



CONFIRMED MINUTES

GOVERNANCE COMMITTEE MEETING

21 AUGUST 2023

I certify that the minutes of the meeting of the Governance Committee held on Monday, 21 August 2023 were confirmed on Monday, 16 October 2023.

A handwritten signature in blue ink, appearing to read "Anna King", is written over a horizontal line.

Presiding Person



**CONFIRMED MINUTES
GOVERNANCE COMMITTEE MEETING
21 AUGUST 2023**

ATTENTION/DISCLAIMER

The purpose of this Committee Meeting is to discuss and make recommendations to Council about items appearing on the agenda and other matters for which the Committee is responsible. The Committee has no power to make any decisions which are binding on the Council or the Shire of Mundaring unless specific delegation of authority has been granted by Council. No person should rely on or act on the basis of any advice or information provided by a Member or Employee, or on the content of any discussion occurring, during the course of the Committee Meeting.

The Shire of Mundaring expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any advice or information provided by a Member or Employee, or the content of any discussion occurring during the course of the Committee Meeting.

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**GOVERNANCE COMMITTEE
COMMITTEE ROOM, SHIRE OF MUNDARING ADMINISTRATION CENTRE – 5.30PM**

1.0 OPENING PROCEDURES

The Presiding Person declared the meeting open at 5.32pm.

Acknowledgement of Country

Shire of Mundaring respectfully acknowledges the Whadjuk people of the Noongar Nation, who are the traditional custodians of this land. We acknowledge Elders past, present and emerging and respect their continuing culture and the contribution they make to the region.

1.1 Announcement of Visitors

Nil

1.2 Attendance/Apologies

Members	Cr James Martin (President)	South Ward
	Cr Paige McNeil (Deputy President) (Presiding Person)	Central Ward
	Cr Neridah Zlatnik	East Ward
	Cr Luke Ellery (arrived 5.37pm)	South Ward
	Cr Jo Cicchini	West Ward
	Cr Karen Beale (left 5.49pm)	West Ward

Staff	Jonathan Throssell	Chief Executive Officer
	Jeannine Bryant	Acting Director Corporate Services
	Elizabeth Nicholls	Governance Coordinator
	Pascaline Owers	Governance Officer

Apologies	Garry Bird	Director Corporate Services
	Stan Kocian	Manager Finance and Governance

Leave of Absence Nil

Guests Nil

2.0 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

The Presiding Member requested that an update be provided on the review of the Roadside Conservation Policy.

The Governance Coordinator advised that the review of the Roadside Conservation Policy has been put on hold. Following the Governance Committee workshop, officers had further discussions with relevant service areas. Based on the discussions it is considered appropriate to schedule the Roadside Conservation Policy in the Governance Committee Workplan which will be reviewed presented to the Governance Committee following the 2023 ordinary local government election.

3.0 DECLARATION OF INTEREST

3.1 Declaration of Financial Interest and Proximity Interests

Council Members must disclose the nature of their interest in matters to be discussed at the meeting (*Part 5 Division 6 of the Local Government Act 1995*).

Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting (*Sections 5.70 and 5.71 of the Local Government Act 1995*).

Cr Paige McNeil disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may have a financial interest should the policy be approved and personally used in the future.

Cr James Martin disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may have potential future financial benefit .

Cr Neridah Zlatnik disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may provide potential benefit if policy is approved and utilised in the future.

Cr Luke Ellery disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may provide potential benefit of legal services.

Cr Jo Cichinni disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may provide legal representation.

The Chief Executive Officer disclosed an financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may provide the potential to access legal representation through this policy.

Approval has been sought for committee members to participate in the meeting consistent with section 5.69 of the *Local Government Act 1995*. Approval has been granted for Cr Paige McNeil, Cr James Martin, Cr Neridah Zlatnik, Cr Luke Ellery and Cr Jo Cichini to fully participate in the discussion and decisions making relating to item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation).

Cr Karen Beale disclosed a financial interest in item 6.2 (Policy Review – Provision of Financial Assistance for Legal Representation) as the item may have potential future financial benefit. Due to being on a leave of absence, the financial interest was not disclosed prior to the meeting.

3.2 Declaration of Interest Affecting Impartiality

Nil

4.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

COMMITTEE DECISION RECOMMENDATION	GC1.08.23
Moved by Cr Zlatnik	Seconded by Cr Martin

That:

1. the Minutes of the Governance Committee Meeting held 19 June 2023 be confirmed;
and
2. the Minutes of the Special Governance Committee Meeting held 25 July 2023 be confirmed.

CARRIED 5/0

For: Cr Beale, Cr Cicchini, Cr Zlatnik, Cr McNeil and Cr Martin

Against: Nil

5.0 PRESENTATIONS

Nil

6.0 REPORTS OF EMPLOYEES

6.1 New Policy - Execution of Documents and Use of Common Seal Policy

File Code	GV.OPP1
Author	Pascaline Owers, Governance Officer
Senior Employee	Garry Bird, Director Corporate Services
Disclosure of Any Interest	Nil
Attachments	1. Draft Execution of Documents Policy

SUMMARY

An “Execution of Documents Policy” has been drafted (**Attachment 1**) and is presented to the Committee for its consideration and recommendation to Council for adoption.

BACKGROUND

A “Use of Common Seal Policy” OR-13 was adopted in February 2013 and repealed by Council in September 2017 (C3.09.17). The reason for repeal included in the report was as follows:

This policy was adopted in February 2013 as a “temporary policy to clarify use of the common seal until the Standing Orders Local Law is reviewed and complies with the Act.”

In 2015 the Meeting Procedures Local Law replaced the Standing Orders Local Law and it is silent on the use of the common seal as this is now governed by section 9.49A of the Local Government Act 1995 (the Act).

Historically affixing the common seal was the standard way to execute a document or deed. In 2009 the Act was amended to allow local governments to execute a document either by affixing the common seal or by an authorised person signing it. In reality Shire of Mundaring only uses the common seal where its use is required by a third party (such as Landgate) or by legislation, for example the Transfer of Land Act 1893 for land transactions including leases.

The “Execution of Documents and Use of the Common Seal Procedure” is a current operational document which provides details of the execution authorisations from Council to CEO and from the CEO to Directors and the procedure for affixing of Common Seal.

At the 17 July 2023 Governance Committee informal workshop, a new policy discussion paper was presented to the committee to seek feedback and inform the writing of the draft policy. Feedback has been incorporated into the final draft for adoption (**Attachment 1**).

STATUTORY / LEGAL IMPLICATIONS

Section 2.7 of the *Local Government Act 1995* provides the role of council in relation to the determination of policies:

- (1) *The council —*
 - (a) *governs the local government’s affairs; and*

- (b) *is responsible for the performance of the local government’s functions.*
- (2) *Without limiting subsection (1), the council is to —*
- (a) *oversee the allocation of the local government’s finances and resources; and*
- (b) *determine the local government’s policies.*

POLICY IMPLICATIONS

A new “Execution of Documents Policy” will be adopted if the recommendation is adopted by Council.

The “Policy Development and Review Policy” provides the process by which policies are to be scheduled for review. At the February 2023 Governance Committee meeting, the 2023 Governance Committee Workplan was endorsed. An “Execution of Documents Policy” was listed by officers in the Workplan for development to provide additional clarity on the provisions of the legislation.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Mundaring Strategic Community Plan 2020 - 2030

Priority 4 - Governance

Objective 4.4 – High standard of governance and accountability

Strategy 4.4.3 – Risks are well managed

SUSTAINABILITY IMPLICATIONS

Governance

- Comply with relevant policy, legislation, regulation, criteria and guidelines.

RISK IMPLICATIONS

Risk: Compliance: Documents are not executed in accordance with section 9.49A of the Act		
Likelihood	Consequence	Rating
Possible	Minor	Moderate
Action / Strategy		
An “Execution of Documents Policy” be adopted and internal procedures support the operation of the policy.		

EXTERNAL CONSULTATION

Nil

COMMENT

The draft “Execution of Documents Policy” has been developed encompassing aspects the City of Wanneroo’s, City of Vincent’s and the Town of Victoria Park’s Execution of Documents Policies.

The current practices for executing documents have been formalised in the “Execution of Documents Policy” to provide:

- overarching authorisations to various Shire officers so that Council approval is not required every time a document is signed; and
- clarity on documents categories.

An updated “Execution of Documents Procedure” will incorporate relevant information from the Policy (if adopted) to provide guidance to employees authorised to execute of documents.

VOTING REQUIREMENT

Simple Majority

COMMITTEE RECOMMENDATION		GC2.08.23	
Moved by	Cr Zlatnik	Seconded by	Cr Cicchini

That Council adopts the “Execution of Documents Policy” (**Attachment 1**).

CARRIED 6/0

For: Cr Beale, Cr Cicchini, Cr Ellery, Cr Zlatnik, Cr McNeil and Cr Martin

Against: Nil

Change to Order of Business

COMMITTEE DECISION MOTION		GC3.08.23	
Moved by	Cr Beale	Seconded by	Cr Cicchini

That Item 6.3 be considered prior to Item 6.2.

CARRIED 6/0

For: Cr Beale, Cr Cicchini, Cr Ellery, Cr Zlatnik, Cr McNeil and Cr Martin

Against: Nil



2.X EXECUTION OF DOCUMENTS POLICY

Responsible Directorate	Corporate Services
Responsible Service Area	Governance
Adopted	<month/ year> <Council resolution>
Procedure Ref	Execution of Documents and Use of Common Seal Procedure (Admin-02)

1. PURPOSE

The purpose of this policy is to establish, in accordance with the requirements of the *Local Government Act 1995* the authority for the Chief Executive Officer (CEO) and other authorised officers to sign (execute) documents on behalf of Shire of Mundaring (the Shire), and the protocols for affixing and administration of the Shire's common seal.

This policy provides overarching authorisations to various Shire officers so that Council approval is not required every time a document is signed.

2. SCOPE

This policy applies to all Shire officers preparing documents for execution and/or who have been authorised through the provisions of this policy to execute documents on behalf of the Shire.

3. DEFINITIONS

Act	<i>Local Government Act 1995.</i>
'acting through'	An individual undertaking a task on behalf of a more senior officer who is responsible for that task.
authorised officer	person, or class of persons, appointed under a head of power (e.g. section 9.10(2) of the Act) for the purposes of performing particular functions.
CEO	the Chief Executive Officer who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.
'delegated authority' (exercise of)	the exercising of a power or discharging of a duty by a person with the statutory power to do so, and who has been duly appointed
Director	an employee classified as a senior employee under section 5.37 of the Act and directly responsible to the CEO.

document	for the purpose of this policy, document means any paper or electronic document which establishes obligations on the part of the Shire and/or third parties.
Line Manager	an employee responsible for organisational and financial management of a service area.

