

POLICY: INSURANCE - PUBLIC LIABILITY – EX-GRATIA PAYMENTS

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Policy Meeting 6 November 2024
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Director Corporate Services & Finance’s Report #1
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ORIGINAL ADOPTION: Director Corporate Services & Finance’s Report #5
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OBJECTIVE To establish a sound position for Council when dealing with public Liability claims that have been denied by Council.

It is important the Council’s position when dealing with Public Liability Claims that have been denied by the Insurer is established. The reason for the denial by the Insurer is based on the fact that no legal liability is attributed to Council. This decision is based on the law of negligence.

In some circumstances Council may face a situation where a moral obligation may exist, and it may be considered expedient to meet certain claims. However, Council must bear in mind that the insurer will in all likelihood offer no protection as soon as liability is admitted by Council. Additionally, any ex-gratia payment by Council will weaken any subsequent defence that may arise in the future, and the responsibility will then rest with Council.

At the same time, some simple claims may arise, where there is no likelihood of repercussions and the cost of the claim may be less than the cost of staff time to investigate the claim. In such cases it is proposed:

1. That Council take no action on claims for personal injury or those that may lead to a subsequent claim for personal injury, that have been refused by the Insurer.
2. That in the case of claims for property damage up to \$2,000 which are denied by the Insurer. If, in the opinion of the General Manager the claim has no possibility of any future liability and in addition a moral liability exists, or it is considered expedient to resolve, an ex-gratia payment on an without admission of liability and without prejudice basis be made upon the signing of a release.

3. That Council stand by the decision of the Insurer in respect to any claims for property damage in excess of \$2,000.

Special Considerations

1. In order that Council fully protects itself it should stand by the decision of the Insurer. As previously indicated, failure to take this action, may result in Council being held liable for any award that may be given if a claim is pursued through the courts, without any protection from the Insurer.
2. If Council agreed to make available an ex-gratia payment for property damage on a without admission of liability and prejudice basis, following denial by the Insurer, it should be clear that there should be no possibility of any future liability arising.

Before any such payment is made, the claimant should be requested to investigate other forms of recovery, (i.e. through personal insurance). In these circumstances, the private insurer may settle the claim, and the commercial decision is then made whether to pursue the claim against Council. If the claimant remains out of pocket - i.e. for the excess, they may seek recovery from Council.

In either of the above circumstances, the payment should be made upon the signing of a release, and the limit of such claims should be \$2,000, which are to be approved by the General Manager.

3. In the case of claims in excess of \$2,000 Council should stand by the decision of the Insurer.