

**12.3 CLAIM FOR REIMBURSEMENT - LEGAL COSTS**

- Attachments:**
1. Cr Ioppolo Application for Legal Costs 2021 - Confidential
  2. Statutory Declaration - Cr Ioppolo - Confidential

**RECOMMENDATION:**

That in accordance with policy 4.2.1 *Legal Representation for Council Members and Employees* Council:

1. **APPROVES** Cr Ioppolo's application for reimbursement of legal costs related to his summons to appear before the Court of Disputed Returns in November 2021; and
2. **LIMITS** reimbursement of costs in relation to Cr Ioppolo's application to \$2,376.

**PURPOSE OF REPORT:**

To consider an application for reimbursement of legal costs incurred by Cr Ross Ioppolo as consequence of receiving a summons to attend before the Court of Disputed Returns.

**BACKGROUND:**

Cr Ross Ioppolo has requested reimbursement of legal costs he incurred arising from a summons to appear before the Court of Disputed Returns following the 2021 Ordinary Local Government Elections. The Summons from the Plaintiff required Cr Ioppolo to attend on 23 November 2021.

Cr Ioppolo was sworn in as Councillor at a Special Council Meeting held 19 October 2021.

**DETAILS:**

[Policy 4.2.1 Legal Representation for Council Members and Employees](#) provides the parameters under which the City of Vincent will consider providing or reimbursing the costs of legal representation of Council members and Employees where they become involved in legal proceedings because of their official function.

In respect to a Council Member, the policy provides that –

- *legal proceedings* may be civil, criminal or investigative.
- *legal representation* is the provision of legal services to or on behalf of a Council Member by an approved lawyer in respect to –
  - a matter arising from their performance of their functions; and
  - legal proceedings involving the Council Member that have been commenced.

The Policy further provides that there are four major criteria for determining whether the City will pay the legal representation costs of a council member or employee. These are –

- (a) 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;
- (b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (c) 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
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

Should the above criteria be satisfied, the City may approve payment of legal representation costs –

- (a) where proceedings are brought against a Council Member in connection with his or her functions; or
- (b) to enable proceedings to be commenced and/or maintained by a Council Member to permit him or her to carry out his or her functions; or
- (c) where exceptional circumstances are involved.

The Policy provides the way an application should be made, and Council may refuse, grant, or grant subject to conditions the application, and set any limitation to the cost to be reimbursed.

Cr Ioppolo has made his application in the form of a Statutory Declaration at **Attachment 2** to address the requirements of the Policy. Cr Ioppolo declares that the legal expenses relate to a summons issued for him to appear the Court of Disputed Returns in response to a plaintiff's dissatisfaction with the way the Western Australian Electoral Commission handled the 2021 South Ward Election, in which Cr Ioppolo was elected and the plaintiff was unsuccessful. Due to conflicting work commitments Cr Ioppolo engaged a lawyer to represent him at court.

Cr Ioppolo engaged Arns & Associates, Barristers and Solicitors, incurring a cost of \$2,376.

The Plaintiff subsequently discontinued the claim through the Court of Disputed Returns.

Cr Ioppolo declares that –

*16 Nov 2021 – Perth Magistrates Court issues a summons for me to appear at the Court of Disputed Returns on 23 Nov 2021 regarding the Plaintiff's action against the WA Electoral Commission.*

*The summons contained no information as to the matter between the Plaintiff and the WA Electoral Commission, nor the purpose for me to appear. Notwithstanding, given I was a sworn in and a serving Council Member and unable to attend Court at the designated time, I appointed counsel (Arns & Associates, Barristers and Solicitors) to appear on my behalf.*

*The 'nature of the legal representation sought' was to:*

- appear as legally required and attend to any administrative requirement of the Court.*
- make the parties aware it was incumbent on me, as a serving Councillor, to remain impartial to the proceedings and declare I had no intent to furnish unsolicited submissions to the proceedings as a Party.*

*Following Court appearance, it was confirmed the Plaintiff's claim against the WA Electoral Commission made no reference to me personally, including as a 'candidate'.*

Cr Ioppolo further declares –

*My only interest as a Council Member is preserving the integrity of the electoral process from the City of Vincent's perspective including abiding by the decision of the Court. Given I acted in that capacity, it is in the interests of the City for payment to be made.*

Administration acknowledges while the new Council Member Induction for Cr Ioppolo and other new Councillors in November 2021 covered 'protection from liability' provisions under the Local Government Act 1995, it did not specifically address the Legal Representation for Council Members and Employees Policy.

Cr Ioppolo was not aware of the Policy's existence until after the fact and only after seeking guidance from the Western Australian Local Government Association.

Administration was not engaged or required to respond to the Court of Disputed Returns complaint.

#### **CONSULTATION/ADVERTISING:**

No consultation has been undertaken in respect to this matter.

#### **LEGAL/POLICY:**

Council Policy 4.2.1 *Legal Representation for Council Members and Employers* applies.

Clause 3.7 provides that an application is also to be accompanied by a report prepared by the CEO and will contain an assessment of the request, together with a recommendation.

Clause 5.1 provides that Council may –

- refuse;
- grant; or
- grant subject to conditions, an application for payment of legal representation costs.

Conditions include, but are not restricted to, a financial limit and the entering into a formal agreement related to payment and repayment of legal representation costs.

Administration (and WALGA) confirms that Cr Ioppolo's application under the Policy meets the grounds for which a matter **may** be closed to the public under section 5.23(2) of the Local Government Act 1995.

While Cr Ioppolo has advised that he is amenable for this matter to be discussed in 'open Council', it is Council's and not Administration's discretion under section 5.23(2) whether discussion on the matter is to be closed to the public. As a consequence, the attachments to this report have been made confidential until Council determines otherwise.

### **RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to consider the reimbursement of legal representation costs within the framework of established policy.

### **STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

#### Innovative and Accountable

*We are open and accountable to an engaged community.*

### **SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

### **PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

### **FINANCIAL/BUDGET IMPLICATIONS:**

The claim for legal representation costs amounts to \$2,376. This will be accommodated within existing budget provisions.

### **COMMENTS:**

Given the nature of events and circumstances related to Cr Ioppolo's engagement of legal representation, his application for reimbursement has addressed the requirements of the Policy (where applicable).

The Western Australian Local Government Association has provided the following guidance –

### **Considerations as to if legal representation costs were incurred as a council member:**

*The basis of the Invalidity Complaint is unknown, so two scenarios may apply:*

- A. *If the basis of the Invalidity Complaint was related to actions taken or not taken by Cr Ioppolo BEFORE he was declared elected – then the basis for incurring the legal costs would not be related to the Council Member's role.*
- B. *If however, the basis of the Invalidity Complaint was only that the votes between Cr Ioppolo and the next (unsuccessful) candidate were close, then the basis for incurring legal costs, may be considered as related to the Council Member's role on the basis that:*
  - *Cr Ioppolo was declared elected by the Returning Officer at the 2021 LG Elections, subsequently made the declaration of office and has since performed the functions of a council member.*
  - *Cr Ioppolo is therefore a Council Member and may be considered to be acting in his Council Member role, when as a consequence of his election to office, he was required to respond to the Court of Disputed Returns subpoena.*

Administration has verified that the legal expenses claimed relate to the legal representation declared by Cr Ioppolo. It is recommended that the application for reimbursement be approved to the limit of \$2,376.