



OBTAINING LEGAL ADVICE

ES280

NARRANDERA SHIRE COUNCIL POLICY

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OBTAINING LEGAL ADVICE



Policy No:	ES280
Policy Title:	Obtaining Legal Advice
Section Responsible:	Executive Services
Minute No:	12/136
MagiQ No:	8389
Next Review Date:	To be reviewed as appropriate

Objective

The purpose of this policy is to provide guidelines for obtaining legal advice/service, together with acknowledging Council's resolution to be informed if legal advice/services are to exceed \$5,000.

Statement

Legal services obtained by Council generally relates to:

- (a) Litigation – both planning matters and other matters;
- (b) Advice in relation to the preparation of legal instruments; and
- (c) Preparation of contracts and advice on other matters.

The Legal advice is provided by law firms which have standing arrangements with Council and have the relevant expertise in the areas of law from which the advice is sought. This policy does not apply in insurance matters where the Insurer recommends and seeks to pursue a legal action.

Authority to obtain legal services

The power to issue instructions to Council's solicitors to provide legal advice is with the General Manager. This has been given to the General Manager when Council delegated all of its powers of the General Manager except for those powers which Council cannot delegate under the Act. In turn the General Manager has delegated powers to his staff.

It is reasonable that the authority to approve legal action of any sort rests mainly with the General Manager. Such actions may include, but are not limited, to the following:

1. Defending an action against Council by another party;
2. Initiating prosecutions for day to day matters, for example, failure to pay a fine or over a contractual breach;
3. Initiating legal action to protect an interest of Council, for example a rating matter. Point of principle matters may also involve a further appeal or defence to a higher court;

4. Seeking legal advice on matters relating to litigation;
5. Seeking legal advice on the prospects of potential litigation to further Council's interest;
6. Seeking legal advice on the interpretations of laws, regulations, planning instruments, policies and provisions contained in contracts and leases;
7. Drafting contracts, leases, agreements, deeds, licenses, MOU's and other instruments;
8. Ad-hoc advice or guidance on whether contemporary issues may have legal implications; for example, reviewing draft documents prepared by Council, GIPAA, ICAC and Administrative Decision Tribunal (ADT) matters, Plans of Management etc.

The role of the General Manager is to protect Council's legal interests. If relevant, and wherever possible, mediation should be exhausted before legal action is commenced. In all of the above situations, legal proceedings are not commenced without the concurrence of the General Manager, except in minor enforcement matters.

Authority to obtain legal services

- (a) Council may instruct its legal representatives, through the General Manager, at any time on any matter provided it is by formal resolution;
- (b) The General Manager may instruct Council's legal representatives on all matters, consistent with Council decisions and policies. If the General Manager proposes to give instructions to commence legal proceedings (including an appeal), but excluding minor enforcement or prosecution matters, he/she shall consult the Council before doing so.
- (c) The General Manager may instruct Council's legal representatives for day to day matters including the commencement of legal proceedings in minor enforcement or prosecution matters. This authority may be sub delegated to appropriate staff in accordance with the requirements of the General Manager.

Reporting to Council

The General Manager will report to Council at each Ordinary Meeting, through the Income Statement Report, the detail of the legal expenses expenditure including a breakdown of that expenditure from the commencement of the financial year period.

Additionally, the General Manager will advise Council of a legal action/service that is likely to exceed \$5000.

Policy History

Adopted	15 May 2012
Reviewed	n/a
Amended	n/a

R. E. Plui

Signed: General Manager

Date: 17 May 2012