

POLICY – RECOVERY OF COSTS AWARDED TO THE CITY

STATUS: **City Policy** - *A policy that is developed for administrative and operational imperatives and has an internal focus*

City policies are referred to Council for review and endorsement.

**RESPONSIBLE
DIRECTORATE:** Corporate Services

OBJECTIVE: To obtain monies due to the City.

STATEMENT:

The City will, as a general principle, seek to recover costs which are awarded to the City as a result of legal proceedings which have been taken against the City by another body. People involved in legal proceedings with the City should be aware of the situation.

Before any action is taken to recover costs under such circumstances, a report will be presented to Council and Council will make the final decision on whether to proceed with recovery action.

This Policy only applies to situations where court action is taken against the City. It does not apply to ordinary operational situations where the City commences a prosecution for a breach of one of its laws.

Amendments:

Related Documentation:

Issued:

Chief Executive Officer
City of Joondalup

Proposed Policy - Recovery of Costs from Prosecutions of the City

Further to the actions taken by the Mullaloo Progress Association earlier this year in regard to the proven failure of the Joondalup City Council to protect the amenity of local ratepayers after the effective disposal of the entire Mullaloo Surf Club Community Hall car park, the current Council authorised an unlawful attempt to recover immediately in full the entire amount of \$10, 000 from them as determined by the previous Commissioners.

No proper apology has ever been received from the Council by this Community Association despite this matter being brought to their urgent attention, as emphasised once again by the Mayors recent newspaper claims.

This Community Association then took this matter to the ACCC for unconscionable conduct and this matter is still under investigation.

As a result of this action by this Association, there are now published these proposals for a new City Policy "Policy - Recovery of Costs from Prosecutions of the City".

This policy was requested to be developed by the current CEO as part of the same resolution of Commissioners a year ago.

Up until the ACCC was contacted to review the unconscionable conduct and improper actions of the City in this matter earlier this year the CEO disregarded this direction of Council.

The proposed new policy very clearly contradicts the lawful order of Council (CJ 266-12/05) which directed the CEO "to draft a policy for consideration of the Council in relation to recovering costs awarded to the City in legal proceedings" in December 2005.

This draft Policy now out for public comment fails completely to outline any recovery processes at all, and does not inform or prescribe how such costs will be recovered. It does not even properly make clear against whom it is intended to take action, since this proposed Policy deliberately makes no distinction between persons belonging to an organisation that is at some time involved in legal action against the City and those persons who join or leave that organisation after that legal action has been concluded.

Currently for example this Council is pursuing for money members of a Community Association that were never involved in taking any legal action against the City of Joondalup, but this Council does not care about this, which is why this proposed policy is so deliberately vague in so many areas. The fact is, that by these actions already undertaken, this Council has already contravened even the draft policy now proposed and has already made clear its indifference to reasonableness and due process.

This draft policy also makes no reference or comment to the fact that the City of Joondalup constitutes a 'body Corporate' and as such has a legal requirement to abide by the provisions of the Trade Practices Act (the TPA) and its associated requirements, in order to ensure that any debt collection or cost recovery process's adopted will also have to comply with the intentions of the TPA, or else the City will be routinely left open to charges of acting in an unconscionable manner in such matters.

It even fails to make clear precisely what sorts of costs will be recovered, since it makes no mention of the increasing number of SAT actions or the activities of various private developers who have both threatened and taken legal actions against the City. Apparently the Council wish to allow the City complete autonomy to determine whether legal actions taken by private developers against the City even count as such prosecutions of the City - an unfettered authority without referral or review by you, the elected Council.

Of course the fact that this Association undertook no direct prosecution of the City either didn't make any difference to the current Council undertaking its unlawful recovery attempt earlier this year.

As part of a case contested by the Mullaloo Progress Association in 2003, on behalf of its members at that point in time, which gave rise to this \$10,000 debt, when it sought to determine the extent of the planning powers of the Council, the City stated that "carbays paid and constructed by the tavern have previously been provided on the opposite of the road".

However in Public answers given to ratepayers over this alleged transaction, the current Council has repeatedly made plain that when it made that same statement to ratepayers and to the media, and to the SAT earlier this year, and previously to the Supreme Court, that it in fact, possesses no true and proper records of this alleged transaction.

Clearly the current Council is unafraid of being seen to act improperly and is entirely comfortable in going to any length to present as fact matters which it is blatantly uninformed of. As a body corporate it cannot now be seen to be providing any semblance of proper governance to the ratepayers of Joondalup since it openly

displays a complete disregard for providing any open and transparent business processes, and is apparently wholly incapable of substantiating the written claims it routinely makes regarding critical financial transactions or even in the so called policies it puts forward for adoption.

Apparently because the Council says something it is fact, and when it is asked for the records to substantiate those claims the Council cannot find them or it is too hard for the Council to get them. It is still behaving like Wanneroo Inc 10 years on and nothing has changed except some of the names of those involved.

This proposed Policy, as it now stands, by failing to take into account fully the requirements of the TPA, also fails to ensure that the Council of the City is required to be fully involved in any subsequent process's of litigation in the pursuit of such debts being recovered, as all these process's are now to be wholly delegated to the CEO, leaving this and future Councils hopelessly exposed to variety of other charges relating to its conduct in such matters, reinforced by it's already well documented failures to properly make decisions on matters of fact but rather by only the 'cherry picked' matters that are brought to its attention by self interested City officer's, as in its Wanneroo Inc. days.

In fact this proposed policy is a recovery policy only because the current CEO says it is, and that is its title, even though it contains no details of any recovery processes or such related matters.

Since one of the alleged prosecutions of the City, in its own words, was only won by its claims centring on an financial arrangement which it has repeatedly refused to disclose, this Association and its members, both past and present, whose views are yet again undemocratically dismissed by the current Council in a report now before it - "there may well be negative reactions from individuals or groups" - seeks once again the release of the full and complete details of the alleged cash in lieu car parking payment arrangement in respect of the now demolished Mullaloo Beach Restaurant, which the current Council claimed to be fully informed of earlier this year, before the commencement of the final Council meeting of the year.

If the Council improperly refuses once again to finally provide in full all details of this alleged cash in lieu car parking payment arrangement in respect of the now demolished Mullaloo Beach Restaurant, which it transferred over to the new redeveloped Tavern without any due process, then it displays to all ratepayers a full and complete contempt for even the most basic business and legal process's.

The reason the current Council cannot now do this is because it has already represented to ratepayers and to both the Supreme Court and the State Administrative Tribunal that "carbays paid and constructed by the tavern have previously been provided on the opposite of the road ", when in fact ALL these car bays existed long before the old Tavern and the old restaurant were even built and that this Restaurant car parking arrangement effectively ended when that business was sold and the Restaurant demolished.

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