4. POLICY

Section 9.49A(1) of the Act provides that a document is duly executed by a local government if:

- the common seal of the local government is affixed to it; or
- it is signed on behalf of the local government by a person or persons authorised by the Council to do so.

For the purpose of this policy, documents commonly executed by the Shire are grouped into three categories. The way in which a document is to be executed and who has the authority to execute a document is based upon its category as outlined below.

The actions for the implementation of this policy are detailed in the "Execution of Documents Procedure".

4.1. Categories

If it is unclear what category a document is, then the higher category is to take precedence.

If a document does not fit under any category, the Shire officer is to refer to a Director or the CEO for appropriate category classification.

4.1.1. Category 1 Documents

Category 1 documents require the Shire's common seal to be affixed in accordance with section 9.49A of the Act as follows:

- a. Council has specifically authorised by resolution:
 - i. the execution of the document by the Shire; and,
 - ii. the affixing of the common seal to the document in accordance with section 9.49A(2).
- b. The common seal is affixed to the document in the presence of the Shire President and the CEO to attest the common seal was so affixed in accordance with section 9.49A(3). In the absence of the Shire President and/or the CEO, as the case may be, the Deputy Shire President and a Director as authorised in accordance with the provisions of the Act.

4.1.2. Category 2 Documents

Category 2 documents do not require the Shire's common seal to be affixed.

In accordance with section 9.49A(4), Council have authorised officers designated to the positions listed under schedule 1 to sign documents on behalf of the Shire. These authorisations do not undermine any delegated authority which may be in place.

4.1.3. Category 3 Documents

Category 3 documents are documents that are created in the normal course of business to discharge the duties of an officer's position in a manner consistent with Shire policies and procedures.

Category 3 documents are to be executed by the CEO, a Director, Line Manager, or a Shire officer where the authority and accountability has been extended to that officer through an authorisation, policy, procedure, or a position description. It is therefore important to have a good knowledge of the documents that relate to the directorate and/or service area which is responsible for the document.

Schedule 1 - Document Categories

The below table indicates pre-approved signing rights (marked with an 'X'):

Category 1	Shire President	CEO	Authorised officer	Director	Line Manager
Land transfer forms	x	x	Where authorised		
Loan documentation (relating to loans which Council has resolved to raise)	x	x	Where authorised		
Local Laws (made and amended)	x	x	Where authorised		
Local Planning Scheme (adopted and amended)	x	x	Where authorised		
Mortgage documents	x	x	Where authorised		
Documents which, in the opinion of the CEO, or Director are sufficiently complex, high risk and / or significant in nature to warrant the affixing of the common seal	x	x	Where authorised		
Documents of a ceremonial nature	x	x	Where authorised		

Category 2	Shire President	CEO	Authorised Officer	Director	Line Manager
Offer and Acceptance forms and associated documents required to enact a decision of Council to purchase or sell land. Note: this does not include mortgage documents and land transfer forms which are Landgate forms		x	x		
Documents required to enact a decision of Council which are not Category 1 documents		x	x	x	
General deeds, legal and service agreements		x		x	x
Leases, licences and access agreements, and associated documents		x	x	x	x
Documents required to enact a decision made under a delegated authority or as a condition of approval given under delegated authority			x [refer to delegation]		
Documents required when the Shire owns land		x	x	x	x
Documents required when the Shire manages land under a management order		x	x	x	x
Documents prepared for registration at Landgate. (The above does not extend to Category 1 Mortgage documents and Land transfer forms)		x	x	x	x
Indemnity given by the Shire to a third party		x	x	x	
Memorandums of Understanding and other statements of intent and terms and conditions		x	x	x	x

Category 3	Shire President	CEO	Authorised Officer	Director	Line Manager
Documents which arise out of the general operation of a Directorate, and/or are those which are sent on behalf of the Shire in the ordinary course of business (acting through).		x	x	x	x

4.2. Order of signing

Documents should generally be executed by all other parties prior to being executed by the Shire.

Exceptions may arise with Scheme Amendments and Structure Plan documents which may be certified prior to Western Australian Planning Commission (WAPC) certifying the document or when it is not practicable or appropriate.

4.3. Protocol for Execution by Authorised Officers

Employees authorised under section 9.49(A)(4) of the Act may sign documents identified for that purpose.

Directors may only execute documents relevant to matters within the scope of their directorate. Documents relevant to the activities of multiple directorates may only be executed by the CEO.

Line Managers may only execute documents relevant to matters within the scope of their responsibilities. Documents relevant to the activities of multiple service areas may only be executed by the relevant Director.

If any documents are considered high risk and/or significant in nature having for example a political, historical/customary, controversial or financial impact on the Shire, the CEO or Director can determine how such documents are to be executed.

4.4. Deputising or Signing on Behalf of Another Person

In accordance with section 9.49(4) of the Act which requires authority for execution of documents to be resolved by Council, a document may only be executed by a person who holds a position authorised by Council's adoption of this policy. Therefore, in the absence of a person authorised by this policy another person may deputise where they have been appointed in writing to act for the authorised person.

4.5. Order of Precedence

The following takes precedent over this policy, in the order listed below:

- a. any legislation;
- b. formal requirements of a Commonwealth or State department, authority or agency (as described in a policy or procedure);
- c. a Council decision expressly specifying a particular way in which a document is to be executed; and

d. the Shire's Delegation Register.

5. RELATED LEGISLATION

Local Government Act 1995 section 9.49A

6. RELATED DOCUMENTS

Delegations Register

DRAFT

In accordance with Committee Decision GC4.08.23 Item 6.3 was considered prior to Item 6.2

At 5.49pm Cr Beale left the meeting after having declared an interest in Item 6.2 “Policy Review – Provision of Financial Assistance for Legal Representation”.

6.2 Policy Review - Provision of Financial Assistance for Legal Representation

File Code	GV.OPP 1
Author	Pascaline Owers, Governance Officer
Senior Employee	Garry Bird, Director Corporate Services
Disclosure of Any Interest	Nil
Attachments	<ol style="list-style-type: none">1. Draft Legal Representation for Council Members and CEO Policy2. Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy (OR-06)3. Department of Local Government Operational Guidelines - Legal Representation for Council Members and Employees

SUMMARY

The draft “Legal Representation for Council Members and CEO Policy” (**Attachment 1**) has been reviewed.

The review has been informed by:

- the current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) (**Attachment 2**);
- the Department of Local Government Operational Guidelines, Legal Representation for Council Members and Employees and model policy “Legal Representation for Council Members and Employees”. (**Attachment 3**)

BACKGROUND

The current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) was adopted by Council in August 2006. At this time, the then Department of Local Government and Regional Development released a Model Policy on Legal Representation for Council Members and Employees and accompanying Local Government Operational Guidelines on Legal Representation for Council Members and Employees. The Shire sought legal advice during the development of the policy and advice “(received 7 August 2006) confirms the draft policy accords in its essentials with the Department’s Model Policy” (14.08.2006 Strategic Policy Committee Minutes).

In August 2010 Council’s Strategic and Governance Committee conducted a review of “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) and recommended that the policy be adopted without change. Council members and the CEO were required to declare a financial interest and approval was obtained from the Director General of the Department of Local Government. The

recommendation for the policy to be adopted without change was endorsed by Council (C5.08.10).

At the 17 July 2023 Governance Committee informal workshop, a discussion paper was presented to the Committee to seek feedback and inform the next iteration of the policy. The feedback has been incorporated into the final drafts for adoption.

As the review of the current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) has resulted in significant amendments, the draft “Legal Representation for Council Members and CEO Policy” has not been provided with track changes.

STATUTORY / LEGAL IMPLICATIONS

Section 2.7 of the *Local Government Act 1995* provides the role of council in relation to the determination of policies:

- (1) *The council —*
 - (a) *governs the local government’s affairs; and*
 - (b) *is responsible for the performance of the local government’s functions.*
- (2) *Without limiting subsection (1), the council is to —*
 - (a) *oversee the allocation of the local government’s finances and resources; and*
 - (b) *determine the local government’s policies.*

Section 3.1 of the *Local Government Act 1995* (the Act) provides that “*the general function of a local government is to provide for the good government of persons in its district*”.

Section 6.7(2) of the Act provides that “*money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law*”. Under these provisions, a Council can expend funds to provide legal representation for council members and employees, as long as it believes that the expenditure falls within the scope of the local government's functions.

Section 9.56 of the Act provides protection from actions of tort for anything a council member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people taking action against individual council members or employees if they believe that the council member or employee has not acted in good faith.

Furthermore, the Act states:

5.65. Members’ interests in matters to be discussed at meetings to be disclosed

- (1) *A member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member must disclose the nature of the interest -*
 - (a) *in a written notice given to the CEO before the meeting; or*
 - (b) *at the meeting immediately before the matter is discussed.*

5.67. Disclosing members not to participate in meetings

- A member who makes a disclosure under section 5.65 must not —*
- (a) *preside at the part of the meeting relating to the matter; or*

(b) *participate in, or be present during, any discussion or decision making procedure relating to the matter,*

unless, and to the extent that, the disclosing member is allowed to do so under section 5.68 or 5.69.

5.69. Minister may allow members disclosing interests to participate etc. in meetings

(1) *If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to allow the disclosing member to participate in the part of the meeting, and any subsequent meeting, relating to the matter.*

Advice received from the Department of Local Government confirms that prior to being allowed to participate in discussions and/or decision making procedures for this policy review, all council members in attendance at a meeting where this policy is dealt should disclose a financial interest. The CEO is required to apply to the Minister for Local Government for an exemption for whole of Council to be involved in this process.

POLICY IMPLICATIONS

The draft “Legal Representation for Council Members and CEO Policy” will be adopted, and the current policy “Provision of Financial Assistance for Legal Services for Elected Members and Employees” (OR-06) will be replaced if the recommendation is adopted by Council. To capture the information relevant to employees in the current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” a CEO approved policy for legal representation for employees will be developed.

The “Policy Development and Review Policy” provides the process by which policies are to be scheduled for review. At the February 2023 Governance Committee meeting, the 2023 Governance Committee Workplan was endorsed. The current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) was listed for review in the content of the report.

FINANCIAL IMPLICATIONS

There are no direct financial implications in terms of adopting the proposed policy; however, there would be a financial cost should the provisions of the policy be accessed by council members or employees. Such costs are unable to be determined at this stage.

