



Date: Thursday 20 July 2023

Time: 5:00pm

**Location: Council Chambers
Cnr Camp & Weddin Streets
GRENFELL NSW 2810**

AGENDA

Late Reports

Ordinary Council Meeting

20 July 2023

**Noreen Vu
General Manager**

Order Of Business

11	Corporate Services Reports	3
11.1	REQUEST FOR LEGAL ASSISTANCE UNDER THE COUNCILLOR EXPENSES AND FACILITIES POLICY	3

11 CORPORATE SERVICES REPORTS

11.1 REQUEST FOR LEGAL ASSISTANCE UNDER THE COUNCILLOR EXPENSES AND FACILITIES POLICY

File Number:

Author: Public Officer

Attachments:

1. Attachment 1 - Statement of Claim
2. Attachment 2 - Request for Legal Assistance

CSP Objective: Democratic and engaged community supported by efficient internal systems

Precis: A request for legal assistance under the Councillor Expenses and Facilities Policy

Budget: To be confirmed

RECOMMENDATION

That Council:

1. Note the information and attachments contained within this report.
2. Note the request in this report by the first respondent and the legal proceedings initiated by the plaintiff.
3. Approves under the Councillor Expenses and Facilities Policy, legal assistance in the form of the reimbursement of all legal expenses incurred by the first respondent in defending the legal proceedings which is the subject of this report.
4. Approves the reimbursement of legal expenses incurred by the first respondent subject to compliance with Section 8 and other reimbursement provisions in the Councillor Expenses and Facilities Policy.

PURPOSE

Council is in receipt of a request for legal assistance under section 8 of the Councillor Expenses and Facilities Policy (1.6.17) from Mayor Craig Bembrick (first respondent). The purpose of this report is to seek Council resolution on this request.

BACKGROUND

The first respondent was served with a Statement of Claim from the plaintiff on 13 July 2023. A copy of the Statement of Claim (Attachment 1) is provided for Council's information.

The Statement of Claim relates primarily to allegations made against the first respondent in the role as Mayor of Weddin Shire Council.

Council has received a request for legal assistance under section 8 of the Councillor Expenses and Facilities Policy (1.6.17) from Mayor Craig Bembrick on 16 July 2023 (Attachment 2).

ISSUES AND COMMENTS

Under the Councillor Expenses and Facilities Policy, Section 8 Legal Assistance specifies the following:

8. Legal assistance

8.1. Council may, if requested, indemnify or reimburse the reasonable legal expenses of:

- a councillor defending an action arising from the performance in good faith of a function under the Local Government Act provided that the outcome of the legal proceedings is favourable to the councillor
- a councillor defending an action in defamation, provided the statements complained of were made in good faith in the course of exercising a function under the Act and the outcome of the legal proceedings is favourable to the councillor
- a councillor for proceedings before an appropriate investigative or review body, provided the subject of the proceedings arises from the performance in good faith of a function under the Act and the matter has proceeded past any initial assessment phase to a formal investigation or review and the investigative or review body makes a finding substantially favourable to the councillor.

8.2. In the case of a code of conduct complaint made against a councillor, legal costs will only be made available where the matter has been referred by the general manager to a conduct reviewer and the conduct reviewer has commenced a formal investigation of the matter and makes a finding substantially favourable to the councillor.

8.3. Legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the Act are distinguished from expenses incurred in relation to proceedings arising merely from something that a councillor has done during his or her term in office. For example, expenses arising from an investigation as to whether a councillor acted corruptly would not be covered by this section.

8.4. Council will not meet the legal costs:

- of legal proceedings initiated by a councillor under any circumstances
- of a councillor seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation
- for legal proceedings that do not involve a councillor performing their role as a councillor.

8.5 Reimbursement of expenses for reasonable legal expenses must have Council approval by way of a resolution at a council meeting prior to costs being incurred

In accordance with section 8 of the Councillor Expenses and Facilities Policy, Mayor Craig Bembrick is seeking a Council resolution for legal assistance to defend the allegations listed in the Statement of Claim, before any legal costs are incurred.

POLICY/LEGAL IMPLICATIONS

Council's current Councillor Expenses and Facilities Policy was adopted by Council on 17 November 2022.

The proposed request for legal assistance by Mayor Craig Bembrick has been made prior to legal expenses being incurred, which complies with section 8.5 of the Policy. Mayor Craig Bembrick is a defendant in the matter and therefore was not the initiator.

Council is requested to consider the legal assistance request under the Councillor Expenses and Facilities Policy and not to discuss any other particular matters.

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications are unknown at this time, as the first respondent has not yet incurred costs. However, any reimbursement of costs will need to comply with section 8 of the Policy.

INTERNAL/EXTERNAL CONSULTATION

Nil.

