



**13.2** **MANAGEMENT OF LEGAL SERVICES**

**EXECUTIVE MEMBER:** **BRIAN TEE, ACTING, GENERAL MANAGER, CUSTOMER, OPERATIONS AND INFRASTRUCTURE**

**PREPARED BY:** **JEANENE SIMMONS, SENIOR CONTRACTS ADVISOR**  
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**1. PURPOSE**

1.1 To note the Chief Executive Officer's determination that the management of legal services meets the 'extraordinary circumstance' provision in the Procurement Policy.

**2. EXECUTIVE SUMMARY**

2.1 This report outlines the current extraordinary circumstances that pertains the use of legal providers for continued advice and guidance on longstanding legal matters.

2.2 Council accesses a range of professional legal services to inform robust decision making particularly for complex legal matters.

2.4 The total projected expenditure for Maddocks Lawyers and Best Hooper for ongoing and complex legal matters exceeds Council procurement policy thresholds (ie greater than \$300,000 inc GST).

2.6 This report notes, pursuant to Clause 4.3 (b) of the City of Port Phillip Procurement Policy, the interim Chief Executive Officer, has deemed the procurement of continued services through Maddocks Lawyers and Best Hooper for ongoing matters an extraordinary circumstance. Consequently, Council will continue to engage Maddocks Lawyers and Best Hooper in these matters. All new legal matters will follow standard procurement processes in accordance with Council's Procurement Policy.

2.7 The Procurement Policy will be reviewed in early 2023 to address anomalies, ensure consistency, align with system capability, and integrate improvement opportunities. The review will assess the procurement requirements for legal services and balance the need for agility and achieving value for money

2.8 Any new legal matters will be referred to providers on the MAV Procurement Legal Services Panel which is due to expire in late 2023.



### 3. RECOMMENDATION

That Council notes that:

- 3.1 In accordance with Clause 4.3 (b) of the City of Port Phillip Procurement Policy, the interim CEO has deemed the procurement of legal services from Maddocks and Best Hooper an extraordinary circumstance.
- 3.2 The interim CEO has endorsed an exemption for Maddocks Lawyers up to \$500,000 and Best Hooper up to \$200,000 above normal Procurement Policy requirements.
- 3.3 Any new legal matters will be referred to providers on the MAV Procurement Legal Services Panel.

### 4. KEY POINTS/ISSUES

- 4.1 Prior to 30 June 2021, the legislative requirements relating to procurement were set out in the Local Government Act 1989 (LGA 1989). From 1 July 2021 those provisions were replaced by sections 108 and 109 of the Local Government Act 2020 (LGA 2020).
- 4.2 The LGA 2020 removed the requirement for ministerial approval for the provision of legal services. Instead the procurement of legal services is now be managed via council procurement policy.
- 4.3 When the procurement threshold of \$300,000 is reached for an individual provider Council's Procurement policy prevents the use of those legal providers.
- 4.4 Council's Strategic Risk and Internal Audit (SRIA) committee has recommended that Council's Governance team actively manages the provision of legal services to realise better value and to ensure that duplicate advice was not sought. Centralised monitoring and governance of legal procurement will ensure deliverables are monitored, the method of engagement is reviewed and will develop a reference library of legal matters. Implementation of this recommendation has been delayed by staff recruitment difficulties.
- 4.5 Complex historical legal matters requiring ongoing legal support to protect Council's rights and interests make up a significant portion of the annual legal expenditure. These projects, include Bubup Nairn, St Kilda Marina Project and the South Melbourne Town Hall.
- 4.6 MAV Procurement has a Legal Services Panel with 17 approved legal providers. Unfortunately, Council's legal advice providers providing advice on longstanding legal matters, are not represented on this panel. These providers comprise approximately 70% of Council's total annual expenditure on legal matters. The providers are Maddocks Lawyers (\$927,883 expenditure in the last 12 months) and Best Hooper (\$172,403 expenditure in the last 12 months). The MAV Procurement Panel is due for renewal on 31 October 2023 and comprises;
  - FOI Solutions
  - Hunt and Hunt Lawyers
  - HWL Ebsworth Lawyers

## ORDINARY MEETING OF COUNCIL – 16 NOVEMBER 2022



- Macquarie Local Government Lawyers
- Moray and Agnew
- Switch Legal Pty Ltd
- Thompson Geer
- Wisewould Mahoney Lawyers
- Beck Legal
- Melville Orion and Lewis Solicitors Pty Ltd
- Russell Kennedy
- Sparke Helmore Lawyers
- Holding Redlich Partnership
- Justitia Lawyers and Consultants Pty Ltd
- FAI Lawyers
- Hall and Wilcox
- DLA Piper

