

Annexure X

LEGAL AID POLICY FOR COUNCILLORS AND EMPLOYEES

Whereas Section 109 A of the Municipal Systems Act 2000 permits a municipality to provide a councillor or employee of the municipality with legal representation arising out of the institution of legal action against them as a result of any act or omission by them in the exercise of their powers or the performance of their duties, the Council hereby adopts the following policy:

- 1 Whenever a claim is made or legal proceedings are instituted against any councillor or employee of the council arising out of any act or thing done or omitted by them in the exercise of their powers or the performance of their duties and functions, or whenever any such councillor or employee as a consequence of their election as a councillor or employment with a council are compelled to give evidence in or to make a written statement for the purpose of an inquest in terms of the Inquests Act, 1959 [Act 58 of 1959], the council –
 - a shall, in the case of a civil claim or civil proceedings, if it is of the opinion that the councillor or employee concerned acted in good faith and without negligence, indemnify them in respect of such claim or proceedings, and –
 - i shall provide for the legal representation of such councillor or employee at the cost of the council or undertake to pay their legal costs;
 - ii shall pay any award by a court against them, and
 - iii may settle the claim and pay any amount due in terms of such settlement;
 - b shall, in the case of criminal proceedings, if it is of opinion that the councillor or employee concerned acted in good faith and without negligence, indemnify them in respect of their legal costs therein or provide for their legal representation at the cost of the council, and
 - c may, in the case of criminal proceedings, or an inquest in terms of the Inquests Act, 1959, if it is of the opinion that it is in the interests of the council to do so, indemnify the councillor or employee in respect of their legal costs therein or provide for their legal representation at the cost of the council;

provided that the council may refuse to act in accordance with the foregoing provisions or may terminate any steps already taken by it and recover from the councillor or employee concerned any costs incurred by it on their behalf, if such councillor or employee –

 - i has made any admission or statement which the council considers to be prejudicial to a successful defence;
 - ii has made any offer of payment or settlement;
 - iii declines to accept the services of a legal representative nominated by the council;
 - iv fails or refuses to furnish such information as the council may require or furnishes false or misleading information, or

- v fails or refuses to co-operate with the council or to render such assistance as may be required by the council.
- 2 For the purposes of clause [1] "councillor" or "employee" includes a former councillor or employee of the council.
- 3 Whenever any claim is or is proposed to be made or legal proceedings are or are to be instituted by any councillor or employee of a council against any person in consequence of any act or thing done or omitted by such person and the council is of the opinion that –
- a such act or thing was done or omitted in relation to or in consequence of the exercise and performance by such councillor or employee of his powers, duties and functions;
 - b such councillor or employee exercised and performed such powers, duties and functions in good faith and without negligence, and
 - c such claim or proceedings has or have a reasonable prospect of success,
- the council may indemnify such councillor or employee against all legal costs [including such councillor or employee's own legal costs] which may be or become payable by them in the event of such claim or proceedings not being successful; provided that the council may withdraw any such indemnity and recover all payments made in terms thereof from such councillor or employee if they –
- i took any action or did any thing which in the opinion of the council is prejudicial to the success of such claim or proceeding;
 - ii failed or refused to furnish such information as the council may require or furnished false information, or
 - iii failed or refused to co-operate with the council or render such assistance as may be required by the council.
- 4 Notwithstanding anything to the contrary contained herein, the Council shall refuse to grant legal aid to a councillor or employee in any action resulting from an act or omission which constitutes or would constitute an infringement of the Codes of Conduct for Councillors and Municipal Staff Members contained in the Municipal Systems Act, 2000.
- 5 The Municipal Manager, may amend, vary or deviate from any provision (s) of this policy, if *bona fide* operational requirements so dictates.