CONCLUSION

The first respondent was served with a Statement of Claim from the plaintiff. The Statement of Claim relates primarily to allegations made against the first respondent in the role as Mayor of Weddin Shire Council.

Council has received a request for legal assistance under section 8 of the Councillor Expenses and Facilities Policy from Mayor Craig Bembrick, prior to incurring any legal costs.

A draft recommendation has been included in this report, should Councillors resolve to provide legal assistance to Mayor Craig Bembrick.

F-D-000001

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Craig Bembrick





Filed: 09 July 2023 3:02 PM



Form 3A/B UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Local Court of NSW
List	Small Claims Division
Registry	Cowra
Case number	2023/00218413

TITLE OF PROCEEDINGS

First Plaintiff	Michelle Cook
First Defendant	Craig Bembrick

FILING DETAILS

Filed for	Plaintiff[s]
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TYPE OF CLAIM

Mercantile Law - Other

RELIEF CLAIMED

Amount of claim	\$18754.40
Interest	\$1331.53
Filing fees	\$160.00
Service fees	\$50.00
Solicitors fees	\$0.00
TOTAL	\$20295.93

PLEADINGS AND PARTICULARS

See pleadings attached

SIGNATURE

Not applicable as the filing party is not legally represented.

I have advised the plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature Michelle Cook



Date of signature

9 July 2023

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address Cnr Kendal & Brisbane Street
 COWRA NSW 2794
 Postal address Post Office Box 18
 COWRA NSW 2794
 Telephone 02 6342 1933

FURTHER DETAILS ABOUT PLAINTIFF(S)

First Plaintiff

Name Michelle Cook
 Address [Redacted]
 Telephone [Redacted]
 Fax [Redacted]
 E-mail [Redacted]

FURTHER DETAILS ABOUT DEFENDANT(S)

First Defendant

[Redacted]

Name Craig Bembrick
Address 23 Forbes Street
GRENFELL NSW 2810

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Pleading details (Pleadings and particulars Statement of Claim Michelle Cook and Craig Bembrick.pdf)

[attach.]



Pleadings and particulars Statement of Claim Michelle Cook and Craig Bembrick

1. I am the applicant / plaintiff in this statement of claim.
2. This claim is in relation to Legal Fees charged by my solicitors to respond to an allegation of a breach of a Code of Conduct.
3. On 29 May 2023, the Code of Conduct complaint report was released with no findings against Michelle Cook.
4. The Councillor Expenses and Facilities Policy which was adopted by Council on 17 November 2022 states the following:
"8.2: In the case of a code of conduct complaint made against a councillor, legal costs will only be made available where the matter has been referred by the general manager to a conduct reviewer and the conduct reviewer has commenced a formal investigation of the matter and makes a finding substantially favourable to the councillor."
5. The Code of Conduct allegation was made by the general manager, was referred to an external investigator by the general manager, the expense claim response came from the general manager, but the external investigator concluded the inquiry with no unfavourable findings on the councillor.
6. Legal fees incurred by the applicant, to participate in the investigation are currently \$18, 754.40. This is made up of the following invoices from Hayward Solicitors;
7. INV 28 Nov \$600.00
8. INV-1356 Dated 10 Jan 2023 \$3960
9. INV-1480 Dated 10 March \$10,234.40
10. INV-1524 Dated 09 May \$ 3,062.40
11. INV-1619 Dated 5 June \$897.60
12. As outlined in the Councillor Induction And Professional Development Guidelines 2018, all Councillors have roles and responsibilities. As the Mayor of Weddin Shire Council, Mr Bembrick has additional responsibilities as the leader of the council.
13. "The mayor is often considered the voice of the council and the leader of the community. While the mayor has the same roles and responsibilities as councillors, the mayor is essentially the "first among equals" and is expected to exercise a leadership role within a council. This leadership role is reflected in the mayor's extra responsibilities."
14. Mr Bembrick was shown evidence to the effect that the allegation was false and vexatious. He allowed an external investigation to continue for a period of 8 months, incurring legal fees, until the investigation and allegation was withdrawn in June 2023.
15. The legal fees now need to be paid.
16. I have contacted Mr Bembrick on 28th November 2022, in regard to seeking permission for legal fees. He said he would refer the matter to the general manager Ms Vu (who had instigated and escalated the complaint to an external investigator).
17. Further emails were sent to Ms Bembrick on 1 March, Jan 20, Jan 13 2023 with an expense claim for the legal fees incurred to that date. Attached to that email was the copy of the Department of Premier and Cabinet (Local

Government) - Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors and an expense claim form.

