

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES OF THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 27 OCTOBER 2021

TABLE OF CONTENTS

ITEM NO.	SUBJECT	PAGE NO.
1.	DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS	2
2.	ATTENDANCE	2
3.	ELECTION OF PRESIDING MEMBER AND DEPUTY PRESIDING MEMBER	2
4.	PUBLIC QUESTION TIME.....	3
5.	DISCLOSURE OF INTERESTS	3
6.	CONFIRMATION AND RECEIPT OF MINUTES	3
6.1	Minutes of the Policy and Legislation Committee Meeting held 22 September 2021	3
7.	REPORTS	4
7.1	ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE:.....	4
8.	GENERAL DISCUSSION ITEMS	26
9.	NEXT MEETING DATE	26
10.	CLOSURE	26

MINUTES

MINUTES OF THE POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 27 OCTOBER 2021 AT 10.00AM.

1. DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS

Mr Tony Nottle, Director Finance and Corporate Services, opened the meeting at 9.31am.

Mr Nottle noted the meeting is held on the lands of the Wadandi people and acknowledged them as Traditional Owners, paying respect to their Elders, past and present, and Aboriginal Elders of other communities who may be present.

2. ATTENDANCE

Presiding Member:

Cr Ross Paine (*from 9.34am*)

Members:

Cr Kate Cox
Cr Anne Ryan
Cr Jodie Richards
Cr Grant Henley (*Deputy Member*)

Officers:

Mr Tony Nottle, Director, Finance and Corporate Services
Mrs Emma Heys, Governance Coordinator
Ms Melissa Egan, Governance Officer

Apologies:

Cr Phill Cronin

3. ELECTION OF PRESIDING MEMBER AND DEPUTY PRESIDING MEMBER

In accordance with Delegation S1 – 26 ‘Committee Elections’, Mr Nottle called for nominations for the position of the Presiding Member of the Policy and Legislation Committee.

Cr Paine nominated himself for the position of Presiding Member.

Cr Richards nominated Cr Ryan for the position of Presiding Member. Cr Ryan accepted the nomination.

A vote was conducted for the election of the Presiding Member:

- Cr Ross Paine – 3 votes
- Cr Anne Ryan – 2 votes

Cr Paine was elected as Presiding Member of the Policy and Legislation Committee.

9.34am: At this time, Cr Paine assumed the Chair.

The Presiding Member called for nominations for the position of Deputy Presiding Member of the Policy and Legislation Committee.

Cr Cox nominated herself for the position of Deputy Presiding Member of the Policy and Legislation Committee.

With no other nominations received, Cr Cox was elected as Deputy Presiding Member of the Policy and Legislation Committee.

4. PUBLIC QUESTION TIME

Nil

5. DISCLOSURE OF INTERESTS

Nil

6. CONFIRMATION AND RECEIPT OF MINUTES

6.1 Minutes of the Policy and Legislation Committee Meeting held 22 September 2021

COMMITTEE DECISION

PL2110/429 Moved Councillor K Cox, seconded Councillor G Henley

That the Minutes of the Policy and Legislation Committee Meeting held 22 September 2021 be confirmed as a true and correct record.

For the motion: Cr Henley, Cr Cox, Cr Paine, Cr Richards

Against the motion: Cr Ryan

CARRIED 4/1

7. REPORTS

7.1 ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
SUBJECT INDEX	Code of Conduct
BUSINESS UNIT	Governance Services
REPORTING OFFICER	Governance Coordinator - Emma Heys
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Absolute Majority
ATTACHMENTS	<p>Attachment A Proposed Delegation DA 11 - 03 Behaviour Complaints Committee ↓ </p> <p>Attachment B Proposed Terms of Reference - Behaviour Complaints Committee ↓ </p> <p>Attachment C Amended Council policy: Management of Complaints of Alleged Breaches of Behaviour ↓ </p> <p>Attachment D Current Council policy: Management of Complaints of Alleged Breaches of Behaviour ↓ </p> <p>Attachment E Council Policy: Management of Complaints of Alleged Breaches of Behaviour with Committee amendments ↓ </p>

Cr Henley foreshadowed an alternative to the officer recommendation. The alternative motion was moved and carried.

COMMITTEE RECOMMENDATION

PL2110/430 Moved Councillor G Henley, seconded Councillor K Cox

That the Council:

- 1. Establish a committee of Council to determine complaints called the Behaviour Complaints Committee.**
- 2. Delegates power and authority to the Behaviour Complaints Committee to make findings and dismiss complaints in relation to clause 12(1), (4) and (7) and clause 13 of the *Local Government (Model Code of Conduct) Regulations 2021*, as per Attachment A.**
- 3. Adopt the Terms of Reference for the Behaviour Complaints Committee as per Attachment B.**
- 4. Appoints membership to the Behaviour Complaints Committee:**
 - i. 5 Members**
 - ii. 4 Deputy Members**

- 5. Adopts the Council policy: Management of Complaints of Alleged Breaches of Behaviour inclusive of the Committee amendments (Attachment E), being the inclusion of an additional clause to provide the CEO the discretion to refer the Complaints Officer report, in extraordinary circumstances, to a Council Meeting for Council to make a finding in relation to a complaint of alleged breach of behaviour; and amendments to clauses of the Policy that refer to a meeting of the Committee to now include 'and Council'.**

CARRIED 5/0

BY ABSOLUTE MAJORITY

Reasons: The Committee recommended the amendments to the Policy to provide the CEO with the discretion to refer a report of a complaint to a Council meeting for a finding to be made; and amendments to relevant clauses to refer to both meetings of the Behaviour Complaints Committee and Council.

