



# Agenda – Late Items

## Ordinary Meeting

**Tuesday, 23 May 2023**

**Time: 9.15 am**  
**Location: Council Chambers**  
**82 Brisbane Street**  
**BEAUDESERT QLD 4285**

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**Scenic Rim Regional Council  
Ordinary Meeting  
Tuesday, 23 May 2023  
Agenda – Late Items**

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**10.14 Request for Legal Assistance ..... 3**

## 10 Consideration of Business of Meeting

### Additional Items

#### 10.14 Request for Legal Assistance

**Executive Officer:** General Manager Council Sustainability

**Item Author:** Principal Specialist Governance and Assurance

#### Attachments:

1. Legal Assistance Policy [↓](#) 
2. Legal Assistance Guideline [↓](#) 
3. Application for Legal Assistance - Cr McConnell May 2023\_Redacted - Confidential

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### Executive Summary

The Chief Executive Officer (CEO) has received an application for Legal Assistance from a Councillor which is submitted for consideration by Council in accordance with the Legal Assistance Policy and Guideline. The application is attached for ease of reference.

### Recommendation

That:

1. Council decide whether to grant legal assistance to the applicant Councillor; and
2. If granted, Council determine the amount to be provided along with any conditions that the assistance is subject to.

### Previous Council Considerations / Resolutions

Not applicable.

### Report / Background

The CEO has received a signed application for Legal Assistance from Division 2 Councillor, Jeff McConnell, for consideration by Council.

Cr McConnell is requiring legal assistance in relation to an allegation of inappropriate conduct that was referred to Council from the Office of the Independent Assessor.

In accordance with the Legal Assistance Guideline, this application has been received:

- Prior to the Councillor incurring any legal costs to which the application relates to;
- The written application provides details regarding:
  - The details of the matter for which legal representation is sought;
  - How that matter relates to Council functions and duties of the Councillor;
  - Details of the lawyer (or law firm) who is to be asked to provide the legal representation;
  - The nature of legal representation to be sought;
  - An estimate of the cost of the relevant legal representation; and
  - Details around why Council should provide the relevant support and assistance;
- A signed declaration by the applicant Councillor.

The attached application for legal assistance has been redacted to remove the identity of the complainant and is a confidential document. The complainant is a person who has made a public interest disclosure. The complainant is to be afforded protections which include confidentiality and protection from reprisal. The signed application has been received by the CEO and securely saved in Council's record system.

### **Budget / Financial Implications**

The applicant Councillor is seeking an amount capped at \$15,000 to pay for any legal expenses incurred in dealing with this matter. Should the Councillor be subsequently found to have engaged in inappropriate conduct, the Councillor will be required to pay back any legal costs incurred.

### **Strategic Implications**

#### *Operational Plan*

Theme: 3. Open and Responsive Government

Key Area of Focus: Ongoing integrity of Council's practice and processes

#### *Legal / Statutory Implications*

The provision of legal assistance is governed by Council's Legal Assistance Policy and Guideline. The intent of the policy is to provide a level of legal support to Councillors who may be threatened with legal action or subject to criminal, civil or investigative proceedings. Applicants are required to sign a declaration that they have acted in good faith and not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the legal action relates. The applicant must also agree to repay Council for any legal costs in circumstances where it is found that the applicant did act in a way that was not in good faith, or unlawful or was improper conduct.

**Risks**

Strategic Risks

The following Level 1 and Level 2 (strategic) risks are relevant to the matters considered in this report:

SR46 Inadequate or lack of Governance (including procurement) Framework (systems, policies, procedures, delegations and controls) in place to ensure compliance by Council's Councillors and Officers with all relevant State and Federal legislation and regulations.

Risk Assessment

<b>Category</b>	<b>Consequence</b>	<b>Likelihood</b>	<b>Inherent Risk Rating</b>	<b>Treatment of risks</b>	<b>Residual Risk Rating</b>
Governance, Risk & Compliance  Reputation, damage due to a failure to follow Council policy.	3 Moderate	Possible	Medium	Decide the legal application in accordance with the relevant policy and guideline.	Low

**Consultation**

Not applicable.

**Conclusion**

A decision of Council is now sought in relation to the application for Legal Assistance, which has been submitted by Cr Jeff McConnell.