STRATEGIC IMPLICATIONS

Mundaring Strategic Community Plan 2020 - 2030

Priority 4 - Governance

Objective 4.4 – High standard of governance and accountability

Strategy 4.4.8 – Compliance with the Local Government Act 1995 and all relevant legislation and regulations

SUSTAINABILITY IMPLICATIONS

Governance

- Comply with relevant policy, legislation, regulation, criteria and guidelines.

RISK IMPLICATIONS

Risk: Compliance: Legal representation costs and indemnification costs paid to council

members and the CEO are not made in accordance with legislation.		
Likelihood	Consequence	Rating
Possible	Moderate	Moderate
Action / Strategy		
The updated policy is adopted by Council.		

Risk: Reputation: Legal representation costs and costs indemnification are not allocated in a consistent and accountable manner.		
Likelihood	Consequence	Rating
Possible	Moderate	Moderate
Action / Strategy		
The updated policy is adopted by Council.		

EXTERNAL CONSULTATION

Nil

COMMENT

The draft “Legal Representation for Council Members and CEO Policy” has been developed based on the Department of Local Government Operational Guidelines and model policy “Legal Representation for Council Members and Employees” which was reviewed in May 2023.

Additionally, the draft Legal Representation policies encompass aspects of:

- City of Joondalup’s “Legal Representation for Council Members and Employees Policy”;
- City of Stirling’s “Legal Representation for Elected Members and Employees Policy”; and
- City of Wanneroo’s draft “Legal representation and costs indemnification policy for Councillors”.

As noted above, the review of the current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) has resulted in significant amendments. As such, the draft “Legal Representation for Council Members and CEO Policy” has not been provided with track changes. The significant changes are outlined below for reference.

The draft “Legal Representation for Council Members and CEO Policy” provides a framework to determine when it is appropriate for the Shire to pay reasonable legal expenses incurred by council members and the CEO in the course of, or arising out of, the performance of their official functions.

Development of two separate policies (Council adopted Policy and CEO approved Policy)

The current “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) includes terms relating to financial assistance to secure legal services for council members and employees. The review has resulted in the development of two separate policies:

- A Council adopted policy (this report recommends for adoption) to cover legal representation and costs indemnification of council members and the CEO; and
- A CEO approved policy dealing with legal representation of employees with application(s) submitted to CEO. CEO policies are approved by the CEO (not Council). The key effect of this amendment is that the CEO will be the decision maker in respect of employee applications. This is consistent with the CEO's functions under section 5.41(d) and (g) of the Act.

Scope

A scope has been included in the draft "Legal Representation for Council Members and CEO Policy" to define the audience of who the policy applies to and/or the types of services to which the policy applies.

The draft "Legal Representation for Council Members and CEO Policy" will apply to council members and the CEO in the scope of the Council Policy collectively titled 'applicant'. The draft "Legal Representation for Council Members and CEO Policy" provides the following criteria:

- "Legal representation costs must relate to a matter that arises from the performance by the 'applicant' in undertaking their official duties or functions of their role;*
- Legal representation costs must be in respect of legal proceedings that have been or may be commenced;*
- In performing the functions of their role or undertaking their official duties, the 'applicant' must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and*
- Legal representation costs must not relate to a matter that is of a personal or private matter."*

Exclusions

Exclusions to the policy have been defined in line with the Department of Local Government Operational Guidelines and Model Policy which notes:

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

Furthermore, the Department of Local Government Operational Guidelines notes:

"this guideline does not address the situation where council members and employees are interviewed during, or are required to give evidence to, an inquiry into their local government. Determining whether financial assistance is given in these situation is a complex matter and one that will relate to the circumstances and reasons of the inquiry".

The following exclusions (item 4.2.2.) have been added:

"The Shire will not approve, unless under exceptional circumstances the provision of financial assistance for legal representation costs:

- for a defamation action, or negligence action, instituted by a council member or the CEO.*

- b. *in circumstances where a council member or the CEO is seeking to initiate legal action against another council member.*
- c. *in circumstances where a council member or the CEO is defending legal action initiated by another council member or the CEO.”*

Exceptional circumstances are defined as including but not limited to “*where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about employees, and/or adverse personal comments are resulting in an unsafe workplace*”.

The minutes of the 14 August 2006 Strategic Policy Committee states “*the Shire’s draft policy [later adopted as OR-06] in a number of respects extends the Model Policy to deal with special circumstances existing at the Shire. For instance, it was considered appropriate to broaden, but at the same time to make more consistent with the interests of good government, the circumstances in which the Shire would give financial support for legal proceedings initiated by a Council member or employee*”. Although relevant when the current Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) was adopted, these provisions have not been included in the draft “Legal Representation Policies”. This is due to the introduction of the *Local Government (Model Code of Conduct) Regulations 2021*.

Item 2.2.1 ‘Breaches of behaviour’ in the Shire’s adopted “Code of Conduct for Council Members, Committee Members and Candidates” provides the provision for enforcing the Code of Conduct. As such, the requirements for giving financial support for legal proceedings that have been initiated by a council member are not relevant in the context of the draft “Legal Representation for Council Members and CEO Policy”.

Confidentiality

All applications (and or related reports) are to be confidential and all parties involved must maintain confidentiality. Where applications are to be considered by Council, the meeting will be closed to the public in accordance with section 5.23(2) of the Act.

Reference to the Work Health and Safety Act 2020

Under the department guidelines “*Local governments have a legislative duty of care to their employees to provide a safe working environment and morally have the same duty of care to council members*”. As such the *Work Health and Safety Act 2020* has been listed under related legislation which is relevant to item 4.2.1 c. that references exceptional circumstances which has resulted in an unsafe workplace requiring the provision of financial assistance for legal representation costs.

VOTING REQUIREMENT

Simple Majority

COMMITTEE RECOMMENDATION

That Council adopts the draft “Legal Representation for Council Members and CEO Policy” (**Attachment 1**), replacing the “Provision of Financial Assistance for Legal Services for Elected Members and Employees Policy” (OR-06) (**Attachment 2**)

COMMITTEE DECISION MOTION	GC4.08.23		
Moved by	Cr McNeil	Seconded by	Cr Martin

That the committee:

1. Defers consideration of the draft “Legal Representation for Council Members and CEO Policy” (**Attachment 1**).
2. Requests the CEO seek legal advice on the draft “Legal Representation for Council Members and CEO Policy”, specifically on the elements of the policy that have not been tested and the interpretation of clause 4.2.1 (c).
3. Notes the legal advice and the draft “Legal Representation for Council Members and CEO Policy” will be referred back to the committee for its consideration.

CARRIED 5/0

For: Cr Cicchini, Cr Ellery, Cr Zlatnik, Cr McNeil and Cr Martin

Against: Nil



2.X LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND CEO

Responsible Directorate	Corporate Services	
Adopted	August 2006	C12.08.06 (OR-06)
Reviewed	August 2010 XXX	Res #
CEO Policy Ref	Legal Representation for Employees Policy (CEO) – 4.X	
Procedure Ref	N/A	

1. PURPOSE

This policy provides a framework to determine when it is appropriate for the Shire of Mundaring (the Shire) to pay reasonable legal expenses incurred by council members or the Chief Executive Officer (CEO) in the course of, or arising out of, the performance of their official functions.

2. SCOPE

This policy applies to council members or the CEO that meet the following criteria:

- a. Legal representation costs must relate to a matter that arises from the performance by the council member or the CEO in undertaking their official duties or functions of their role;
- b. Legal representation costs must be in respect of legal proceedings that have been or may be commenced;
- c. In performing the functions of their role or undertaking their official duties, the council member or the CEO must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- d. Legal representation costs must not relate to a matter that is of a personal or private matter.

3. DEFINITIONS

Act the *Local Government Act 1995*.

approved lawyer is to be:

- a. an Australian Legal Practitioner as defined under the *Legal Profession Uniform Law Application Act 2022*;
- b. appointed in accordance with the Shire's "Purchasing Policy";
- c. from a law firm on the WALGA panel of legal service provider, unless Council considers this

- is inappropriate due to a conflict of interest or insufficient experience; and
- d. approved in writing by the Council or the CEO under delegated authority.

CEO	the Chief Executive Officer who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.
Code of Conduct	the Shire's adopted "Code of Conduct for Council Members, Committee Members and Candidates" as required by the <i>Local Government (Model Code of Conduct) Regulations 2021</i> .
Code of Conduct for Employees	the Shire's adopted "Code of Conduct for Employees" policy.
court proceedings	A course of action through which a party seeks to use the power of a court/tribunal to enforce a law or take legal action against another party.
council member	a person elected under the Act as a member of Council. The Shire's council members includes the Shire President, Deputy Shire President and Councillors (as defined by the Act).
department inquiry	an inquiry initiated under section 8.3 of the Act.
financial assistance	the provision of money by the Shire to pay the whole or part of the cost of legal services, such as but not limited to, fees and disbursements properly incurred while receiving legal representation.
improper conduct	in this policy describes conduct which would be appropriate to be reported to the Corruption and Crime Commission as corruption or improper conduct.
inquiry	a department inquiry or a panel inquiry under Part 8 of the Act.
legal proceedings	civil, criminal or investigative proceedings brought in a court, tribunal or authorised body within the jurisdiction of Western Australia.
legal representation	the provision of legal services, to or on behalf of a council member or the CEO, by an approved lawyer in accordance with this policy.

legal representation costs	costs, including fees and disbursements, properly incurred in providing legal representation.
legal services	includes advice, required attendance at legal proceedings or inquiries, legal proceedings representation or documentation provided by an approved lawyer.
payment	a payment by the Shire for legal representation costs, that may be either by: <ul style="list-style-type: none">a. a direct payment to the Approved Lawyer (or the relevant firm); orb. a reimbursement to the council member or the CEO.
WALGA	Western Australian Local Government Association

4. POLICY

Section 9.56 of the *Local Government Act 1995* provides protection from actions of tort for anything a council member or the CEO has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law.

Under the provisions of section 6.7(2) a Council can expend funds to provide legal representation for council members or the CEO, as long as the local government believes on reasonable grounds that the expenditure does provide for the good government of the persons in its district. In each case it will be necessary to determine whether assistance with legal fees and expenses are justified for the good government of the district.

In all circumstances, the applicant must refer the matter to the Local Government Insurance Scheme for assessment in respect of claims against them personally. Should the cover not provide legal representation, the conditions of this policy apply.

4.1. Eligibility

A person is eligible to make application for legal representation under this policy if that person is a council member or the CEO.

For the purposes of this policy, council member may be expanded to include a current or former commissioner, former council members and external members of committees established under section 5.8 of the Act.

