

# Obtaining Legal Advice Policy 2023

**POL049**



<b>Policy No:</b>	<b>POL049</b>
<b>Policy Title:</b>	<b>Obtaining Legal Advice Policy</b>
<b>Section Responsible:</b>	<b>Executive Services</b>
<b>Minute No/Ref:</b>	<b>23/047</b>
<b>Doc ID:</b>	<b>8389</b>

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## **1. INTENT**

The purpose of this policy is to provide guidelines for obtaining legal advice/service and to confirm who may give instructions for the purpose of obtaining legal advice.

## **2. SCOPE**

Legal services obtained by Council generally relates to:

- Litigation – both planning matters and other matters.
- Advice in relation to the preparation of legal instruments.
- Preparation of contracts and advice on other matters.
- Conveyancing.

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.

## **3. OBJECTIVE**

The policy acknowledges Council's resolution to be informed if/when legal advice/services are expected to exceed \$5,000.

## **4. POLICY STATEMENT**

From time-to-time issues may arise about access to legal advice. This can relate to requests by Councillors as well as requests by Council staff. Legal advice attracts legal privilege, the effect of which is that the recipient of the advice is not required to disclose the advice to third parties.

## **5. PROVISIONS**

### **5.1 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 to the General Manager, except for those powers which Council cannot delegate under the Act. In turn the General Manager has delegated powers to staff.

- Defending an action against Council by another party.
- Initiating prosecutions for day-to-day matters, for example, failure to pay a fine or over a contractual breach.
- 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.
- Seeking legal advice on matters relating to litigation.
- Seeking legal advice on the prospects of potential litigation to further Council's interest.
- Seeking legal advice on the interpretations of laws, regulations, planning instruments, policies and provisions contained in contracts and leases.
- Drafting contracts, leases, agreements, deeds, licenses, MOU's and other instruments.
- 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.

### **5.2 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 and 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.

## **6. DEFINITIONS**

- **NSC:** Narrandera Shire Council.

## **7. ROLES AND RESPONSIBILITIES**

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.

- Council may instruct its legal representatives, through the General Manager, at any time on any matter provided it is by formal resolution.

- 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, the General Manager shall consult the Council.
- 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.

## **8. RELATED LEGISLATION**

- Local Government Act 1993
- Local Government (General) Regulation 2005

## **9. RELATED POLICIES AND DOCUMENTS**

- CS330 Legislative Compliance Policy

## **10. VARIATION**

Council reserves the right to review, vary or revoke this policy in accordance with legislation, regulation and award changes, where applicable. Council may also make changes to this policy and the relevant procedures from time-to-time to improve the effectiveness of its operation.

## **11. PREVIOUS VERSIONS**

Reference to a superseded policy number and/or name is also considered a reference to the new policy number. This policy was previously named:

- ES280 Obtaining Legal Advice

## POLICY HISTORY

<b>Responsible Officer</b>	<b>General Manager</b>		
<b>Approved by</b>	<b>General Manager</b>		
<b>Approval Date</b>	<b>3 April 2023</b>		
<b>GM Signature (Authorised staff to insert signature)</b>			
<b>Next Review</b>	<b>1 February 2025</b>		
<b>Version Number</b>	<b>Endorsed by ELT</b>	<b>Endorsed by Council</b>	<b>Date signed by GM</b>
<b>1 Adopted</b>	-	15/05/2012	17/05/2012
<b>2 Reviewed</b>	22/12/2020	16/03/2021	3/05/2021
<b>3 Reviewed</b>	14/02/2023	21/03/2023	3/04/2023

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## 12. Acknowledgement of Training Received

I hereby acknowledge that I have received, read and understood a copy of Council's Obtaining Legal Advice Policy.	
Employee Name	
Position Title	
Signature	
Date	