4.7 Legal services is one of the more complex service categories to manage. Receiving professional, quality advice and support in a timely manner are key requirements that support the value for money principle. The key legal categories include:

- Government Legislation
- Property
- Commercial Law
- Intellectual Property and Technology Law
- Litigation
- Workplace Health and Families
- Representation
- Subscription Services
- Staff Development
- Workplace related matters

4.8 The relevant key principles in the Procurement Policy are as follows;

- value for money – the best mix of cost, quality (i.e., ability to meet user requirements) and sustainability (environmental, social and economic).
- efficiency and effectiveness – the cost of procurement to Council, tenderers and respondents should be minimised while delivering procurement objectives.



- probity – procurement should demonstrate fairness and impartiality, transparency and accountability, confidentiality and effective management of conflicts of interest.
- advanced practice – a commitment to achieving advanced practice in procurement, including accreditation of contractors by relevant bodies and, where possible and beneficial, collaboration with other councils and public bodies.

4.9 Reassigning matters being managed by Maddocks and Best Hooper would incur unnecessary additional cost, risk project delays, increase the overall risk to key strategic projects and interrupt continuity of service for long term matters such as Bubup Nairn and the St Kilda Marina.

4.10 In response, the interim CEO has determined the circumstances as extraordinary in accordance with the Procurement Policy and has allowed ongoing legal matters with Maddocks and Best Hooper to continue. A cap will be implemented on Maddocks and Best Hooper to maintain control and ensure value for money.

4.11 Clause 4.3 (b) of the Procurement Policy applies when “The CEO has declared a situation of extraordinary circumstance. In this event a report will be provided to Council at the next available opportunity detailing the contract and grounds for providing the exception.”

## 5. CONSULTATION AND STAKEHOLDERS

5.1 With expenditure from all parts of the organisation, key departments have been consulted with respect to the provision of legal services.

## 6. LEGAL AND RISK IMPLICATIONS

6.1 The proposed approach will ensure the Council maintains a high level of probity and financial control and reduces procurement and contract management risk. The approach is in accordance with Council’s Procurement Policy and the LGA 2020.

## 7. FINANCIAL IMPACT

7.1 As the budget for the provision of Legal Services is decentralised, departments are responsible for management of their own expenditure. The estimated annual expenditure on legal matters is \$1.6M.

7.2 An analysis of the current expenditure for ongoing legal matters found that provision for additional expenditure with Maddocks of \$500,000 and Best Hooper \$200,000 is appropriate. The key Maddocks projects include Bubup Nairn, St Kilda Marina, South Melbourne Town Hall and South Melbourne Market. Best Hooper is a specialist advisor on complex planning and building matters.

7.3 The ongoing engagement of Maddocks and Best Hooper on key strategic projects is consistent with the value for money principles and objectives in the Procurement Policy.

## 8. ENVIRONMENTAL IMPACT

8.1 Not applicable.

## 9. COMMUNITY IMPACT

9.1 Not applicable.



**10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

10.1 The proposed Policy supports the Council Plan 2021-2031. The key alignments include:

- Direction 3 Sustainable Port Phillip - with a sustainable future, where our community benefits from living in a bayside city that is cleaner, greener, cooler and more beautiful.
- Direction 5 Well Governed Port Phillip - a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts

10.2 The proposed procurement process (ie the extraordinary circumstance and the ongoing use of the MAV Legal Services Panel) has been conducted in accordance with the Procurement Policy and Section 208 and 209 of the Local Government Act 2020.

10.3 The Local Government Act 2020 has empowered Councils to develop their own principles, processes and procedures that support good governance. The procurement policy seeks to ensure Council and the community receive value for money from the significant expenditure of public funds on the purchase of goods, services and works.

**11. IMPLEMENTATION STRATEGY**

11.1 TIMELINE

11.1.1 The approach is being implemented.

11.2 COMMUNICATION

11.2.1 Documentation will be prepared and forwarded to internal stakeholders.

**12. OFFICER DIRECT OR INDIRECT INTEREST**

12.1 The officer involved in the preparation of this report has an indirect conflict of interest. This perceived conflict of interest has been identified and has not impacted the professional judgement of the officer.

**ATTACHMENTS**

Nil