4.2. Provision of financial assistance for legal representation costs

- 4.2.1. If the criteria set out in the scope of this policy are satisfied, the Shire may approve the payment of legal representation costs:
- a. where legal proceedings are brought or threatened against a council member or the CEO in connection with the functions of their role or in undertaking their official duties (including

- but not limited to, an action for defamation, negligence or a work health and safety matter arising out of a decision made or action taken by the council member or the CEO); or
- b. to enable legal proceedings to be commenced and/or maintained by a council member or the CEO to permit them to carry out the functions of their role or to undertake their official duties - for example, where a council member or the CEO seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or the CEO; or
- c. in exceptional circumstances, including but not limited to, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or the CEO, and/or adverse personal comments are resulting in an unsafe workplace.

4.2.2. The Shire will not approve, unless under exceptional circumstances, the provision of financial assistance for legal representation costs:

- a. for a defamation action, or negligence action, instituted by a council member or the CEO;
- b. in circumstances where a council member or the CEO is seeking to initiate legal action against another council member; or
- c. in circumstances where a council member or the CEO is defending legal action initiated by another council member.

4.3. Application for payment

A council member or the CEO (the applicant) who seeks assistance under this policy is to make an application, in writing, to the Council.

4.3.1. The application for payment of legal representation cost is to give details of:

- a. the matter for which legal representation is sought;
- b. how that matter relates to the functions of the council member or the CEO making the application;
- c. the lawyer (or law firm) who is asked to provide legal representation;
- d. the nature of the legal services to be sought (such as advice, representation in court, preparation of a document etc.);
- e. an estimated cost of the legal representation; and
- f. the reasons why it is in the interests of the Shire for the payment to be made.

4.3.2. The application is to contain a statutory declaration made by the applicant that they have:

- a. acted in good faith in undertaking the functions of their role or their official duties;
- b. not acted unlawfully or in a way that constitutes improper conduct (e.g. failure to adhere to relevant "Code of

- Conduct") in relation to the matter to which the application relates; and
- c. that there are no circumstances known to the applicant which would render those representations untrue.
- 4.3.3. The application is to be accompanied with a signed written statement by the applicant that they:
- a. have read, and understand, the terms of this policy;
 - b. acknowledge that any approval of legal representation costs is conditional on the repayment provision of clause 4.7 below and any other conditions to which the approval is subject;
 - c. undertakes to repay the Shire any legal presentation costs in accordance with the provisions of clause 4.7; and
 - d. acknowledge that the provisions of 4.7 apply in respect to repayment of Legal Representation Costs.

As far as possible, the application is to be made before the commencement of the legal representation to which it relates. In the event that the application is not made in advance, details of the services previously provided and the explanation for there being no application in advance;

All applications are to be confidential. Where applications are to be considered by Council, the meeting will be closed to the public in accordance with section 5.23(2) of the Act.

When presented to Council, an application is to be accompanied by a report and recommendation prepared by the CEO or where the CEO is the applicant, by the Director Corporate Services.

4.4. Legal representation costs – limit

Council shall set a limit on the legal representation cost to be paid based on the estimated costs in the application when approving an application in accordance with this policy.

A council member or the CEO may make further application to the Council in respect of the same matter.

4.5. Council powers

- 4.5.1. In considering an application for payment of legal representation costs Council may:
 - a. refuse;
 - b. approve;
 - c. approve, subject to conditions.
- 4.5.2. Conditions under 4.5.1(c) may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
- 4.5.3. In assessing an application, Council may have regard to any insurance benefits that may be payable to the applicant under the Shire's council members or employees' insurance policy or equivalent.

- 4.5.4. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 4.5.5. Council may, on the basis of, and consistent with, the findings of a court, tribunal or inquiry, determine that a council member or the CEO whose application for legal representation costs were 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. Given false or misleading information in respect of the application.
- 4.5.6. Where Council makes a determination under clause 4.5.5, the legal representation costs paid by the Shire are to be repaid by the council member or the CEO in accordance with clause 4.7.
- 4.5.7. The outcomes of legal representation and expenditure is to be reported to Council.

4.6. Authorisation to Chief Executive Officer

- 4.6.1. 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 clause 4.5.1 and 4.5.2, to a maximum of \$10,000 in respect to each application.
- 4.6.2. An application approved by the CEO under 4.6.1 is to be submitted to the next ordinary meeting of Council and Council may exercise any of its powers under this policy, including its powers under clause 4.5.4 in respect of that application.
- 4.6.3. In circumstances where the applicant is defending legal action taken by the CEO against the applicant, Council may exercise the powers of clause 4.6.1 at a Special Council Meeting.

Where the CEO is the person seeking financial assistance, the application is to be determined by the Shire President and Deputy Shire President who are to ensure that the matter is reported (as a confidential item) to the next available Council meeting.

4.7. Repayment of Legal representation costs

A council member or the CEO whose legal representation costs have been paid by the Shire is to repay the Shire:

- a. all or part of those costs, in accordance with a determination by the Council under clause 4.5.6;
- b. as much of those costs as are available to be paid by way of set-off; where the council member receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

5. RELATED LEGISLATION

Local Government Act 1995 section 9.56

Corruption, Crime and Misconduct Act 2003

Work Health and Safety Act 2020

6. RELATED DOCUMENTS

Code of Conduct for Council Members, Committee Members and Candidates 2.7

Code of Conduct for Employees 4.15

Shire of Mundaring

POLICY**PROVISION OF FINANCIAL ASSISTANCE FOR LEGAL SERVICES
FOR ELECTED MEMBERS AND EMPLOYEES**

Policy Ref:	OR-06
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Committee Rec:	SPC 6.08.06	Date:	14 Aug 2006
Adopted by:	C12.08.06	Date:	22 Aug 2006
Amended by:		Date:	
Reviewed:	Once per Electoral Cycle	Date:	24 August 2010
Procedure Ref:		Delegation Ref:	
Statute Ref:	<i>Local Government Act 1995 s. 9.56</i>		
Local Law Ref:	n/a		

PURPOSE

This Policy is designed to set out:

1. the circumstances in which the Shire will, as a general rule, provide financial assistance to elected members and employees who require legal services in the course of or arising out of the performance of their official functions; and
2. the procedure for making and dealing with applications.

In each case it will be necessary to determine in the final analysis whether financial assistance is justified for the good governance of the district.

BACKGROUND

Elected members or employees of the Shire from time to time may require legal services in connection with any matter impacting on their conduct or the performance of their functions as elected members or employees.

Questions may arise from time to time as to whether, and the extent to which, the Shire should provide financial assistance to secure legal services, and this policy is intended to facilitate decision-making on those questions.

As a general rule, financial assistance will only be provided to an elected member or employee for a matter which arises out of or in the course of their conduct, or the performance of their functions, as elected members or employees.

It is intended that financial assistance will not be provided to an elected member or employee who has acted unlawfully, dishonestly, improperly, or otherwise in bad faith.

Generally, financial assistance may be provided to former elected members or employees, or may continue to be provided for elected members or employees after

they cease their membership or employment, where that can manifestly be seen to be justified by the interest of good government of the district.

The level of financial assistance provided is to be assessed in all cases against an evaluation of the extent to which it is justified in the interest of the good government of the district.

POLICY

1. Definitions

In this Policy:

“**Act**” means the *Local Government Act 1995*;

“**CEO**” means the Chief Executive Officer of the Shire;

“**department inquiry**” means an inquiry initiated under section 8.3 of the Act;

“**district**” means the local government district of the Shire;

“**employee**” means an employee of the Shire;

“**financial assistance**” means the provision by the Shire of money to pay the whole or part of the cost of legal services, or a guarantee of or indemnity for the payment of such cost or part;

“**improperly**” in this policy describes conduct which would be appropriate to be reported to the Corruption and Crime Commission as corruption or improper conduct;

“**inquiry**” means a department inquiry or a panel inquiry under Part 8 of the Act;

“**legal services**” means the provision of legal advice on any matter, or legal advice and legal representation in connection with court proceedings, or in connection with any other investigation, inquiry, hearing or adjudication, including but without limiting the generality of the foregoing an inquiry under Part 8 of the Act;

“**elected member**” means a member of the Council of the Shire including a Commissioner appointed under Part 8 of the Act;

“**panel inquiry**” means an Inquiry initiated under section 8.16 of the Act;

“**Shire President**” means the President of the Shire;

“**Shire**” means the Shire of Mundaring.

2. Eligible Persons

A person is eligible to make application for financial assistance under this Policy if that person is an elected member or an employee.

3. Proceedings in respect of which financial assistance may be provided

Proceedings in respect of which financial assistance may be provided include:

3.1 Proceedings brought by any elected member or employee to enable them to undertake or continue to undertake the duties and responsibilities associated with their office. An example is where an elected member or employee seeks a restraining order against a person using threatening behaviour.

3.2 Proceedings brought by any elected member or employee in respect of defamation against them PROVIDED THAT legal advice obtained by the Shire

supports such action as being capable of being regarded as appropriate for the good government of the district to ensure elected members and employees are not deflected from the performance of their duties by unreasonable interference. Such proceedings may involve:

- (a) seeking an injunction to prevent further defamation of a specific elected member or employee, the intention being to seek the removal of a distraction or impediment to the performance by the elected member or employee of their functions as such; or
- (b) making a claim for damages:
 - (i) additional to an injunction, if it is determined or appears likely that an injunction has failed or will fail to prevent further defamation of the affected member or employee; or
 - (ii) as an alternative to an injunction if damages is the more appropriate remedy or in the event that a Court declines to grant an injunction on grounds that are not directly related to the merits of the proposed action.

3.3 Proceedings brought against one or more elected members or employees in the performance of their functions as such. For example, this could be in relation to a decision of the Council or an employee who aggrieves another person (e.g. refusing a development application).

3.4 In, or in connection with, an inquiry or other official proceeding or investigation where, in the opinion of the Council, representation of elected members or employees is appropriate or justified.

4. Legal Service Provider

4.1 Legal services provided under this policy are to be provided by a lawyer or a firm of lawyers nominated by the Chief Executive Officer (CEO).

4.2 In circumstances where the CEO has applied for financial assistance, the Council, or in the case of urgent applications, the Shire President, will nominate the lawyer or firm of lawyers to provide the legal services.

4.3 The CEO or the Council, as the case requires, may entertain an application by a elected member or employee for financial assistance for legal services provided by a lawyer other than a lawyer nominated by the CEO or the Council, as the case may be, provided that clear justification is given. An example of a justification that may be adequate is where there is a perceived conflict of interest on the part of a nominated lawyer.