An email response was received from the General Manager Ms Vu. She clarified the information I had provided to the Mayor. And again states "8.2: In the case of a code of conduct complaint made against a councillor, legal costs will only be made available where the matter has been referred by the general manager to a conduct reviewer and the conduct reviewer has commenced a formal investigation of the matter and makes a finding substantially favourable to the councillor."

18. I was given a 2-week window to respond to the external investigator, and there was little time between the lodging of the complaint and the response required by the investigator. My solicitor addressed this issue in his letter of December 2022.
19. In particular my solicitor raised concerns that the allegation was not of a serious nature to refer to an external body, that the time between the complaint and the referral did not suggest procedures had been followed and the actual allegation was not particularised. He wrote these concerns in a number of letters and correspondence.
20. As Mr Bembrick is the leader of the council, is supposed to represent the councillors. By allowing the investigation to be filed, escalated, and continue for an extended time frame, after being shown the evidence that the allegation was falsified, is the reason why a claim has been made against Mr Bembrick.
21. He could have raised a motion to council, or a mayoral minute, in relation to these fees, but he failed to do this. He also could of suggested alternative dispute resolution as suggested under the Procedures for the Administration of the Model Code of Conduct:
22. "6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer"
23. "6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:
 - a) that the complaint is a code of conduct complaint for the purposes of these procedures, and
 - b) that the alleged conduct is sufficiently serious to warrant the formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment if it were to be proven, and
 - c) **that the matter is one that could not or should not be resolved by alternative means.**"
24. I had made a complaint about bullying in the Weddin Shire Council and set up a meeting with the Mayor, Mr Bembrick on 27 September 2022. He advised he would take my concerns on board, and would speak with the general manager Ms Vu in the following week. Mr Bembrick never got back to me about my concerns.
25. I later learned that a meeting was set up with Mr Bembrick, Ms Vu and my support person Clr Parlett. This was to occur on the afternoon of 19 October 2022.
26. At lunchtime on 19 October 2022, Ms Vu contacted Mr Bembrick making an allegation against Clr Cook. At the afternoon meeting, Ms Vu made a

statement to Mr Bembrick, with words to the effect "that she would be getting rid of Michelle Cook"

27. A bullying and harassment claim had been made by Michelle Cook. The action taken by Mr Bembrick was to encourage the general manager to make a false allegation against Michelle Cook. This has caused emotional distress to Michelle Cook and also legal fees, to defend the falsified claim.
28. The legal fees are now brought before the small claims court in the amount of \$18, 754.40.



FILE COURT FORMS ONLINE

The NSW Online Registry provides secure services for all parties to cases in the NSW Supreme, District and Local Courts including legal representatives, agents and clients who are representing themselves.

- File court forms online
- Download court sealed documents
- View information about your case
- File multiple forms at once
- Publish & Search probate notices

You may respond to this Statement of Claim by filing a Defence, Statement of Cross Claim or Acknowledgment of Liquidated Claim online.

To respond online, you will need the Case Number (located in the Court Details section of the court approved Statement of Claim). If you are representing yourself, you will also need the document barcode (normally located on the top right hand side of the Statement of Claim).

If this Statement of Claim does not have a document barcode, you will need to attend a Court Registry to obtain the document barcode. You will need to provide identification (e.g. drivers license) before the Court Registry staff can give you a form relating to this case.

Save time and money

- File online from your home or office
- View your case information online
- Most online forms processed within minutes.
- Option to attach and file your own pre-prepared form online for many forms
- Court sealed documents available online ready to download and serve
- Forms pre-filled with existing case and party information where known
- Filing fees calculated for you online
- Pay for up to 100 forms in one transaction
- View and download tax invoices online

Simple to Use

- Free to register
- Easy to use website
- Step-by-step guidance and links to useful information provided throughout the online filing process
- Preview function to review forms before submitting

For help using the Online Registry

- Call 1300 679 272 Mon-Fri (business hours)
- Email onlineregistry_support@justice.nsw.gov.au

Register now

<https://onlineregistry.lawlink.nsw.gov.au/>



Luke J. Sheehan

From: Clr Craig R. Bembrick - Mayor - Weddin Shire Council
Sent: Sunday, 16 July 2023 8:09 PM
To: Luke J. Sheehan
Subject: Request for legal assistance under section 8 of the policy
Attachments: statement of claim 2.docx

To the Public Officer Weddin Shire Council

Please find attached Statement of Claim (SOC) against me as an individual from Cr Michelle Cook.

I note the matters raised in the SOC related to an ongoing matter between Weddin Shire Council and Cr Cook.

I therefore request that under the Councillors Expenses and Facilities Policy a resolution for legal assistance under section 8 of the policy.

My reasons are based on jurisdictional reasons:

1. The plaintiff is not entitled to make this application.
2. I am not an employer nor have financial delegation.

Thank you for your consideration.

Craig Bembrick
Mayor Weddin Shire Council