

Liability Claims against Whitsunday Regional Council

Corporate Services CORP_41

Purpose

The purpose of this policy is to outline the approach of Whitsunday Regional Council (Council) in dealing with liability claims in order to provide a consistent and controlled process which will inform potential claimants and provide direction to Council staff.

Council treats all claims seriously and all of the circumstances surrounding a claim will be fully investigated before making a decision. Liability claims will be received on a without prejudice basis. Claims for damage are considered under the *Civil Liability Act 2003* and the common law. When coming to a decision on a claim, Council will consider the law, its regulatory obligations and, in particular, the *Civil Liability Act 2003* which recognises that:

- The functions performed by councils are limited by financial and other resources;
- The general allocation of financial or other resources is not open to challenge;
- The functions required to be exercised by councils are to be considered against the full range of functions, and;
- Council may rely on compliance with general procedures while carrying out their functions.

Council will only consider settling a claim for compensation where Council has been found to have acted negligently at law.

Scope

This policy only relates to liability claims made against Council for property damage.

Applicable Legislation

This policy should be read in conjunction with any related legislation codes of practice, relevant internal policies and procedures.

- *Local Government Act 2009*
- *Local Government Regulations 2012*
- *Civil Liability Act 2003*

Policy Statement

1. Claim Management

- 1.1 All liability claims must be in writing and addressed to the Chief Executive Officer.
- 1.2 For clarity, the acceptance of a liability claim for investigation is not evidence, nor should be construed as an admission of liability.
- 1.3 Where possible, liability claims should be made on Council as soon as possible and within 10 business days. Any exception to this timeframe may be granted only in exceptional circumstances and only where approved by the Director Corporate Services or CEO.
- 1.4 Once a liability claim has been received, Council will conduct a thorough investigation into the circumstances of the incident, the alleged loss or damage and the actions of the parties. This may require the taking of statements, internal or external investigations or any other act Council considers reasonable in the circumstances.
- 1.5 To assist Council in assessing and investigating a liability claim, the claimant should provide as much information as possible, including but not limited to:
 - a. The claimant's full name and contact details;
 - b. Details of what happened, including when and where it happened;
 - c. Details of why the claimant believes the incident occurred and who is responsible for the alleged damage;
 - d. Details of the claimant's quantum or how much is being claimed; and
 - e. Any other information that supports the claim including, but not limited to: photographs of the damage; location map; witness statements; at least two quotations for repairs and any other appropriate documents to support the claim.
- 1.6 Where possible Council will assess liability claims internally, however retains, at its sole discretion, the ability to refer the matter to its insurers.
- 1.7 For clarity, while all liability claims will be considered by Council, the following claims will generally not be considered under this Policy:
 - a. Damage to tyres and rims which are shown to result from wear and tear
 - b. Damage due to debris (if it occurs in the normal course of driving);
 - c. Damage resulting from criminal actions;
 - d. Damage resulting from extreme weather events;

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- e. Matters already the subject of an insurance claim; and
- f. Damage resulting from the actions of a third party.

2. Personal Injuries Claims

- 2.1 Claims for personal injuries are expressly excluded under this Policy. Such claims are notifiable under the terms and conditions of Council's liability insurance cover and are referred to Council's insurers for claim management.

Definitions

CEO refers a person who holds an appointment as Chief Executive Officer of the Whitsunday Regional Council under section 194 of the Local Government Act 2009. This includes a person acting in this position

Claim shall mean any writ, summons, application, third party proceeding or other originating legal or similar process including any written demand communicated to Council under this Policy. **Claimant** means the person or persons making a liability claim on Council

Council means Whitsunday Regional Council

Liability claims means a claim against Council alleging the negligent act or omission of Council (including Council operated plant) for which property damage has resulted.

Related Documents

N/A

Human Rights Compatibility Statement

This Policy has been assessed as compatible with the Human Rights protected under the *Human Rights Act 2019*.

COUNCIL POLICY			
Date Adopted by Council		Council Resolution	
Effective Date		Next Review Date	



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Responsible Officer(s)		Revokes	CP_CORP_22
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