5. Form of Application

An application under this policy should:

- (a) be in writing;
- (b) provide full details of the nature and extent of the legal services anticipated to be required and when they are required;
- (c) detail how the matter for which the legal services are required arises out of the conduct or performance of functions of the applicant as a member or employee;
- (d) explain how it might be said that the provision of financial assistance would be justified in the interest of the good government of the district;

- (e) provide, in the event that the application is not made in advance, details of the services previously provided and the explanation for there being no application in advance;
- (f) indicate if the applicant considers that the application is urgent and the applicant's reasons for that view;
- (g) contain a declaration by the applicant that:
 - (i) the applicant has read this policy and accepts its terms (including, without limiting the generality of the foregoing, the terms as to repayment in clause 11); and
 - (ii) the applicant in relation to the matter in respect of which the legal services are required did not act unlawfully, dishonestly, improperly or otherwise in bad faith.

An application when presented to the Council is to be accompanied by a report and recommendation prepared through the office of the CEO in response to the application. An application by the CEO shall be reported to the Council by the Shire President.

6. Who Determines an Application?

- 6.1 The CEO may determine an application seeking financial assistance not exceeding, or reasonably anticipated as not likely to exceed \$3,000.
- 6.2 Where the provision of legal services must occur as a matter of urgency prior to the earliest opportunity for an application to be considered by the Council, the CEO, and in the case of an application by the CEO, the Shire President, may authorise financial assistance up to the value of \$5,000, even if that is not anticipated to be the full extent of the financial assistance ultimately required. In any such case the CEO, or the Shire President, as the case may be, shall present a report to the next available meeting of the Council detailing the application and outlining the circumstances that required the application to be dealt with as a matter of urgency.
- 6.3 Subject to clause 6.2, all applications seeking financial assistance exceeding, or reasonably anticipated as likely to exceed \$3,000 in total, are to be determined by the Council.
- 6.4 Notwithstanding the preceding provisions, the CEO may refer any application to the Council for determination.
- 6.5 Subject to clause 6.2, any application by the CEO for financial assistance on his own behalf is to be dealt with by the Council.
- 6.6 An application for financial assistance in respect of proceedings referred to in clause 3.2 is not to be dealt with by the CEO on an urgent application - any application for financial assistance in respect of proceedings referred to in clause 3.2 is to be determined by the Council.

7. Formal Agreement to be Executed

- 7.1 A person to whom financial assistance is to be provided, whether by the decision of the CEO or the Council, shall be required to execute a formal agreement with the Shire, either in a standard form provided by the Shire, or prepared for the

occasion by the Shire's solicitors, setting out the terms and conditions upon which the assistance is offered.

- 7.2 In ordinary circumstances the applicant will be required to execute the agreement prior to any financial assistance being provided.
- 7.3 In the case of an application for urgent financial assistance, the CEO, or in the case of an application by the CEO, the Shire President, may accept a written undertaking by the applicant to execute a formal agreement as contemplated by this Policy, as soon as it is presented for execution.

8. Preconditions to the Provision of Financial Assistance

Financial assistance will only be provided:

- 8.1 In proceedings to be brought by any member or employee where the CEO or the Council, as the case may be, forms the opinion that the action proposed to be taken is reasonably necessary to enable the elected member or employee to continue to perform their functions without unreasonable obstruction, impediment or discouragement.
- 8.2 In the case of any proceedings against a elected member or employee, where legal action has been taken or is threatened or seems likely to be taken, in relation to conduct or circumstances arising out of or in the course of the performance of the functions of the elected member or employee.
- 8.3 In the case of an inquiry where:
- (a) prior to the final report on the outcome of the inquiry, an adverse allegation is made against the elected member or employee, or the inquiry or any officer assisting indicates that an adverse finding against the member or employee is possible;
 - (b) where conduct of the elected member or employee is subject to inquiry and/or report in the terms of reference of the inquiry, or the elected member or employee receives a summons or subpoena from the inquiry requiring him/her to give evidence and/or produce documents;
 - (c) conduct of the elected member or employee in the performance of their functions as such is under consideration; and
 - (d) the legal services are required prior to the conclusion of the inquiry.
- 8.4 In any case, financial assistance will only be provided where no indemnity for legal services is provided for under a policy of insurance taken out by the elected member or employee, or by the Shire, or to the extent that full cover is not provided under such policy of insurance.

9. No Pledging of the Shire's Credit

Nothing in this policy is intended to represent that any person has authority to pledge the Shire's credit or otherwise commit the Shire to any liability to legal expenses whatsoever.

10. CEO May Continue to Seek Legal Advice

Nothing in this policy derogates from the authority of the CEO or other employees to obtain legal services concerning the business and affairs of the Shire from the Shire's solicitors.

11. Repayment of Financial Assistance

11.1 It is a condition of the provision of financial assistance under this Policy, and it shall be a condition of the formal agreement referred to in clause 7, that:

- (a) the provision of financial assistance shall be at an end; and
- (b) any financial assistance already paid by the Shire shall be repaid by the elected member or employee,

in the event that:

- (c) a finding is made in the report of an inquiry or in court proceedings that the member or employee has acted unlawfully, dishonestly, improperly, or otherwise in bad faith, in circumstances that are fundamental to the inquiry or the court proceedings in respect of which the financial assistance was sought;
- (d) the Council determines on legal advice that the member or employee has acted unlawfully, dishonestly, improperly, or otherwise in bad faith in circumstances that are fundamental to the proceedings in respect of which financial assistance was obtained; or
- (e) where information provided to the CEO or to the Council in the application is materially false or misleading.

11.2 Elected members or employees are not to personally benefit financially from proceedings to the extent that they are financed by the Shire. Damages or costs awarded to the elected member or employee in excess of any expenses incurred separately by the elected member or employee should be dealt with in the following order:

- (a) in reimbursement of any expenses paid or payable personally by the elected member or employee;
- (b) in reimbursement of the financial contribution of the Shire which reimbursement may be repaid to the ordinary funds of the Shire; and
- (c) any excess should be held by the Shire to be used for a charitable purpose within the district.

The reason for the provisions in this clause is not that the Shire should benefit financially from legal proceedings taken by or against a elected member or employee, but rather to ensure that financial assistance will only be provided by the Shire in circumstances where it can be demonstrated manifestly that the purpose for the Shire providing financial assistance is to act in the interest of good government of the Shire's district by ensuring that elected members and employees are not deflected or discouraged from the performance of their official functions by their inability to finance appropriate legal services.

11.3 Where financial assistance is withdrawn, the elected member or employee who obtained the financial assistance is required to repay any moneys already provided.

12. Recovery

An elected member or employee applying for financial assistance under this Policy must agree under clause 7 that:

- (a) the Shire may take action to recover any financial assistance required to be repaid under clause 11;
- (b) the moneys to be repaid shall constitute a debt due by the elected member or employee to the Shire and may be recovered in a court of competent civil jurisdiction; and
- (c) the Shire is entitled additionally to deduct the amount of any outstanding financial assistance from any allowance or salary payable by the Shire to the elected member or employee provided that the Shire is not to deduct more than 5% per week of an employee's weekly salary.

The agreement to be prepared under clause 7 should make provision for such repayment and recovery.

Legal Representation for Council Members and Employees

Guide: Local Government Operational Guidelines

In today's society there is an increased risk of legal action being taken or threatened against individual council members and employees. Council members and employees may require legal advice and representation and expect their local government to provide financial assistance to meet the cost of the advice or representation.

For example, council members or employees may be 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. Legal action may also be threatened where it is anticipated that such action will influence a vote or a recommendation.

Council members and employees may feel inhibited in undertaking their roles in a full, frank and impartial manner if they do not have an assurance that they are protected from threats and will be given proper legal representation if any legal action is taken against them. Local governments have a legislative duty of care to their employees to provide a safe working environment and morally have the same duty to council members. Accordingly, it is appropriate and prudent for local governments to assist council members and employees by adopting a policy to fund or partly fund the cost of providing legal representation in appropriate circumstances.

The Inquiry into the City of Joondalup criticised some council members for making uninformed and ill-advised decisions to pay personal legal expenses of the Chief Executive Officer (CEO). It is therefore important that council adopts a policy on the provision of financial assistance so that its position is known to the council members, employees and the community in advance of applications for funding being made. Non-elected council committee members may also require assistance and should be considered in any policy adopted by council.

This guideline, and the incorporated model policy, are provided to assist councils when making decisions or developing a policy. It is important that a council devotes time to understanding the issues outlined in this guideline.

If a policy is adopted and legal representation costs are granted under the policy, it is critical that council has presented to it full and detailed accounts from the lawyer approved to provide the legal representation to ensure that the representation provided complies with the approval given. Repayment of any costs associated with matters not approved should be enforced.

This guideline does not address the situation where council members and employees are interviewed during, or are required to give evidence to, an inquiry into their local government. Determining whether financial assistance is given in these situations is

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a complex matter and one that will relate to the circumstances and reasons for the inquiry.

Legislation

Section 9.56 of the Local Government Act 1995 (the Act) provides protection from actions of tort for anything a council member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people taking action against individual council members or employees if they believe that the council member or employee has not acted in good faith.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, a council can expend funds to provide legal representation for council members and employees, as long as it believes that the expenditure falls within the scope of the local government's function.

Determining a suitable policy

The policy should have a clear set of principles or directives to help the council deal with a situation where a council member or employee is defending or will need to defend a legal action or requires advice or representation and is requesting financial assistance. The policy should set out the circumstances under which funding will be provided, the level of funding that will be provided and the processes to be followed by the applicant when making a request.

The degree of complexity of an appropriate policy may vary but generally could include the following matters –

- under what circumstances would financial assistance be provided. For example, where legal action is taken against a council member or employee in connection with the performance of their duties and they have not acted illegally, dishonestly or in bad faith;
- who would make the decision that financial support would be provided (eg council or the CEO);
- who would provide the legal services (eg the local government's lawyers, other lawyers);
- what limits, if any, would be placed on financial assistance;
- how applications would be made for assistance;
- what obligations a council member or employee receiving assistance should have (eg an obligation to disclose anything that might affect representation or to act reasonably);
- whether contingent authorisation in urgent cases would be provided for and who would exercise that authority;
- under what circumstances could financial assistance be withdrawn (eg person having acted illegally, dishonestly or otherwise in bad faith);
- provision for the recoup of money already provided under the policy where approval is withdrawn; and

- a clear statement that legal representation will not be provided for matters that relate to the personal affairs of a council member or employee (eg under investigation for a matter not related to a legislative function or an employee seeking legal advice on a contract of employment).

Other circumstances where funding requests may be made

Under legislation, any expenditure of a local government's funds must be justified on the basis that the expenditure will 'provide for the good government of persons in its district'. Therefore, in formulating a policy on legal representation the council must take into account the need to satisfy itself that the expenditure can be justified as providing for that good government.

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

It is important to note that where public criticism is made about the local government, i.e. the City, Town, or Shire, funding could 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 local government will have an inhibiting effect on freedom of speech and inevitably lessen a local government's accountability to its community.