In accordance with the Legal Assistance Policy, Council may:

- a. Refuse;
- b. Grant; or
- c. Grant subject to conditions;

An application for the payment of legal representation costs is attached.

A copy of the Legal Assistance Policy and Guideline are attached to this report for ease of reference.



## **COUNCIL POLICY (CM02.08.CP) LEGAL ASSISTANCE**

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### **OBJECTIVES**

The objective of this Policy is to provide a framework for the provision of Council legal assistance for:

1. Defamation actions that are commenced by Councillors or employees, as a result of their Council functions and duties; and
2. Where Councillors or employees are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner.

### **POLICY STATEMENT**

Council is committed to:

1. Recognising that Councillors and employees may at times, as a result of their functions and duties, be the subject of defamatory publication:
  - a. Acknowledging that depending on the nature of these defamatory publications, Councillors and employees may seek to take legal action;
  - b. In exceptional circumstances and where appropriate for Council to do so, providing financial assistance to meet the cost of Councillors or employees obtaining legal representation to institute defamation proceedings against third parties; and
  - c. Providing assistance in accordance with the Legal Assistance Guideline.
2. Recognising that Councillors and employees may at times, as a result of their functions and duties, be the subject of legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner:
  - a. Acknowledging that Council has a legislative duty of care to its employees to provide a safe working environment and as such, ensuring Councillors and employees have assurance that they are protected from threats and are not inhibited in undertaking their roles in a full, frank and impartial manner;

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**Policy Reference Number:** CM02.08.CP  
**Portfolio:** Customer and Regional Prosperity  
**Branch:** Governance

**Adoption/Approval Date:** 29.1.2019  
**Review Date:** 29.1.2022  
**File References:** 13/04/003

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- b. In exceptional circumstances and where appropriate for Council to do so, providing financial assistance to meet the cost of Councillors or employees obtaining legal representation if any legal action is taken against them, as a result of undertaking their roles; and
- c. Providing assistance in accordance with the Legal Assistance Guideline.

## DEFINITIONS

**Councillor** means a current or former Councillor or non-elected member of a Council Committee of the Council.

**defamation** means where a person's reputation is harmed by the publication of defamatory matter.

**employee** means a current or former employee or contractor of the Council.

**legal proceedings** may be civil, criminal or investigative.

**legal representation** is the provision of legal services, to or on behalf of a Councillor or employee, by an approved lawyer that are in respect of:

1. a matter or matters arising from the performance of the functions of the Councillor or employee; and
2. legal proceedings involving the Councillor or employee that have been, or may be, commenced.

**legal representation costs** are the costs, including reasonable professional fees and disbursements, that are properly incurred in providing the approved legal representation and the associated legal costs arising therefrom.

**legal proceedings** may be civil, criminal or investigative.

**legal services** include advice, representation or the preparation documentation that is provided by an approved lawyer.

## RELATED DOCUMENTS

1. *Local Government Act 2009*;
2. *Local Government Regulation 2012*;
3. *Defamation Act 2005*; and
4. Legal Assistance Guideline.

This Policy supports the Scenic Rim Regional Council Corporate Plan 2018-2023, in particular Theme - Organisational Sustainability.

**Approved By:**

**SCENIC RIM REGIONAL COUNCIL  
Adopted 29.1.2019**

**Version Information**

<b>Version No.</b>	<b>Date</b>	<b>Key Changes</b>
1	29.1.2019	New Corporate and Community Services 22.1.2019 Item No. 3.1

**Policy Reference Number:** CM02.08.CP  
**Portfolio:** Customer and Regional Prosperity  
**Branch:** Governance

**Adoption/Approval Date:** 29.1.2019  
**Review Date:** 29.1.2022  
**File References:**13/04/003

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## LEGAL ASSISTANCE (CM02.08.01.GL)

### OBJECTIVES

The objective of this Guideline is to provide a framework for the provision of Council legal assistance for:

1. Defamation actions that are commenced by Councillors and employees, as a result of their Council functions and duties, including:
  - a. Identifying the exceptional circumstances in which Council may fund or partly fund the cost of providing relevant legal representation to Councillors and employees to commence a defamation action against third parties in relation to publications made about Councillors and employees in connection with their work with Council; and
  - b. Setting out the process that Council follows in dealing with any requests for legal assistance that are received from Councillors and employees.
2. Where Councillors or employees are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner, including:
  - a. Identifying the exceptional circumstances in which Council may fund or partly fund the cost of providing relevant legal representation to Councillors and employees to meet the cost of any legal action taken against them, as a result of undertaking their roles; and
  - b. Setting out the process that Council follows in dealing with any requests for legal assistance that are received from Councillors and employees.

