



## (F22) DAMAGES CLAIMS

### **POLICY OBJECTIVE**

To outline the principles that must be considered for assessment of any damages claim that is lodged with the Shire of Derby/West Kimberly (the Shire), such that the Shire equitably addresses the variety of potential claims that might occur across the Shire's broad level of operations.

### **POLICY STATEMENT**

All claims for damages must firstly be referred to the Shire's insurers for consideration.

Following assessment of a damages claim by the Shire's insurers, that claim for damages may subsequently be submitted to the Shire. Such a claim will be considered by Council if:

1. The claimant can justify (and the Council accepts that justification) why they did not have in place, relevant insurance for the event claimed for;
2. It can be reasonably concluded that the activities of the Shire, or the fact that the Shire did not undertake an activity (vis. mis-feasance v's non-feasance) was the primary cause of the damages being claimed;
3. The claim is for less than the level of the Shire's insurance excess threshold value applicable for the claim;
4. The Shire's insurance policies do not cover the claim, or the Shire's insurer does not accept the claim (in which case the claim must be for below the excess threshold value for the closest similar insurance policy that might have otherwise applied); and
5. Any payment that might be made by Council is accepted by the claimant on the basis of it being "ex-gratia", and is "without any fault admission" by the Shire.

Only the Council can consider the payment of a damages claim and this must be through an officer report to Council. Whilst this policy makes every effort to reflect a strategic and generic approach to damages claims, each case may also be considered based on its own unique merits. The report must contain commentary on at least the following for Council considerations:

1. Whether the Shire, through its actions or negligence, are considered to have caused harm or damage to the claimant;
2. The legitimacy of the claim and the level of responsibility the Shire should take for its actions;
3. Whether the claimant has lodged any previous claims for this or other events;
4. Whether there are any Council precedents for payment/non-payment of similar claims;
5. The potential of a legitimate legal action/legal penalties prevailing, and the organisational time/expense of defending that legal action;
6. Whether there is any legitimate risk of adverse reputational/negative publicity if the claim is accepted/not accepted;
7. The cost/benefit of accepting the claim versus the potential precedent for other less legitimate/opportunistic claims being encourage as a result; and
8. Whether any unique claimant circumstances prevail such that more generous levels of empathy/compassion ought to be offered by Council.



# Shire of Derby / West Kimberley

Policy Details			
<b>Original Adoption date:</b>	12 December 2024, Item 11.1, Res. 165/24	<b>Review Frequency:</b>	2 years
		<b>Next Review Due:</b>	August 2026
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<b>Legislative Head of Power (Act, Regulation, or Local Law):</b>	s.2.7 of the Local Government Act 1995		
<b>Related Documents (other Policies, Operational Procedures, Delegations, etc.):</b>			
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1.			