Council members, if asked to vote on such a request, should ask themselves 'would a reasonable person, given all the facts, conclude that the expenditure provides for the good government of the persons in the district'. If a majority of council members are satisfied, council could, under its general function power, resolve that the local government fund the obtaining of advice or initiation of legal action by the council member or employee.

Council members should ensure that they receive appropriate documentation that presents reasons for and against the recommendation when considering an application for such funding as they may be asked to justify the decision at a future date. Documentation provides a proper decision-making trail that can be used to support the decision.

As a condition of approval, the council may require the council member or employee to undertake to refund the costs of legal representation paid by the local government should their action be successful.

Support for former council members and employees

The council, when considering the scope of its policy, will need to determine if the policy extends to the funding of legal representation for former council members, commissioners and employees and under what circumstances funding would be provided.

Delegation

A number of councils have, in adopting a policy on this issue, delegated to their CEO the power to deal with requests for the payment of legal representation costs. Because of the sensitive nature of providing funding, some CEOs have asked council not to delegate the power. A council should discuss the matter with the CEO before making any decision to delegate any aspect of its legal representation policy.

It may be appropriate for council to seek agreement from the CEO for a delegation limited to circumstances where a delay in approving a request will be detrimental to the legal rights of the council member or employee.

Adopting a Policy

In considering the policy all relevant people are encouraged to study and thoroughly understand the implications and likely consequences of adopting the policy.

A model policy has been provided on the following pages as an example for local governments undertaking their own policy-making on legal representation of adopting the policy. The Department welcomes any comments that individuals or local governments believe will assist in the improvement of the model policy.

Model policy

Legal representation for council members and employees

Explanation of key terms

- approved lawyer is to be:
 1. a 'certified practitioner' under the Professions Act 2008;
 2. from a law firm on the City/Town/ Shire's panel of legal service providers, if relevant, unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
 3. approved in writing by the council or the CEO under delegated authority.
- council member or employee means a current or former commissioner, council member, non-elected member of a council committee or employee of the City/Town/Shire.
- legal proceedings may be civil, criminal or investigative.
- legal representation is the provision of legal services, to or on behalf of a council member 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 council member or employee; and
 2. legal proceedings involving the council member or employee that have been, or may be, commenced.
- legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.
- legal services includes advice, representation or documentation that is provided by an approved lawyer.
- payment by the city/town/shire of legal representation costs may be either by:
 1. a direct payment to the approved lawyer (or the relevant firm); or
 2. a reimbursement to the council member or employee.

1. Payment criteria

There are four major criteria for determining whether the city/town/shire will pay the legal representation costs of a council member or employee.

These are:

1. the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her functions;
 1. the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
 2. in performing his or her functions, to which the legal representation relates, the council member 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.

2. Examples of legal representation costs that may be approved

1. If the criteria in clause 1 of this policy are satisfied, the city/town/shire may approve the payment of legal representation costs:
 1. where proceedings are brought against a council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the council member or employee; or
 2. to enable proceedings to be commenced and/or maintained by a council member or employee to permit him or her to carry out his or her functions – for example, where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or employee; or
 3. where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.
2. The City/Town/Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a council member or employee.

3. Application for payment

1. A council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.
2. The written application for payment of legal representation costs is to give details of:
 1. the matter for which legal representation is sought;
 2. how that matter relates to the functions of the council member or employee making the application;
 3. the lawyer (or law firm) who is to be asked to provide the legal representation;
 4. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
 5. an estimated cost of the legal representation; and
 6. why it is in the interests of the City/ Town/Shire for payment to be made.

3. The application is to contain a declaration by the applicant that he or she has 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.
4. As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
5. The application is to be accompanied by a signed written statement by the applicant that he or she:
 1. has read, and understands, the terms of this policy;
 2. acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
 3. undertakes to repay to the City/Town/ Shire any legal representation costs in accordance with the provisions of clause 7.
6. In relation to clause 3.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.
7. An application is also to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an appropriate employee.

4. Legal representation costs – limit

1. The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.
2. A council member or employee may make a further application to the council in respect of the same matter.

5. Council's powers

1. The council may:
 1. refuse;
 2. grant; or
 3. grant subject to conditions,
 - an application for payment of legal representation costs.
2. Conditions under clause 5.1 may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
3. In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the City's/Town's/Shire's council members 'or employees' insurance policy or its equivalent.
4. The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
5. The council may, subject to clause 5.6, determine that a council member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –
 1. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 2. given false or misleading information in respect of the application.
6. A determination under clause 5.5 may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Attachment 3 to Report 6.2

7. Where the council makes a determination under clause 5.5, the legal representation costs paid by the City/ Town/Shire are to be repaid by the council member or employee in accordance with clause 7.

6. 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 the council, any of the powers of the council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.
2. An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of the council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.

7. Repayment of legal representation costs

1. A council member or employee whose legal representation costs have been paid by the City/Town/Shire is to repay the city/town/shire :
 1. all or part of those costs – in accordance with a determination by the council under clause 5.7;
 2. as much of those costs as are available to be paid by way of set-off – where the council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the city/town/shire paid the legal representation costs.
2. The city/town/shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

Page reviewed 25 May 2023

6.3 Policy Review - Related Party Transactions and Disclosure

File Code	GV.OPP 1
Author	Elizabeth Nicholls, Governance Co-ordinator
Senior Employee	Garry Bird, Director Corporate Services
Disclosure of Any Interest	Nil
Attachments	<ol style="list-style-type: none">1. Draft Related Party Transactions and Disclosure Policy2. Related Party Transactions and Disclosure Policy - OR-213. Draft Related Party Transactions and Disclosure Policy - with track changes

SUMMARY

The draft “Related Party Transactions and Disclosure Policy” (**Attachment 1**) has been reviewed, based on the current “Related Party Transactions and Disclosure Policy” OR-21 (**Attachment 2**).

The Committee is asked to consider and recommend that Council adopt the draft “Related Party Transactions and Disclosure Policy”.

BACKGROUND

The current “Related Party Transactions and Disclosure Policy” (OR-21) was adopted in December 2017. This was in response to the requirement that local governments ascertain their related party relationships and disclose certain related party transactions together with information associated with those transactions in its annual financial report from the financial reporting period ending 30 June 2017. This complies with Australian Accounting Standards Board, Related Party Disclosures Standard (AASB 124).

At the 17 July 2023 Governance Committee informal workshop, a discussion paper was presented to the Committee to seek feedback and inform the next iteration of the policy. Feedback has been incorporated into the final draft for adoption and is shown as track changes (**Attachment 3**).

STATUTORY / LEGAL IMPLICATIONS

Section 2.7 (2)(b) of the *Local Government Act 1995* provides that the role of Council is to “*determine the local government’s policies*”.

POLICY IMPLICATIONS

The reviewed policy will be adopted and current policy “Related Party Transactions and Disclosure Policy” OR-21 replaced if the recommendation is adopted by Council.

The “Policy Development and Review Policy” provides the process by which policies are to be scheduled for review. At the February 2023 Governance Committee meeting, the 2023 Governance Committee Workplan was endorsed. The current “Related Party Transactions and Disclosure Policy” was listed for review in the content of the report, noting that it was not anticipated to have significant changes.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Mundaring Strategic Community Plan 2020 - 2030

Priority 4 - Governance

Objective 4.4 – High standard of governance and accountability

Strategy 4.4.8 – Compliance with the Local Government Act 1995 and all relevant legislation and regulations

SUSTAINABILITY IMPLICATIONS

Nil

RISK IMPLICATIONS

Risk: Reputation: Although the Shire is not bound by the requirements of the Australian Accounting Standards Board, Related Party Disclosures Standard (AASB 124), the requirement that Key Management Personnel disclose related party transactions minimises the risk of a qualified audit report.		
Likelihood	Consequence	Rating
Possible	Moderate	Moderate
Action / Strategy		
That the updated policy is adopted.		

EXTERNAL CONSULTATION

Nil

COMMENT

Issues identified in the review of the policy and updated in the draft “Related Party Transactions and Disclosure Policy” include the following:

- Emphasis added to the purpose of the policy, that Australian Accounting Standards Board, Related Party Disclosures Standard (AASB 124) is not designed to detect and report fraud.
- Scope updated to detail who the policy relates to rather than repeating information contained in the body of the policy.
- Additional definitions have been included for clarity.
- Further clarity included in the in the body of the policy on:
 - Who is a related party and how they are identified
 - What is a related party transaction
 - What is an ordinary citizen transaction
 - How often declarations are to be completed
 - Who may access disclosures

- Information removed from the body of the policy that included in the “Related Party Disclosures Declaration Form” or is operational in nature. Information specific to financial years has also been removed.
- The updated “Related Party Disclosures Declaration Form” has been included as an appendix.

VOTING REQUIREMENT

Simple Majority

COMMITTEE RECOMMENDATION		GC5.08.23	
Moved by	Cr Ellery	Seconded by	Cr Martin

That Council adopts the draft “Related Party Transactions and Disclosures Policy” (**Attachment 1**), replacing OR-21 “Related Party Transactions and Disclosure Policy”.

CARRIED 6/0

For: Cr Beale, Cr Cicchini, Cr Ellery, Cr Zlatnik, Cr McNeil and Cr Martin

Against: Nil



2.X RELATED PARTY TRANSACTIONS AND DISCLOSURE

Responsible Directorate	Corporate Services	
Responsible Service Area	Finance	
Adopted	December 2017	C4.12.17 (OR-21)
Reviewed	XXX 2023	X
Procedure Ref	N/A	

1. PURPOSE

To ensure that Shire of Mundaring's (the Shire's) financial statements contain disclosures necessary to comply with the Australian Accounting, Related Party Disclosures (AASB 124), which draws attention to the possibility that the Shire's financial position and profit or loss may have been affected by the existence of transactions with a related party and outstanding balances and commitments with such parties.

This policy aims to assist Council in complying with the disclosure requirements and the level of reporting within the financial statements as per AASB 124. It aims to define the parameters for related party transactions and the level of disclosure and reporting. It is important to emphasise that AASB 124 is not designed to detect and report fraud.

2. SCOPE

This policy applies to all key management personnel of the Shire including council members, the Chief Executive Officer and senior employees.

3. DEFINITIONS

Act

Local Government Act 1995

close members of the family

family members who may be expected to influence or be influenced by those individuals' dealings with the Shire and include:

- children and spouse or domestic partner;
- children of that person's spouse or domestic partner; and
- dependents of that person or that persons spouse or domestic partner.

