

LIVERPOOL CITY COUNCIL

LEGAL SERVICES POLICY

Adopted: 29 July 2015

TRIM: 126646.2015



LEGAL SERVICES POLICY

1. PURPOSE

- 1.1 This policy sets out the arrangements for the control, coordination, management and provision of legal services for and on behalf of Liverpool City Council.
- 1.2 This policy applies to the Mayor, Councillors, members of Council staff and any other persons acting for or on behalf of, or in the name of, the Council irrespective of any delegation or authority issued in the name of any position title or individual member of Council staff.

2. LEGISLATIVE REQUIREMENTS

Evidence Act 1995
Government Information (Public Access) Act 2009
Legal Profession Act 2004
Legal Profession Regulation 2005
Legal Profession Uniform Law 2015
Local Government Act 1993
Privacy and Personal Information Protection Act 1998
Revised Professional Conduct and Practice Rules 1995 (Solicitors' Rules)

3. DEFINITIONS

Council means Liverpool City Council.

CEO means the Chief Executive Officer of Council.

CFO means the Chief Financial Officer of Council.

MG&LS means Council's General Counsel and Manager Governance and Legal Services.

LS means Council's Legal Services Unit.

Legal provider means a provider of legal services external to Council and includes a firm of solicitors or a barrister.

Referring person means the member of Council staff or other person acting for or on behalf of, or in the name of the Council, who is seeking legal services.

4. POLICY

4.1 The role of LS

- 4.1.1 The MG&LS has primary responsibility for the control, coordination, management and provision of all legal advice and other legal services for and on behalf of Council.

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- 4.1.2 LS, through its in-house solicitors, is committed to providing independent and professional legal advice and support to all areas of Council and ensuring that the legal service needs of Council are met in a timely and cost-effective manner, which facilitates outcomes in the best interests of Council.
- 4.1.3 LS seeks to provide practical solutions to legal issues and to minimise the risk of claims and litigation against Council.
- 4.1.4 LS will also strive to preserve and protect the reputation of Council in the community and its standing as a progressive local authority.
- 4.1.5 The role of LS includes, but is not limited to:
- a) Advising on specific compliance and legislative requirements
 - b) Alternative dispute resolution, litigation and claims management
 - c) Legal advice, including the interpretation and application of the Council's legislation, policies and procedures
 - d) Reporting on Council's legislative compliance and its claims and contingent liabilities
 - e) Responding to court proceedings such as a statement of claim or an appeal notice, orders such as subpoenas and requests from third parties under legislative authority.
- 4.1.6 All LS solicitors are admitted to practice in New South Wales and hold current practising certificates.
- 4.1.7 As well as being required to act in accordance with Council policies and procedures, LS solicitors are officers of the Supreme Court of NSW and their practice and ethical standards must also be in accordance with the *Legal Profession Act 2004*, the *Legal Profession Regulation 2005* and the *Revised Professional Conduct and Practice Rules 1995 (Solicitors' Rules)* issued by the Law Society of New South Wales and as amended from time to time.
- 4.1.8 The MG&LS may from to time issue guidelines and procedures to assist with the implementation of this policy and the control, coordination, management and provision of legal services for Council.
- 4.1.9 Any legal services or advice requested from LS, or from legal providers engaged on behalf of Council, must relate to the business and interests of Council.
- 4.1.10 LS provides independent legal advice and services that take into account the overall interests and business of Council.

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4.1.11 LS cannot provide legal services or advice of a personal nature to the Mayor, Councillors or members of Council staff.

4.2 Legal service requests

4.2.1 All requests for legal services must be in writing to the MG&LS. All such requests are to be approved by, and copied to, the relevant Manager (or, in the case of requests by Managers, the relevant Director) of the requesting business unit/division.

4.2.2 All requests for legal services must include detailed information about the matter or transaction (including copies of all relevant documents) to LS at the time a request for services is made. The following information is required before LS can commence work:

- a) A summary of what the matter or transaction is about and, if a contract, details of what has already been negotiated with the other party;
- b) Evidence that the matter or transaction has first been authorised by the person(s) with appropriate authority;
- c) The name of the person who will be instructing the LS;
- d) All documents (including approvals) and background information relating to the matter or transaction, including all relevant evidence, plans and/or photographs, and any additional documents requested by LS; and
- e) Any other information requested by LS.

4.2.3 The MG&LS, in consultation with the referring person will determine whether the work is to be undertaken by LS or through the use of a legal service provider.

4.3 When to contact LS

4.3.1 Instructions received by LS are normally dealt with in order of receipt, but receive priority according to the level of importance and genuine urgency. Accordingly, it is important to involve LS as early as possible in any transaction or matter where legal advice or services are required, including where:

- a) There is an actual or potential dispute including an imminent or actual threat to commence litigation; or
- b) It is proposed to procure goods or services for Council. If a transaction involves a tender with a specified timeframe, that timeframe should take into account any need for LS to provide or

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seek certain advices, to review material and to prepare and settle documentation (such as draft contracts).