### SCOPE

This Guideline applies to Councillors and employees who at times, as a result of their functions and duties are:

1. Subject of defamatory publication; and then seek legal representation to institute defamation proceedings against third parties; and
2. Subject of legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner.

**Guideline Reference Number:** CM02.08.01.GL  
**Portfolio:** Customer & Regional Prosperity  
**Branch:** Governance

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**File References:** 13/04/003

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## GUIDELINE RESPONSIBILITIES

### Roles

1. Council is to receive, assess and decide any requests for legal assistance from a Councillor or employee, in accordance with the Policy and Guideline.
2. The Chief Executive Officer (CEO) is then to make any other related decisions on behalf of Council under the Policy and Guideline.
3. An application is to be assessed in the first instance by the CEO. If the applicant is the CEO, the application is to be first assessed by the Mayor.

### Exceptional Circumstances

Under legislation, any expenditure of a local government's funds must be justified on the basis that the expenditure will provide for the good rule and local government of the local government area. Therefore, Council must take into account the need to satisfy itself that the expenditure can be justified as providing for that good government.

Council should not approve a funding decision, unless there are exceptional circumstances that justify the expenditure of public funds:

1. The exceptional circumstances relating to defamation actions that are commenced by Councillors and employees, as a result of their Council functions and duties are detailed in Attachment 1.
2. The exceptional circumstances relating to where Councillors or employees are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner are detailed in Attachment 2.

### Application for payment

1. A Councillor or employee who seeks assistance for the payment of legal representation costs under the Policy is required to make an application(s) in writing to Council via the CEO, using the Application for Legal Assistance form. If the applicant is the CEO, the application is to be made via the Mayor.
2. As far as possible, the application is to be made before incurring any legal costs to which the application relates.
3. A written application under the Policy for the payment of legal representation costs is to provide the required details which include:
  - a. the details of the matter for which legal representation is sought;
  - b. how that matter relates to Council functions and duties of the Councillor or employee making the application;
  - c. in relation to defamation actions commenced by a Councillor or employee, the steps that the Councillor or employee have taken in respect of the publication (eg. whether a concerns notice has been served and/or whether an offer to make amends has been received);

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**File References:** 13/04/003

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- d. the lawyer (or law firm) who is to be asked to provide the legal representation;
  - e. the nature of legal representation to be sought (such as legal advice, representation in court, preparation of legal proceedings etc.);
  - f. an estimate of the cost of the relevant legal representation; and
  - g. why Council should provide the relevant support and assistance.
4. The application includes a signed declaration by the applicant that they:
- a. have acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates;
  - b. have read, and understands the terms of Council's Legal Assistance Policy and Guideline;
  - c. acknowledges that any approval of legal representation costs is conditional on the repayment provisions (see Repayment of Legal Representation Costs below) and any other conditions which are provided for in any approval given under the Policy; and
  - d. undertakes to repay Council any legal representation costs in accordance with the repayment provisions (see Repayment of Legal Representation Costs below).
5. If the amount of the legal assistance is material, then an applicant will be required to sign a more formal document, which requires repayment of monies to Council in return for the provision of assistance under the terms of the Policy.

#### **Limitation of Legal Representation Costs**

1. In approving an application, Council is to set a limit on the legal costs that will be paid.
2. A Councillor or employee may make a further or subsequent application to Council under the Policy in respect of the same matter.

#### **Council's Powers**

1. Under the Legal Assistance Policy, Council may:
  - a. refuse;
  - b. grant; or
  - c. grant subject to conditions,an application for the payment of legal representation costs.
2. The conditions that may be imposed may include, but are not restricted to, setting a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment of the legal representation costs paid for by Council under the Policy.
3. In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under Council's insurance policies or other similar arrangements.

4. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
5. On the basis of, and consistently with, the findings of a court, tribunal, inquiry, regulatory investigation or other similar independent body, Council may determine that a Councillor or employee whose application for legal representation costs has been approved, has, in respect of the matter for which legal representation costs were approved:
  - a. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
  - b. provided false or misleading information in respect of their application for assistance under the Policy.
6. Where a determination is made as per clause 5 (above), the legal representation costs paid by Council are required to be repaid by the Councillor or employee, in accordance with the repayment provisions (see Repayment of Legal Representation Costs below).

**Repayment of Legal Representation Costs**

1. A Councillor or employee whose legal representation costs have been paid by Council is required to repay to Council:
  - a. all or part of those legal costs, as determined by Council - where a determination has been made that the Councillor or employee:
    - i. did not act in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
    - ii. provided false or misleading information in respect of their application for assistance under the Policy;
  - b. if the Councillor or employee receives monies from costs orders, damages, or any settlement, in respect of the matter for which Council has paid legal representation costs, then the Councillor or employee is to repay such sum to Council up to the amount of legal representation costs that have been paid by Council under the Policy.
2. Council reserves its rights to take action in a court of competent jurisdiction to recover any monies due and owing to it by a Councillor or employee under its Policy.

**Delegation to Chief Executive Officer**

1. In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of the Council under Council's Powers (as detailed above), to a maximum of \$10,000 in respect of each application.
2. An application approved by the CEO under Repayment of Legal Representation Costs (as detailed above), is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this Policy, including its powers under Council's Powers (as detailed above).

## DEFINITIONS

**approved lawyer** is to be:

1. an 'Australian legal practitioner' under the *Legal Profession Act 2007* (Qld);
2. from a law firm on Council's panel of legal service providers, unless Council considers that this is not appropriate in the circumstances; and
3. as otherwise approved in writing by Council or the CEO under delegated authority.

**Councillor** means a current or former Councillor or non-elected member of a Council Committee of the Council.

**defamation** means where a person's reputation is harmed by the publication of defamatory matter.

**employee** means a current or former employee or contractor of the Council.

**legal proceedings** may be civil, criminal or investigative.

**legal representation** is the provision of legal services, to or on behalf of a Councillor or employee, by an approved lawyer that are in respect of:

1. a matter or matters arising from the performance of the functions of the Councillor or employee; and
2. legal proceedings involving the Councillor or employee that have been, or may be, commenced.

**legal representation costs** are the costs, including reasonable professional fees and disbursements, that are properly incurred in providing the approved legal representation and the associated legal costs arising therefrom.

**legal proceedings** may be civil, criminal or investigative.

**legal services** include advice, representation or the preparation of documentation that is provided by an approved lawyer.

**payment** by Council of the legal representation costs may be either by:

1. a direct payment to the approved lawyer; or
2. a reimbursement to Councillor or employee.

## RELATED DOCUMENTS

- (a) *Local Government Act 2009*;
- (b) *Local Government Regulation 2012*;
- (c) *Defamation Act 2005*; and
- (d) Legal Assistance Policy.

This Guideline supports the Scenic Rim Regional Council Corporate Plan 2018-2023, in particular Theme - Organisational Sustainability.

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**Approved By:**

**Jon Gibbons**  
**Chief Executive Officer**  
**29 January 2019**

**Version Information**

<b>Version No.</b>	<b>Date</b>	<b>Key Changes</b>
1	29.1.2019	Corporate and Community Services Committee 22.1.2019 Item No. 3.1 New

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**Branch:** Governance

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## Attachment 1

### Exceptional circumstances relating to defamation actions that are commenced by Councillors and employees, as a result of their Council functions and duties

#### Exceptional Circumstances

Councillors and employees will at times be the subject of personal public criticism they consider to be unfair. Depending on the circumstances and the veracity of the criticism, Councillors or employees may seek to redress the situation by taking legal action. Legal advice suggests that only in exceptional circumstances would a Council be able to justify, under the 'good government' provisions, funding the initiation of legal action by a Councillor or employee.

It is important to note that where public criticism is made about Council as a whole, funding should not be justified. Legal precedent dictates that it is fundamental to public scrutiny that governments be open to criticism by members of the community. The threat of civil action against any person who publicly criticises a Council will have an inhibiting effect on freedom of speech and inevitably lessen a Council's accountability to its community.