Under AASB 124, close members of the family could also include extended members of the family such as parents, siblings, grandparents, uncles/aunts or cousins if they could be expected to have influence or be influenced by the KMP in their dealings with the Shire.

entity	can include a body corporate, a partnership or a trust, incorporated association, or unincorporated group or body.
Key Management Personnel (KMP)	a person or persons having authority and responsibility for planning, directing and controlling the activities of the entity, either directly or indirectly, including any director (executive or otherwise) of that entity.
related party	<p>a person or an entity that is related to the Shire, referred to as the “reporting entity”.</p> <p>Examples of related parties of the Shire are:</p> <ul style="list-style-type: none">• Council subsidiaries;• Key Management Personnel (KMP);• close family members of KMP; and• entities that are controlled or jointly controlled by KMP or their close family members.
related party transactions	these are a transfer of resources, services or obligations between the Shire and a related party, regardless of whether there is a cost involved.
ordinary citizen transaction	a transaction that an ordinary citizen would undertake in the ordinary course of carrying out business with the Shire
significant influence	the power to participate in the financial and operating policy decision of an entity but not to control those policies.

4. POLICY

Related party transactions are a normal feature of commerce. However they can affect the profit or loss, financial position, and cash flows of an entity. Related parties may transact with an entity on terms that would not be available to an unrelated party. Therefore, knowledge of an entity’s transactions, outstanding balances (including commitments), and relationships with related parties may affect assessments of its operations by users of the financial statements.

4.1. Identifying Related Parties

The most common related parties of the Shire includes, but is not limited to:

- Council members (KMP).
- A person employed under section 5.36 of the Act in the capacity of Chief Executive Officer or Director (KMP).
- Close members of the family of any person listed above, including that person’s child, spouse or domestic partner, children of a spouse or

domestic partner, dependents of that person or person's spouse or domestic partner.

- Entities that are controlled or jointly controlled by a KMP or their close family members. Entities include companies, trusts, joint ventures, partnerships and non-profit associations such as sporting clubs.

The Shire will therefore be required to assess all transactions made with these persons or entities.

4.2. Identification of Related Party Transactions

A related party transaction is a transfer of resources, services or obligations between the Shire (reporting entity) and the related party, regardless of whether a price is charged (AASB 124, paragraph 9).

For the purposes of determining whether a related party transaction has occurred, the following transactions or provision of services have been identified as meeting this criteria, this list is not exhaustive:

- paying rates
- infringements
- use of Shire owned facilities such as libraries, parks, ovals and other public open spaces (whether charged a fee or not)
- employee compensation whether it is for KMP or close family members of KMP
- application fees paid to the Shire for licences, approvals or permits
- lease agreements for housing rental (whether for a Shire owned property or property sub-leased by the Shire through a Real Estate Agent)
- lease agreements for commercial properties
- monetary and non-monetary transactions between the Shire and any business or associated entity owned or controlled by the related party (including family) in exchange for goods and/or services provided by/to the Shire (trading arrangement)
- sale or purchase of any motor vehicles, buildings or land owned by Shire, to a person identified above
- sale or purchase of any motor vehicles, buildings or land owned by a person identified above, to the Shire
- loan arrangements
- contracts and agreements for construction, consultancy or services

Some of the transactions listed above, occur on terms and conditions no different to those applying to the general public and have been provided in the course of delivering public service objectives. These transactions are those that an ordinary citizen would undertake with Council and are referred to as an ordinary citizen transaction.

Where the Shire can determine that an ordinary citizen transaction was provided at arm's length, and in similar terms and conditions to other members of the public and, that the nature of the transaction is immaterial, no disclosure in the annual financial report will be required.

Examples of ordinary citizen transactions include:

- paying rates
- infringements
- use of Shire owned facilities such as libraries, parks, ovals and other public open spaces (whether charged a fee or not)]
- disposal charges at Shire facilities
- purchase of saleable products from Shire facilities

4.3. Identifying Circumstances in which Disclosure is Required

In assessing materiality (quantitative and qualitative), consideration is to be given to both the size and nature of the transaction, individually and collectively in accordance with AASB 124, paragraph 17.

4.4. Identifying Information about the Related Parties And Related Party Transactions

KMP will be identified and the position they hold with the Shire disclosed. KMP will be required to complete the Related Party Disclosures Declaration Form (Appendix 1), which at minimum will require details of the related party, (family members and/or entities) that may have existing transaction potential with the Shire and the relationship to the KMP.

KMP are to complete a Related Party Disclosure Declaration Form:

- annually; and
- immediately prior to the end of a council member term (as applicable) or;
- immediately prior to the termination of an employee who is a KMP (as applicable).

KMP who no longer hold that role with the Shire will still be subject to disclosure requirements up until their status as KMP is no longer applicable. The same will apply for KMP who acquire the role in that year.

Completed forms are to be submitted to the Manager Finance and Governance. The Finance Department will be responsible for the maintenance of a register that captures all related party transactions of KMP.

4.5. Privacy

Disclosures form part of the Shire's financial statements, therefore, they are subject to audit by independent external auditors.

It should be noted it is only the transactions (if any) that have occurred between a related party and the Shire during the financial year that are disclosed in the annual financial report.

The Shire will endeavour to ensure that only those staff and the external auditors who are involved in the preparation of the related party disclosures will have access to the related party declarations.

5. APPENDICES

Appendix 1 Related Party Disclosures Declaration Form

6. RELATED LEGISLATION

Not Applicable

7. RELATED DOCUMENTS

Australian Accounting Standard, Related Party Disclosures (AASB 124)

DRAFT

Shire of Mundaring

POLICY**RELATED PARTY TRANSACTIONS AND DISCLOSURE**

Policy Ref:	OR-21		
Committee Rec:	ARC4.11.17	Date:	21 Nov 2017
Adopted:	C4.12.17	Date:	12 Dec 2017
Reviewed:		Date:	
Procedure Ref:		Delegation Ref:	
Statute Ref:			

PURPOSE

To ensure that the Shire of Mundaring's Financial Statements contain disclosures necessary to comply with the Australian Accounting Standard AASB 124 Related Party Disclosures, which draws attention to the possibility that the Shire's financial position and profit or loss may have been affected by the existence of transactions with a related party and outstanding balances and commitments with such parties.

POLICY

The Related Party Disclosure Policy aims to assist Council in complying with the disclosure requirements and the level of reporting within the Financial Statements as per AASB-124 Related Party Disclosures. It aims to define the parameters for related party transactions and the level of disclosure and reporting.

Scope:

The Policy is to be applied in:

1. Identifying and recording related parties and related party relationships;
2. Identifying and recording related party transactions and their terms and conditions;
3. Assessing materiality and or significance of these transactions;
4. Identifying the circumstances in which disclosure of points 1 and 2 is required;
5. Determining the disclosures to be made about points 1 and 2; and
6. Disclosing relevant information in the Financial Statements.

Definitions:**1. Related Party**

A person or an entity that is related to the Shire, referred to as the "reporting entity".

Examples of related parties of the Shire are:

- Council Subsidiaries;
- Key Management Personnel (KMP);
- Close family members of KMP; and
- Entities that are controlled or jointly controlled by KMP or their close family members.

2. Key Management Personnel (KMP)

A person or persons having authority and responsibility for planning, directing and controlling the activities of the entity, either directly or indirectly, including any director (executive or otherwise) of that entity. In the case of the Shire, KMP will include, but is not limited to, Councillors, CEO and Directors.

3. Close members of the family

Those are family members who may be expected to influence or be influenced by those individuals' dealings with the Shire and include:

- Children and spouse or domestic partner;
- Children of that person's spouse or domestic partner; and
- Dependents of that person or that persons spouse or domestic partner.

Under AASB 124, close members of the family could also include extended members of the family such as parents, siblings, grandparents, uncles/aunts or cousins if they could be expected to have influence or be influenced by the KMP in their dealings with the Shire.

4. Related Party Transactions

These are a transfer of resources, services or obligations between the Shire and a related party, regardless of whether there is a cost involved.

5. Ordinary Citizen Transaction

These are transactions that an ordinary citizen would undertake with the Shire, which would be undertaken at arm's length and in the ordinary course of carrying out the Shire functions and activities. They would not be seen as material in nature.

Examples of ordinary citizen transactions would be:

- The paying of disposal charges at Shire facilities; and
- The purchase of saleable products from Shire facilities.

6. Control

The power to govern the financial and operating policies of any entity to obtain benefits from its activities.

7. Significant Influence

The power to participate in the financial and operating policy decision of an entity but not to control those policies.

Responsibilities:

Key Management Personnel will include, but is not limited to, Councillors, CEO and Directors.

Recommended Practices:

From 1 July 2016, AASB 124 Related Party Disclosures applies to the Shire. This means that the Shire will be required to disclose information about related parties and the Shire's transactions with those related parties in the 2016-2017 financial statements and onwards. In the context of transactions, this means cash and non-cash transactions.

As the disclosures will form part of the financial statements, they will be subject to audit by the external auditors.

KMP will be identified and the position they hold with the Shire disclosed. They will be required to complete a disclosure notification, which at minimum will require details of the related party, (family members and/or entities) that may have existing transaction potential with the Shire and the relationship to the KMP.

As per paragraph 17 AASB 124, the Shire shall disclose compensation in total provided to KMP, and for each of the following categories:

- Short term employee benefits;
- Post-employment benefits;
- Other long-term benefits;
- Termination benefits; and
- Share based payments.

For disclosure requirements of AASB 124, the Shire shall implement a process to capture related party transactions for reporting in the financial statements. The following will be collated and recorded throughout each year:

- Related parties to the KMP;
- Relationship to KMP;
- Transactions that are monetary and/or non-monetary;
- The value of the transaction if monetary;
- The benefit if non-monetary;
- The value of outstanding balances;
- Details of commitments and/or guarantees; and
- Recognition for the provision of doubtful debts related to outstanding balances of related parties.

KMP who no longer hold that role with the Shire will still be subject to disclosure requirements up until their status as KMP is no longer applicable. The same will apply for KMP who acquire the role in that year.

Once the related party transactions have been identified, they will be assessed by the Manager Finance and Governance and a determination will be made regarding the materiality of the transaction. This will include assessment of Ordinary Citizen Transactions and whether the terms and conditions differ from normal practice, which would then exclude them from being Ordinary Citizen Transactions.

If a Councillor believes a transaction may constitute a related party transaction, they must notify the CEO who will discuss the matter with the Manager Finance and Governance to confirm whether the transaction falls within the scope of this policy.

If an Employee believes a transaction may constitute a related party transaction, they must notify their supervisor or manager who will discuss the matter with the Manager Finance and Governance to confirm whether the transaction falls within the scope of this policy.

The Finance Department will be responsible for the maintenance of a register that captures all related party transactions of KMP.

