

# CONFIDENTIAL

**Note: Confidential Provisions released on 30/06/2022**



REPORT FOR:	<b>Council Meeting</b>		
MEETING DATE:	10 August 2021		
REPORT FROM:	Chief Executive Officer		
REPORT TITLE:	<b>Information Report - Mutual Liability Scheme Legal Matter</b>		
FILE NAME:	F18/570	RECORD NO:	AR21/39494

## **STRATEGIC DIRECTIONS**

<b>5</b>	<b>Governance and Financial Sustainability</b>
5.5	We meet or exceed legislative and accreditation requirements for all relevant programs.

## **SUMMARY/ABSTRACT**

The purpose of this report is to inform Elected Members in relation to a legal matter that is being defended by the Mutual Liability Scheme on behalf of Council.

## **RECOMMENDATION**

**Council** receives and notes the report (AR21/39494) dated 28/07/2021, submitted by the Chief Executive Officer concerning Information Report - Mutual Liability Scheme Legal Matter.

## **DISCUSSION**

In 2017 a legal claim was lodged against Council, in relation to an incident that had occurred at a Council site in 2000. The matter was referred to the Mutual Liability Scheme (Council's insurer) who have taken over the defence of the claim in the District Court.

The parties to the matter are now contemplating a settlement (despite liability not being admitted). It is proposed that an offer may be made in a genuine attempt to compromise this matter, without the need to proceed to a trial. The Scheme is prepared to make what it considers to be a very generous offer, one which will give a real prospect of settling the matter, but if not accepted, will provide the Council will protection on the issue of costs.

It is proposed that the Scheme will file an offer to resolve this matter under the processes allowed by the current rules of Court. That process involves the making of a "without prejudice" offer in a form prescribed by the Court which is then served on the Plaintiff's lawyers. The offer will remain open for 14 days, and if it is not accepted, it will then lapse.

If it is accepted, there will then be a binding agreement in place between the Plaintiff and the Council for settlement of the matter, requiring the payment of a settlement sum (by the Mutual Liability Scheme) and a fair portion of the plaintiff costs – either to be agreed, or ultimately assessed under processes provided for in the Court Rules.

As the offer will be made on a "without prejudice" basis, it will remain confidential – but if it accepted, that confidentiality will disappear and the fact of the settlement, and the terms of the settlement, are then likely to become public.

Whilst this will enable the terms of the settlement to become public, it also enables Council to be more transparent about its handling of the claim and, in our view, appropriately, take a position that Council has been proactive in seeking to put an end to this distressing matter by reaching a genuine compromise in good faith.

Council's financial exposure to any offer is its \$3,750 excess with the Scheme.

### **CONFIDENTIALITY PROVISIONS**

The Council is satisfied that, pursuant to Section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to litigation, and should be considered under confidential provisions.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of the litigation process may impact negatively upon legal proceedings.

Having considered this agenda item in confidence under Section 90(2) and (3)(i) of the Local Government Act 1999, the Council, pursuant to Section 91(7) of that Act orders that report (AR21/39494), discussions and minutes be retained in confidence for a period of 12 months or until such time as the matter has been resolved, and that this order be reviewed every 12 months.

**JOHN BANKS**  
**28/07/2021**