

LEGAL PROCEEDINGS – COMMENCEMENT AND CESSATION POLICY

ADMINISTRATIVE POLICY



1 Scope

This policy applies to Rockhampton Regional Council legal proceedings including prosecutions or actions addressing alleged offences or non-compliance in a judicial court under Council's local laws and any state legislation for which Council has the responsibility to administer.

This policy does not apply to legal processes and matters dealt with by a tribunal or commission (for example, QCAT), or by agents acting on behalf of Council for matters such as recovery of overdue rates and charges, and insurance claims. Such matters are governed by separate policy documents and/or statutory processes.

2 Purpose

The purpose of this policy is to ensure delegated powers are exercised in a manner that demonstrates Council's commitment to model litigant principles and that the community and public interest is a dominant factor in exercising the discretion to commence or discontinue legal proceedings.

3 Related Documents

3.1 Primary

Nil

3.2 Secondary

Human Rights Act 2019

Justices Act 1886

Local Government Act 2009

Queensland Civil and Administrative Tribunal Act 2009

Rockhampton Regional Council Local Laws

Code of Conduct

Debt Recovery Policy

Delegation and Authorisation Policy

Delegations Corporate Register

Enforcement Policy

External Delegations Registers

Infringement Notice Policy and Procedure

Queensland Government Model Litigant Principles

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4 Definitions

To assist in interpretation, the following definitions apply:

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| Act | <i>Local Government Act 2009</i> |
| CEO | Chief Executive Officer A person who holds an appointment under section 194 of the Act. This includes a person acting in this position. |
| Council | Rockhampton Regional Council |
| Delegated Officer | An employee appointed to a position sub-delegated the relevant legislative power. |
| Employee | Local government employee: (a) The CEO; or (b) A person holding an appointment under section 196 of the Act. |
| Judicial Court | Includes, but not limited to, a Magistrates Court, District Court, Supreme Court, Planning and Environment Court, Land Court, Court of Appeal, Federal Court and High Court and excludes a tribunal or commission. |
| Litigation | Any proceeding before a court, tribunal, coronial inquiry or other enquiry (other than criminal prosecutions, or appeals relating to criminal matters) and includes any arbitration or alternative dispute resolution process in connection with any such proceedings |
| Local Government Act | As defined in the Act, a law under which a local government performs the local government's responsibilities, including for example: (c) This Act; and (d) A local law; and (e) The Building Act; and (f) The Planning Act; and (g) A planning scheme; and (h) The Plumbing and Drainage Act; and (i) The <i>Water Act 2000</i> ; and (j) The <i>Water Supply (Safety and Reliability) Act 2008</i> . |
| Manager | An employee appointed to a position with a corporate band 3 delegated in line with the Delegation and Authorisation Policy and detailed in the Delegations Corporate Register. |
| Principles | The principles in paragraph 5.4 of this policy. |
| QCAT | Queensland Civil and Administrative Tribunal |

5 Policy Statement

Legal proceedings involving Council must be heavily scrutinised to ensure such actions are justified and prosecutions or actions are only commenced or discontinued when it is in the community interest to do so.

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5.1 Enforcement Approach

Council's approach to its significant regulatory responsibilities is based on promoting voluntary compliance by members of the public and deterring non-compliance. Council is committed to discharging its regulatory responsibilities in a manner that is lawful, ethical, fair, efficient, consistent and community focused. Where enforcement action is required, Council's response will be proportionate to the severity of the non-compliance. Council's approach to enforcement is outlined in more detail in Council's Enforcement Policy.

5.2 Legal Proceedings Delegations and Limitations

The Act allows Council to delegate, by resolution, the exercise of its powers for matters under an act. Certain delegations relate to the various levels of enforcement action (for example, decisions to issue stop work orders, serve notices or orders, and initiate a prosecution) as set out in Council's External Delegation Registers. These registers detail what decision making powers Council has delegated (and, where relevant, CEO has sub-delegated to a position) under legislation and include any limitations to the exercise of power.

Examples of limitations that Council may resolve to apply to the exercise of a power include:

- (a) The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge adversely affects, or is likely to adversely affect, the Council's relations with the public at large; and
- (b) The delegate will not exercise any delegated power in relation to a matter which has already been the subject of a resolution or other decision of the Council (including a policy decision relating to the matter).

5.3 The Decision to Commence a Legal Proceeding

5.3.1 Alternate Enforcement Options

Prosecution or actions in a judicial court, where either Council initiates the prosecution or action or where Council institutes proceedings to defend a claim made against or a decision made by Council, is the most serious enforcement option available to Council and is a resource-intensive and costly process.

Before a decision to commence legal proceedings is taken, consideration must be given to Council's Enforcement Policy and the use of other relevant means of enforcement including warning/demand letters, infringement notices and statutory notices and compliance or remediation orders. Any decision by a delegated officer to act other than in accordance with the Enforcement Policy must have approval from the relevant manager.

Where Council is the party intending to initiate a legal proceeding, Council's Enforcement Policy provides delegated officers with direction in relation to the circumstances likely to warrant a prosecution or other action and the considerations that must be applied to enable a decision.