While the categories of exceptional circumstances are not closed, it will generally be the case that providing financial assistance to a Councillor or employee to undertake defamation proceedings will be appropriate only if:

1. The legal representation costs must relate to a matter that arises from the performance, by the Councillor or employee, of his or her Council functions;
2. In performing his or her functions, to which the legal representation relates, the Councillor or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
3. The legal representation costs do not relate to a matter that is of a personal or private nature.
4. The publication:
  - a. is persistent; and
  - b. would lower or harm the Councillor's or employees' personal or professional reputation, hold the Councillor or employee up to ridicule, or lead others to shun and avoid the person; and
  - c. is causing, or is likely to cause, the Councillor or employee distress in the workplace;
5. A concerns notice under the *Defamation Act 2005* (Defamation Act) has been provided by the Councillor or employee to the publisher;
6. The Councillor or employee has not refused to accept a reasonable offer to make amends by the publisher under the Defamation Act;
7. The resources of Council have been, or are likely to be, unreasonably directed towards dealing with the publications; and
8. There is no other reasonable legal cause of action or course available to the person to prevent the ongoing publication.

### **Types of legal representation costs that may be approved**

If the exceptional circumstances outlined above exist, Council may approve the payment of legal representation costs for a Councillor or employee to institute or consider the institution of a defamation action against a third party seeking damages, under Council's Legal Assistance Policy.

Council should not approve a funding decision, unless there are exceptional circumstances that justify the expenditure of public funds:

#### *Exceptional circumstances - Example*

John Smith is a Councillor. Terry Murphy is a local environmentalist and has made on-going and persistent publications indicating that the Councillor has a drinking problem and alleging that he is drunk at every Council meeting - which he asserts explains Council's pitiful response to environmental issues in the City. He also says that the Councillor has no morals and regularly cheats the people of the City, by accepting bribes and gifts from developers. He says that something serious has to be done about the Councillor to save the City from environmental and economic ruin. Terry posts these publications on line and also has been leaving flyers around the City.

John has given Terry a concerns notice under the Defamation Act, but has not received any reasonable offer to make amends from Terry. John has also raised the matter with the police, but no action has been taken because Terry's behaviour is not considered sufficiently threatening.

John has indicated to Council that he is concerned about the impact of the publications on his family and that it is causing him stress in performing his duties and functions as a Councillor. Council is spending a lot of time responding to John's concerns and in trying to manage the issue. For example, Council is continually fielding calls from journalists and ratepayers about the publications.

#### *Not exceptional circumstances - Example*

Mary Bloggs is a Councillor. Bob James, her neighbour, was dissatisfied at the state of Mary's garden, which had trees overhanging on Bob's property. Bob sent Mary an email in which he asked her to get the trees cut, but Mary did not respond. Bob then complained about the state of Mary's garden on social media and suggested that the poor delivery of Council services was a direct result of Mary's incompetence as a Councillor.

Mary is frustrated that the post was made. Some local newspapers have reported the comments about the neighbourly dispute, but Council have not fielded any calls from residents and ratepayers.

Council should not approve for a Councillor, (unless there are exceptional circumstances), the payment of legal representation costs that arise from, or are associated with, election issues or the conduct of an election campaign especially having regard to the implied freedom of political communication that has been recognised by the Australian Courts.



**Attachment 2**

**Exceptional circumstances relating to where Councillors or employees are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner**

**Exceptional Circumstances**

While the categories of exceptional circumstances are not closed, it will generally be the case that providing financial assistance to a Councillor or employee when they are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner will be appropriate only if:

1. The legal representation costs relate only to a matter that arises from the performance, by the Councillor or employee, of his or her functions;
2. The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
3. In performing his or her functions, to which the legal representation relates, the Councillor or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
4. The legal representation costs do not relate to a matter that is of a personal or private nature.

**Types of legal representation costs that may be approved**

If the exceptional circumstances outlined above exist, Council may approve the payment of legal representation costs for a Councillor or employee when they are threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner, under Council's Legal Assistance Policy.

Council should not approve a funding decision, unless there are exceptional circumstances that justify the expenditure of public funds:

*Exceptional circumstances - Example*

1. where proceedings are brought against a Councillor or employee in connection with his or her Council functions -  
  
for example, an action for defamation or negligence arising out of a decision made or action taken by the Councillor or employee; or
2. to enable proceedings to be commenced and/or maintained by a Councillor or employee to permit him or her to carry out his or her functions -  
  
for example, where a Councillor or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Councillor or employee.