



KEMPSEY
Shire Council

DIRECTOR CORPORATE SERVICES REPORT

11th October 2005

DCS8	REQUEST FOR CONTRIBUTION TO LEGAL COSTS
FILE: 200	PJH

SUMMARY:

Reporting on a request from the Local Government & Shires Association for contributions to legal costs.

TTTTTT

The Local Government and Shires Association has written to the Councils of New South Wales regarding the High Court matter of NSW Councils v Telstra/Optus and section 611 charges.

The matter determined by the High Court was whether Councils could impose charges under section 611 of the Local Government Act where carriers such as Telstra and Optus use Council property.

The brief history of this case was that the matter started in the Land and Environment Court in 1997 but was referred to the Federal Court. Justice Wilcox of the Federal Court delivered judgement in favour on the NSW Councils on 21 December 2000. The full Federal Court then upheld an appeal by Telstra and Optus. The High Court granted NSW Councils leave to appeal on 14 February 2003. The High Court heard the matter in October 2003 and handed down its judgement in April 2004 with a 6 to 1 decision in favour of Telstra and Optus.

The letter from the LGSA is reproduced as follows for the information of Council: -

Dear Mr Burgess,

Section 611 Telstra/Optus High Court matter

As you would be aware the Councils of New South Wales were unsuccessful in their High Court legal attempt to require Telstra

and Optus to pay for the use of Council property by way of Section 611 of the Local Government Act 1993.

The legal costs of Telstra and Optus have had to be met by the 12 councils that were named as representing the councils of New South Wales. The costs of the matter were approximately \$1.2 million.

As all New South Wales councils originally agreed that the matter was being run for the benefit of all councils, your council is requested to assist by forwarding \$7,945 (free of GST) to the Associations which is your council's contribution to these legal costs. The proceeds will then be forwarded to the 12 named councils to defray their costs.

If you have any questions regarding this matter please do not hesitate to contact the Association's Legal Officer Frank Loveridge.

Yours sincerely

Bill Gillooly AM
Secretary General"

Previous requests for legal costs supported

Normal practice is for this Council to support requests for assistance where the Association has deemed the case significant for Local Government. Kempsey Shire Council has received such support in the past from other Councils with a case it ran in the 1997 in the matter Kempsey Shire Council v Lawrence.

The contribution asked for is worked out on the formula used to calculate our membership contribution to the Local Government and Shires Association. While the total contribution would appear high by comparison of past cases, with 12 councils involved it equates to us contributing \$662.08 to each of the 12 councils. The 12 Councils involved were Hurstville, Kogarah, Leichhardt, Parramatta, Penrith, Randwick, Hornsby, Drummoyne, Burwood, Concord, Strathfield and Warringah.

The contribution of \$7,945 would be taken from the Admin Legal Expenses budget, which has a total allocation for 2005-2006 of \$30,000, with expenditure to date of \$3,322.

It is agreed that a victory in the High Court would have provided a benefit to all Councils and support is recommended. A provision for such a charge was included in Council's fees and charges since the 2004-2005 year awaiting the High Court decision.

REPORT IMPLICATIONS:

- ***Environmental***

Nil

- *Social*

Nil

- *Economic (Financial)*

As stated above the funds will be paid from the allocation for Admin Legal Expenses. Depending of the number of legal matters arising in the 2005-2006 year, this budget may be exceeded which would reduce Council's working funds balance. At this stage it would appear that the budget for Admin Legal costs may be able to cover this contribution.

- *Policy or Statutory*

Council is not legally obligated to provide these contributions, although it has supported the principle of this case.

- *Director's Review*

The recommendation is supported.

RECOMMENDATION:

That Council agree to contribute to the legal costs incurred by the New South Wales Councils in the High Court matter of NSW Councils versus Telstra and Optus and forward the amount requested by the Local Government and Shires Association.

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G B Snape
DIRECTOR CORPORATE SERVICES