Where Council is initiating an action as a result of an alleged offender electing to have an infringement notice matter decided in a judicial court or is required to defend a decision other policy documents may also provide direction.

Where a delegated officer considers legal proceedings necessary, the delegated officer will only exercise the power to initiate the legal proceedings after consulting with their manager and Council's Legal unit for advice. Council's Legal unit will consider and advise:

- (a) If sufficient admissible and reliable evidence exists;
- (b) Whether, giving consideration to the factors within the Enforcement Policy, the Principles in paragraph 5.4 and other policy documents if applicable, the legal proceedings is in Council's and the public interest; and
- (c) The realistic prospect of success against the alleged offender.

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5.3.2 Commencing/Discontinuing Legal Proceedings

A delegated officer is authorised to commence or discontinue a legal proceeding in a judicial court provided:

- (a) The officer holds the appropriate delegated power and any limitations for such power do not hinder such a decision;
- (b) Paragraph 5.3.1 above has been satisfied, and
- (c) The decision does not conflict with Council's Delegation and Authorisation Policy that requires decisions that appear to the delegated officer to be of particular public interest, sensitivity or special importance to be referred to senior management, the CEO or Council for determination.

Delegated officers involved in the undertaking of such proceedings will conduct themselves at all times in a manner consistent with the principles within this policy.

Legal proceedings that have been commenced or discontinued will be reported to Council and updates will be provided regularly.

5.3.3 Risk to Health and Safety of the Public and Environment

In the event of a potential serious risk to the health and safety of the public and/or environment, the CEO is authorised, where delegated, to undertake appropriate legal proceedings including prosecutions in a judicial court despite not complying with paragraphs 5.3.1 and 5.3.2 without first referring to or obtaining a resolution from Council where, in the CEO's opinion, the matter is urgent and such departure is warranted in the public interest. Should such an event occur, the CEO will report the action to Council.

5.4 Model Litigant Principles

5.4.1 Scope of Principles

Council is committed to acting as a model litigant in the conduct of legal proceedings.

The principles provide the ethical framework on how Council and delegated officers deal with all legal proceedings concerning Council. The principles are not intended to override any legislation requirements.

5.4.2 The Principles

The principles include:

- (a) Council, through its delegated officers, must conduct themselves as model litigants in the conduct of all litigation, by adhering to the following principles of fairness:
 - (ii) Acting consistently in the handling of claims and litigation;
 - (iii) Dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
 - (iv) Endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings, and by participating in alternative dispute resolution processes where appropriate;
 - (v) Where it is not possible to avoid litigation, keeping the costs of litigation to a minimum;
 - (vi) Paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the Council's liability is at least as much as the amount to be paid;
 - (vii) Not seeking to take advantage of an impecunious opponent;

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- (viii) Not contesting matters which it accepts as correct, in particular by:
 - (A) Not requiring a party to prove a matter which the delegated officer knows to be true;
 - (B) Not relying on purely technical defences where the Council will suffer no prejudice by not doing so;
 - (C) Not contesting liability if delegated officer knows that the dispute is really about quantum,
 - (ix) Not instituting and pursuing appeals unless the delegated officer believes it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.
- (b) Council, through its delegated officers, must behave as a model litigant in the conduct of all litigation, including significant litigation, by adhering to the following principles of firmness:
- (i) Appropriately testing all claims;
 - (ii) Contesting all spurious or vexatious claims;
 - (iii) Claiming legal professional privilege where appropriate;
 - (iv) Claiming public interest immunity to protect confidential information;
 - (v) Seeking security costs where appropriate and pursuing costs when it is successful in litigation, which will assist in deterring vexatious proceedings from being instituted against it;
 - (vi) Not seeking to take advantage of an impecunious opponent;
 - (vii) Relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice; and
- (c) Alternative dispute resolution:
- (i) Council, through its delegated officers, is only to commence court proceedings if it has considered other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations);
 - (ii) When participating in alternative dispute resolution, Council must ensure that its representatives:
 - (A) Participate fully and effectively; and
 - (B) Have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

5.5 Human Rights Considerations

In developing this policy, Council has considered any potential relevant human rights in accordance with the requirements of the *Human Rights Act 2019*. It is considered that decisions made in accordance with this policy may impact or limit a number of human rights, including recognition and equality before the law, property rights or privacy and reputation. Any limitation to these rights are reasonable and demonstrably justified in the circumstances in accordance with section 13 of the *Human Rights Act 2019*.

Delegated officers will endeavour to act and make decisions under this policy in a manner that is compatible with human rights. In particular, delegated officers will identify relevant rights, consider the impact and determine whether the limit is reasonable and justified.

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6 Review Timelines

This policy is reviewed when any of the following occur:

- (a) The related information is amended or replaced; or
- (b) Other circumstances as determined from time to time by the Council.

7 Document Management

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| Sponsor | Chief Executive Officer |
| Business Owner | General Manager Workforce and Governance |
| Policy Owner | General Manager Workforce and Governance |
| Policy Quality Control | Legal and Governance |



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