Privacy

The Shire will endeavour to ensure that only those staff and the external auditors who are involved in the preparation of the related party disclosures will have access to the related party declarations and related party transactions.

Council Policy



2.X RELATED PARTY TRANSACTIONS AND DISCLOSURE

Responsible Directorate	Corporate Services	
Responsible Service Area	Finance	
Adopted	December 2017	C4.12.17
Reviewed	XXX 2023	X
Procedure Ref	N/A	

1. PURPOSE

To ensure that the Shire of Mundaring's (the Shire's) Financial Statements contain disclosures necessary to comply with the Australian Accounting Standard AASB 124 - Related Party Disclosures (AASB 124), which draws attention to the possibility that the Shire's financial position and profit or loss may have been affected by the existence of transactions with a related party and outstanding balances and commitments with such parties.

The Related Party Disclosure Policy This policy aims to assist Council in complying with the disclosure requirements and the level of reporting within the Financial Statements as per AASB -124 Related Party Disclosures. It aims to define the parameters for related party transactions and the level of disclosure and reporting. It is important to emphasise that AASB 124 is not designed to detect and report fraud.

2. SCOPE

This policy applies to all key management personnel of the Shire including council members, the Chief Executive Officer and senior employees.

The Policy is to be applied in:

- a. Identifying and recording related parties and related party relationships;
- b. Identifying and recording related party transactions and their terms and conditions;
- c. Assessing materiality and or significance of these transactions;
- d. Identifying the circumstances in which disclosure of points a. and b. is required;
- e. Determining the disclosures to be made about points a. and b.; and
- f. Disclosing relevant information in the Financial Statements.

3. DEFINITIONS

Act Local Government Act 1995



close members of the family

~~these are~~ family members who may be expected to influence or be influenced by those individuals' dealings with the Shire and include:

- ~~C~~children and spouse or domestic partner;
- ~~C~~children of that person's spouse or domestic partner; and
- ~~D~~ependents of that person or that persons spouse or domestic partner.

Under AASB 124, close members of the family could also include extended members of the family such as parents, siblings, grandparents, uncles/aunts or cousins if they could be expected to have influence or be influenced by the KMP in their dealings with the Shire.

entity

can include a body corporate, a partnership or a trust, incorporated association, or unincorporated group or body.

Key Management Personnel (KMP)

a person or persons having authority and responsibility for planning, directing and controlling the activities of the entity, either directly or indirectly, including any director (executive or otherwise) of that entity. ~~In the case of the Shire, KMP will include, but is not limited to:~~

- ~~Councillors;~~
- ~~CEO; and~~
- ~~Directors.~~

rRelated Pparty

a person or an entity that is related to the Shire, referred to as the "reporting entity".

Examples of related parties of the Shire are:

- Council ~~s~~ubsidiaries;
- Key Management Personnel (KMP);
- ~~C~~lose family members of KMP; and
- ~~E~~ntities that are controlled or jointly controlled by KMP or their close family members.

**rRelated Pparty
Ttransactions**

these are a transfer of resources, services or obligations between the Shire and a related party, regardless of whether there is a cost involved.



Ordinary citizen transaction

these are transactions that an ordinary citizen would undertake in the ordinary course of carrying out business with the Shire, which would be undertaken at arm's length and in the ordinary course of carrying out the Shire functions and activities. They would not be seen as material in nature.

Examples of ordinary citizen transactions would be:

The paying of disposal charges at Shire facilities; and

The purchase of saleable products from Shire facilities.

Significant influence

the power to participate in the financial and operating policy decision of an entity but not to control those policies.

4. POLICY

Related party transactions are a normal feature of commerce. However they can affect the profit or loss, financial position, and cash flows of an entity. Related parties may transact with an entity on terms that would not be available to an unrelated party. Therefore, knowledge of an entity's transactions, outstanding balances (including commitments), and relationships with related parties may affect assessments of its operations by users of the financial statements.

4.1. Responsibilities Identifying Related Parties

Key Management Personnel will include, but is not limited to, The most common related parties of the Shire includes, but is not limited to:

- Councillors Council members (KMP).
- A person employed under section 5.36 of the Act in the capacity of Chief Executive Officer or Director (KMP).
- Close members of the family of any person listed above, including that person's child, spouse or domestic partner, children of a spouse or domestic partner, dependents of that person or person's spouse or domestic partner.
- Entities that are controlled or jointly controlled by a KMP or their close family members. Entities include companies, trusts, joint ventures, partnerships and non-profit associations such as sporting clubs.

The Shire will therefore be required to assess all transactions made with these persons or entities.

4.1.4.2. Recommended Practices Identification of Related Party Transactions

From 1 July 2016, AASB 124 Related Party Disclosures applies to the Shire. This means that the Shire will be required to disclose information about related parties and the Shire's transactions with those related parties

~~in the 2016-2017 financial statements and onwards. In the context of transactions, this means cash and non-cash transactions.~~

Commented [EN1]: Specific to a financial year

~~As the disclosures will form part of the financial statements, they will be subject to audit by the external auditors.~~

~~A related party transaction is a transfer of resources, services or obligations between the Shire (reporting entity) and the related party, regardless of whether a price is charged (paragraph 9, AASB 124).~~

~~For the purposes of determining whether a related party transaction has occurred, the following transactions or provision of services have been identified as meeting this criteria, this list is not exhaustive:~~

- ~~• paying rates~~
- ~~• infringements~~
- ~~• use of Shire owned facilities such as libraries, parks, ovals and other public open spaces (whether charged a fee or not)~~
- ~~• employee compensation whether it is for KMP or close family members of KMP~~
- ~~• application fees paid to the Shire for licences, approvals or permits~~
- ~~• lease agreements for housing rental (whether for a Shire owned property or property sub-leased by the Shire through a Real Estate Agent)~~
- ~~• lease agreements for commercial properties~~
- ~~• monetary and non-monetary transactions between the Shire and any business or associated entity owned or controlled by the related party (including family) in exchange for goods and/or services provided by/to the Shire (trading arrangement)~~
- ~~• sale or purchase of any motor vehicles, buildings or land owned by Shire, to a person identified above~~
- ~~• sale or purchase of any motor vehicles, buildings or land owned by a person identified above, to the Shire~~
- ~~• loan arrangements~~
- ~~• contracts and agreements for construction, consultancy or services~~

~~Some of the transactions listed above, occur on terms and conditions no different to those applying to the general public and have been provided in the course of delivering public service objectives. These transactions are those that an ordinary citizen would undertake with Council and are referred to as an ordinary citizen transaction.~~

~~Where the Shire can determine that an ordinary citizen transaction was provided at arm's length, and in similar terms and conditions to other members of the public and, that the nature of the transaction is immaterial, no disclosure in the annual financial report will be required.~~

~~Examples of ordinary citizen transactions include:~~

- ~~• paying rates~~
- ~~• infringements~~
- ~~• use of Shire owned facilities such as libraries, parks, ovals and other public open spaces (whether charged a fee or not)~~
- ~~• disposal charges at Shire facilities~~

- purchase of saleable products from Shire facilities

4.3. Identifying Circumstances in which Disclosure is Required

In assessing materiality (quantitative and qualitative), consideration is to be given to both the size and nature of the transaction, individually and collectively in accordance with As per paragraph 17-AASB 124 paragraph 17, the Shire shall disclose compensation in total provided to KMP, and for each of the following categories:

- Short term employee benefits
- Post-employment benefits
- Other long-term benefits
- Termination benefits
- Share based payments

4.4. Identifying Information about the Related Parties And Related Party Transactions

KMP will be identified and the position they hold with the Shire disclosed. ~~They KMP will be required to complete a disclosure notification~~ the Related Party Disclosures Declaration Form (Appendix 1), which at minimum will require details of the related party, (family members and/or entities) that may have existing transaction potential with the Shire and the relationship to the KMP.

KMP are to complete a Related Party Disclosure Declaration Form:

- annually; and
- immediately prior to the end of a council member term (as applicable)
- or;
- immediately prior to the termination of an employee who is a KMP (as applicable).

KMP who no longer hold that role with the Shire will still be subject to disclosure requirements up until their status as KMP is no longer applicable. The same will apply for KMP who acquire the role in that year.

~~For disclosure requirements of AASB 124, the Shire shall implement a process to capture related party transactions for reporting in the financial statements. The following will be collated and recorded throughout each year:~~

- ~~Related parties to the KMP;~~
- ~~Relationship to KMP;~~
- ~~Transactions that are monetary and/or non-monetary;~~
- ~~The value of the transaction if monetary;~~
- ~~The benefit if non-monetary;~~
- ~~The value of outstanding balances;~~
- ~~Details of commitments and/or guarantees; and~~
- ~~Recognition for the provision of doubtful debts related to outstanding balances of related parties.~~

~~Once the related party transactions have been identified, they will be assessed by the Manager Finance and Governance and a determination~~

Commented [EN2]: Included in form

will be made regarding the materiality of the transaction. This will include assessment of Ordinary Citizen Transactions and whether the terms and conditions differ from normal practice, which would then exclude them from being Ordinary Citizen Transactions.

If a Councillor believes a transaction may constitute a related party transaction, they must notify the CEO who will discuss the matter with the Manager Finance and Governance to confirm whether the transaction falls within the scope of this policy.

If an Employee believes a transaction may constitute a related party transaction, they must notify their supervisor or manager who will discuss the matter with the Manager Finance and Governance to confirm whether the transaction falls within the scope of this policy.

Completed forms are to be submitted to the Manager Finance and Governance. The Finance Department will be responsible for the maintenance of a register that captures all related party transactions of KMP.

4.2.4.5. Privacy

As the disclosures will form part of the Shire's financial statements, therefore, they will be subject to audit by the independent external auditors.

It should be noted it is only the transactions (if any) that have occurred between a related party and the Shire during the financial year that are disclosed in the annual financial report.

The Shire will endeavour to ensure that only those staff and the external auditors who are involved in the preparation of the related party disclosures will have access to the related party declarations and related party transactions.

5. APPENDICES

Appendix 1 Related Party Disclosures Declaration Form

5.6. RELATED LEGISLATION

Include legislation and relevant section Not Applicable

6.7. RELATED DOCUMENTS

Australian Accounting Standard, Related Party Disclosures (AASB 124)

Not Applicable

7.0 URGENT BUSINESS (LATE REPORTS)

Nil

8.0 CLOSING PROCEDURES

8.1 Date, Time and Place of the Next Meeting

The next Governance Committee meeting will be held on Monday, 16 October 2023 at 5.30pm in the Committee Room, Shire of Mundaring Administration Centre.

8.2 Closure of the Meeting

The Presiding Person declared the meeting closed at 6.39pm.