

17. NEW BUSINESS OF AN URGENT NATURE

17.1 Motions tabled from the Special Electors' Meeting - 14 September 2018

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|-------------------------|-----------------------------------|
| Location: | Whole of Shire |
| Applicant: | Not Applicable |
| File Reference: | CM.CM.2 |
| Disclosure of Interest: | Not Applicable |
| Date: | 25.09.18 |
| Author: | Chief Executive Officer, I McCabe |
| Senior Officer: | Not Applicable |
| Attachments: | Nil |

IN BRIEF

A request for a special meeting of electors was lodged by Ms Kaara Andrew of Stratham together with 151 signatures in accordance with regulation 16 of the Local Government (Administration) Regulations 1996, for the purpose of discussing 'The repayment of monies provided to Cr M Scott and ex-CEO Mr Sheedy to obtain legal advice and to retain legal representation to pursue cases for defamation against shire residents.'

The Special Electors' meeting was held at 4.30pm Friday 14 September 2018 in the Capel Community Centre and was attended by 101 electors, one member of the media, Councillors and staff.

The Presiding Member was Deputy President, Cr Brian Hearne.

Three substantive motions were passed, which are herein tabled for Council's consideration with explanatory notes and recommendations.

RECOMMENDATION

That Council:

- 1. Not support the motion of the Special Electors' Meeting to revoke Decision OCO626 of 27 June 2018 and recover the funds as the request is not actionable;**
- 2. Not support the motion of the Special Electors' Meeting to expend no further funds on the matter addressed by Decision OCO626 of 27 June 2018;**
- 3. Support the inclusion of Policy 1.5 Legal Representation in a policy review; that this be done in a timely manner once the matter addressed in the Decision OCO626 of 27 June 2018 is concluded; and that the motion of the Special Meeting of Electors addressing clause 7 of the policy be included for consideration in that review.**

BACKGROUND

Council Decision OCO626 of 27 June 2018 was a Confidential Item addressing legal advice and an application for support from the former CEO Paul Sheedy and the Shire President Cr M Scott in response to alleged defamatory publications.

STATUTORY ENVIRONMENT

Local Government Act 1995, s.5.23;
Defamation Act 2005
Council Policy 1.5 Legal Representation

POLICY IMPLICATIONS

Council Policy 1.5 Legal Representation has been the subject of community questions in the lead-up to this meeting as well as at the meeting itself. The debate about the policy's purpose, interpretation and possible impacts indicates a review and public education is worthwhile. Further, when a wider policy review is conducted, public comment and workshopping would be of value to Council.

FINANCIAL IMPLICATIONS

Budget

There is no specific allocation to this matter; each action, such as the Special Meeting of Electors, has a cost. An indicative cost of the Special Meeting of Electors would include hire of audio equipment \$1,200; direct labour costs (overtime for one staff member) \$147; notional cost of labour (hours dedicated to this meeting but accommodated in usual wages) \$1,300; printing and ancillaries \$80 – a total of \$2,727.

COMMENT

The Minutes of the Special Meeting of Electors held 14 September 2018 will be available shortly via the Shire website.

Three substantive motions were passed by the meeting, as follows:

Motion 1

Moved K Andrew, Seconded T Bridges

This meeting calls on Council to revoke its approval for funding of legal action over alleged defamation on facebook and seek to recover the funds.

Reasons: Capel Shire residents are deeply concerned about Council's decision to approve \$6,000 of council funds to be spent on legal representation by Cr Scott and Mr Sheedy to pursue defamation cases against Shire residents and rate payers. Residents are also concerned about the lack of transparency surrounding Council's decision to do so when Council's original decision is contrary to its own policy and the decision by Cr Scott and Mr Sheedy to pursue personal damages when it is against council policy to do so.

Note by the Chief Executive Officer:

I acknowledge the concerns of ratepayers and residents in respect of this funds allocation. The Council Decision of 27 June 2018 refers to providing support to the officers of CEO and President; there is no reference to the private capacity of those individuals.

The amounts paid by the Shire of Capel for legal representation were made directly to the legal advisor, who in turn delivered services for those amounts (such as the issue of the concerns notices). There is no avenue to recover costs from the legal provider for services already rendered.

As there is no avenue to recover the \$6,000 without, in turn, generating a dispute between Council and that service provider who has delivered the requested services, it is not possible to directly recover these amounts.

However, Clause 9 of the relevant Council policy, Policy 1.5 Legal Representation, requires any damages or cost recovery to be re-paid to Council to offset any legal support paid for by the Shire. This may reduce the total outlay by Council and therefore reduce the cost to ratepayers.

