



POLICY NO:-
CP1-018 – LITIGATIONS

GOVERNANCE INFORMATION			
Procedure Link:	N/A	Administrative Policy Link:	

ADMINISTRATION INFORMATION							
History	1	CP1-018	OCM	10/12/24	Res: 9523	Synopsis:	Policy created.
Version:	2						

1. RESPONSIBLE DIRECTORATE

Chief Executive Officer

2. PURPOSE OR OBJECTIVE

This Policy has been endorsed by the Shire of Collie to assist in maintaining proper standards in litigation. It is intended to reflect the existing law and is not intended to amend the law or impose additional legal or professional obligations upon legal practitioners or other individuals.

This Policy applies to civil claims and civil litigation involving the Shire, including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.

3. POLICY

3.1 Council's Obligation

The Shire of Collie must act as a model litigant in the conduct of litigation.

3.2 Nature of the Obligation

The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their legal ethical obligations. Essentially it requires that the Council act with complete propriety, fairly and in accordance with the highest standards.

The obligation requires that the Council act honestly and fairly in handling claims and litigation by:

- a) Dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
- b) Paying legitimate claims without litigation, including partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid, verified by a cost benefit analysis of a defence of the claim;
- c) Acting consistently in the handling of claims and litigation;

- d) Endeavouring to avoid litigation, wherever possible;
- e) Where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
 - i.) Not requiring the other party to prove a matter which the Council knows to be true; and
 - ii.) Not contesting liability if the Council knows that the dispute is really about quantum;
- f) When settling civil claims the Council should consider the use of confidentiality clauses in relation to settlements on a case by case basis;
- g) Not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
- h) Only undertaking and pursuing appeals where the Council believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interest of the Council pending the receipt of proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable; and
- i) Apologising where the Council is aware that it or its lawyers have acted wrongfully or improperly.

The obligation does not require that the Council be prevented from acting firmly and properly to protect its interests. It does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made.

In particular, the obligation does not prevent the Council from:

- a) Enforcing costs, orders or seeking to recover costs;
- b) Relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;
- c) Pleading limitation periods;
- d) Seeking security for costs;
- e) Opposing unreasonable or oppressive claims or processes;
- f) Requiring opposing litigants to comply with procedural obligations; or;
- g) Moving to strike out untenable claims or proceedings.

4. REFERENCE DOCUMENTS

Local Government Act 1995

NSW Model Litigant Policy M2016-03.