4.4 External legal referrals

4.4.1 The MG&LS has overall responsibility for the control, coordination and management of all legal providers and the legal requests referred to those providers to:

- a) Avoid conflicts of interest;
- b) Ensure consistency and quality of service;
- c) Maintain legal professional privilege; and
- d) Maximise value from Council's expenditure on external legal services.

4.4.2 Where it is determined that work is to be undertaken by a legal provider, the MG&LS will consult with the referring officer as to the selection of the legal provider. The MG&LS, however, retains sole discretion as to the selection of this provider and the terms on which such referral of legal work will be made.

4.4.3 Council normally obtains most of its external legal services from a Recognised Contractor List (a panel of legal providers appointed by Council following a tender process). This panel is not an exclusive arrangement and, subject to the agreement of the CFO or the CEO and appropriate terms of engagement being established, legal services may be sourced from other legal providers where circumstances demand (such as the need for a specialist in a particular area of the law).

4.4.4 The CEO may, at his/her sole discretion, directly engage a legal provider for work that is of a sensitive or urgent nature.

4.5 Legal professional privilege

4.5.1 Legal advice attracts legal privilege. Legal privilege maybe waived (or lost) by inadvertent or actual disclosure of the advice or the existence of the advice to a third party.

4.5.2 Legal privilege is recognised in many circumstances, including as a basis for:

- a) Closing a Council meeting to exclude members of the public under section 10A of the Local Government Act 1993;
- b) Withholding documents under the *Evidence Act* 1995 and the Government Information (Public Access) Act 2009; and

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- c) Withholding documents from production under a subpoena or notice to produce, whether or not Council is a party to the legal proceedings.

4.5.3 As a general rule, Council is entitled to claim legal professional privilege for any communications between lawyers (including LS lawyers) and members of Council staff, provided those communications are for the dominant purpose of seeking or receiving legal advice or services, or where those communications relate to litigation that has already commenced or is anticipated.

4.5.4 All Councillors and members of Council staff must treat all communications between them and LS (and any external lawyers) as strictly private and confidential, and only disclose them to others within the Council on a "strictly need to know" basis. Legal advice should not, under any circumstances, be referred to in any published documents other than in cases of necessity, or for periodical confidential reporting to Council.

4.5.5 Communications from LS to or from external lawyers should not be disclosed to anyone outside Council, without first obtaining the approval of the MG&LS.

4.6 Access to legal advice

4.6.1 In determining a right of access to legal advice, a distinction must be made between the right to read relevant legal advice and the right to have a copy.

4.6.2 In regard to access to legal advice, the Mayor and Councillors:

- a) Must have access to all legal advice relevant to a matter before Council upon which a decision is to be made, but they may not retain written copies of such advice. All copies of advice circulated during a briefing or Council meeting must be returned at the end of that briefing or meeting to the CEO, CFO, or MG&LS;
- b) May, on request to the CEO, have access (for reading only) to any legal advice on any other matter not involving matters referred to in subclause a) above. In making that request, the Councillor shall state the particular advice requested and the purpose of that request. If such advice exists, the CEO may provide access to that advice to the Councillor (and other Councillors in accordance with the Code of Conduct);

4.6.3 Where the Mayor and Councillors are privy to legal advice, they have a special duty to avoid any disclosure to any party, including any constituent who may have made representation to them. Where the

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Mayor or a Councillor has chosen to take an advocacy role for any party (other than Council), the Mayor or the Councillor should:

- a) Declare these circumstances, including, for example, where any representations are made to them by a Council adversary in litigation;
- b) Complete and lodge a declaration of interest form; and
- c) Disqualify themselves from receiving any legal advice, in any form, obtained by Council on the matter.

4.6.4 Potential recipients of copies of legal advice must have regard to actual or potential conflicts of interest and must not obtain access to legal advice in respect of which they have a conflict of interest.

4.7 Notification of matters to the Mayor and Councillors

4.7.1 The MG&LS will keep the Mayor and Councillors apprised of the progress and outcome major litigation by providing quarterly reports to Council for consideration in confidential session.

4.7.2 All insured litigation, managed by the Westpool Panel, is dealt with through the Westpool Board. Councillors who are members of the Board will receive information through the Board and must adhere to the Board's fiduciary obligations.

4.8 Breaches of this policy by Councillors

4.8.1 A breach of this policy by the Mayor or any Councillor will be dealt with in accordance with Council's Code of Conduct and Code of Conduct Procedures.

4.9 Breaches of this policy by members of Council staff

4.9.1 A breach of this policy by members of Council staff will be dealt with in accordance with any relevant staff agreements, awards, industrial agreements, contracts and Council policies, including the Code of Conduct and Code of Conduct Procedures.

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AUTHORISED BY

Council

EFFECTIVE FROM

29 July 2015

DEPARTMENT RESPONSIBLE

Corporate Services (Governance and Legal Services)

REVIEW DATE

29 July 2017

REFERENCES

Liverpool City Council: Code of Conduct

Liverpool City Council: Code of Conduct Procedures

Liverpool City Council: Ethical Governance: Conflicts of Interest Policy

VERSION

Version	Amended by	Changes made	Date	TRIM Number
1	Council	Original adoption	23 December 2013	270066.2013
2	Council	Complete review	29 July 2015	126646.2015