Further, Council made a Decision based on legal advice; in the absence of alternative legal advice at further cost and the possible consideration thereafter of other matters, the Decision of 27 June 2018 stands. While confidentiality may concern some members of the community, it should be appreciated that where matters could eventuate in court action; the debate of council and materials presented to them must be kept confidential. Council has made a determination that this is necessary and in keeping with s. 5.23 of the Local Government Act, which addresses (among other matters) issues concerning an employee and / or legal advice.

Accordingly, it is my recommendation that this motion is not actionable.

Motion 2

Moved G Piirto, Seconded Sharon Staniforth-Smith

That no further rate payers' money is put into this legal action cost in regards to this matter.

Note by the Chief Executive Officer:

No person or entity seeks out legal action as this will result in legal costs that are unforeseen and undesirable. This is contrary to the primary focus of Council and the local government which is to maximise value for ratepayers and residents.

In this instance a Decision was made by Council in response to legal advice that defamatory publications were made about two officers of the local government.

The allocation of \$6,000 was made by Council with the knowledge that the legal advice presented at the 27 June meeting also had a cost (\$4,000). The total amount spent on this matter since 6 June 2018 is \$10,411 plus GST; the amount directly related to the issue of concerns notices is \$5,775 plus GST. It is reasonable that ratepayers be concerned with any expenditure of the Council and to ensure this is contained where there may be risk, Council obtains and considers professional advice – such as legal advice. This is necessary in order to reduce the likely exposure of Council to even greater costs.

Equally, it is reasonable to seek the limitation of further expenditure in any particular matter. However, in this case, the legal process is not yet resolved and it is not possible to accurately foresee what the resolution may be.

Additionally, each action taken by any officer in relation to this matter may not have a financial cost such as payment to a law firm but will have opportunity costs, such as diverting that officer from other productive work.

This motion is informative to Council and staff but as the legal process is continuing it is entirely possible there will be additional costs; for example, an email enquiry about this matter from a ratepayer to the CEO will require a response and that necessarily incurs time and costs. To ignore legal, customer service and other obligations would be clearly unacceptable and therefore some costs are anticipated.

I do commit, however, to minimising costs to ratepayers where I am able.

For the above reasons, it is recommended that Council acknowledge and be informed by this elector's motion but that there be no Council Decision in support of the motion at this time.

Motion 3

Moved P Harbour, Seconded K Andrew

To reinstate section 7 (Policy 1.5 Statement 7 a, b and c) back into Policy 1.5, in its entirety.

Reasons: On 27 September 2017, an alteration to Policy 1.5 (Legal Representation, costs and indemnification, Councillors and Employees) was made at a Council meeting supported by the Council to remove parts of Section 7, entitled "Applications for Financial Assistance". Sections 7a, b and c were removed by Council and essentially it changed the delegation from the Council to the CEO. I believe, as a rate payer, that this was not in the best interests of the community and the best use of the funds and therefore I put a motion forward in the meeting to improve the accountability for making the best use of Council reserves.

7. ~~Applications for Financial Assistance~~ Financial Interest provisions

- ~~a) Subject to item (8), decisions as to financial assistance under this policy are to be made by the Council.~~
- ~~b) A Councillor or employee requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Council providing full details of the circumstances of the matter and the legal services required.~~
- ~~e) An application to Council is to be accompanied by an assessment of the request and with a recommendation which has been prepared by, or on behalf of, the CEO.~~
- e) A Councillor or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Local Government Act 1995.

Note by the Chief Executive Officer:

At the Council Meeting of 25 July 2018 I responded to some questions from the public around policy '1.5 Legal Representation' and I indicated that section 2.7 of the Local Government Act 1995 makes it Council's role to determine policy. Further, I pointed out that Council will interpret policy within debate and relate it to the material presented to them and then form a Decision.

The wording of a policy that is interpreted by Council, how it was debated and how material is presented in the context of a confidential item, particularly where legal advice is part of the consideration, is not a matter for me to address. I simply cannot debate the merits of the Decision as I would breach the Local Government Act (s.5.23) and legal privilege. However, I gave my personal commitment at the meeting of 25 July 2018 that once this matter was resolved I would review the policy for improvement.

Each of the above amendments re-located the requirements of section 7 to section 3 of the policy, such as written application and assessment of the matter. I re-iterate my commitment to review this policy in a timely manner when this particular matter is resolved.

It is my recommendation therefore that policy 1.5 Legal Representation is reviewed at a suitable time and that this motion is considered when that review occurs.

VOTING REQUIREMENTS

Simple majority

OFFICER'S RECOMMENDATION - ITEM 17.1

That Council:

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- 3. Support the inclusion of Policy 1.5 Legal Representation in a policy review; that this be done in a timely manner once the matter addressed in the Decision OCO626 of 27 June 2018 is concluded; and that the motion of the Special Meeting of Electors addressing clause 7 of the policy be included for consideration in that review.**