OFFICER RECOMMENDATION

That the Council:

- 1. Establish a committee of Council to determine Complaints called the Behaviour Complaints Committee.**
- 2. Delegates power and authority to the Behaviour Complaints Committee to make findings and dismiss complaints in relation to Clause 12(1), (4) and (7) and Clause 13 of the *Local Government (Model Code of Conduct) Regulations 2021*, as per Attachment A.**
- 3. Adopt the Terms of Reference for the Behaviour Complaints Committee as per Attachment B.**
- 4. Appoints membership to the Behaviour Complaints Committee:**
 - i. 5 Members**
 - ii. 4 Deputy Members**
- 5. Adopts the amended Council policy: Management of Complaints of Alleged Breaches of Behaviour (Attachment C) (the Policy) to replace the current policy (Attachment D).**

EXECUTIVE SUMMARY

This report seeks Council endorsement of the establishment of a Behaviour Complaints Committee (the Committee), under section 5.8 of the *Local Government Act 1995*, with the Committee to be delegated the power and authority to make findings or dismiss complaints in relation to alleged breaches of Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates. Presented for Council adoption is the Committee Terms of Reference; under which the Council is asked to appoint membership to the Committee.

Council is also requested to adopt the amended Council policy: Management of Complaints of Alleged Breaches of Behaviour, to reflect the proposed changes to the complaints management process.

BACKGROUND

The *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations) came into effect on 3 February 2021. The Regulations replaced the *Local Government (Rules of Conduct) Regulations 2007* (repealed) and prescribed a Model Code of Conduct for local government council members, committee members and candidates (Model Code).

At its 28 April 2021 meeting, Council, in accordance with s.5.104 of the Act, adopted the City's Code of Conduct for Council Members, Committee Members and Candidates (the Code), and the form for making Complaints. Council also appointed the CEO as the Complaints Officer. The CEO has delegated this power to the Director Finance and Corporate Services.

At its meeting of 9 June 2021 Council adopted Council policy: Management of Complaints of Alleged Breaches of Behaviour. Whilst the policy was informed by several other local government council policies, the Western Australian Local Government Association (WALGA) template Complaints Management Process was released post formulation of our policy. The City's complaints management process as adopted differs from the WALGA process in that, at the time, the City chose to have complaints managed by a third party investigation and findings by Council.

OFFICER COMMENT

Officers have had some time since commencement of the new requirements to reflect and further discuss with other local governments the best way to manage complaints when they arise, particularly in relation to interests that may arise. On reflection, officers believe it is prudent to revisit the City's position in regards to complaints management.

The complaints management process in the current policy requires a complaint to be dealt with by the whole of Council. Putting aside the common law principles of apprehended bias, there is no provision in the Act that excuses a Councillor from the deliberative voting process in a Council meeting, outside of a financial or proximity interest. There would be no financial implication arising from a finding in relation to a complaint and therefore a Councillor who is the subject of a complaint would arguably be required to remain in the Council meeting during the determination of the complaint, after having declared an impartiality interest. Similarly so would a maker of the complaint. This may cause a perception of bias and may negate the principles of natural justice.

In order to manage this issue, WALGA's template policy and their approach is predicated on a committee being delegated the power from Council to deal with each complaint.

Officers are proposing that the City adopt this approach also and that the Council establish a committee of Council, the Behaviour Complaints Committee, to make findings and/or dismiss complaints received under Part 3 of the Code.

Officers have developed Terms of Reference (ToR) for the Committee which outline the proposed membership and delegated powers and conditions. The ToR are presented to Council for endorsement (Attachment B). Notably, the membership of the Committee, as outlined in the ToR, require the appointment of 5 Members and 4 Deputy Members, thereby allowing members who are the subject or maker of a complaint, to recuse themselves and for the meeting to continue with the attendance of a Deputy Member/s.

The proposed delegated powers to the Committee as detailed in the ToR and proposed Delegation DA 11 – 03 (Attachment A) (the Delegation) are:

- a. the authority to make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur and determine reasons for any finding.
- b. where a finding is made that a breach has occurred, the power to:
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.

- c. dismiss a complaint and determine the reasons for the dismissal.

The proposed delegate powers to the Committee will be subject to the following conditions:

- a. the Committee will make decisions in accordance with Council Policy: Management of Complaints of Alleged Breaches of Behaviour and these Terms of Reference.
- b. that part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act.
- c. the Committee is prohibited from exercising its delegated power where a Committee Member in attendance at a Committee meeting is either the complainant or respondent to the complaint under consideration by the Committee.

Statutory Environment

Section 5.103 of the *Local Government Act 1995* (the Act) [Model code of conduct for council members, committee members and candidates] provides that regulations must prescribe a Model Code of conduct for council members, committee members and candidates and must include:

- (a) general principles to guide behaviour; and
- (b) requirements relating to behaviour; and
- (c) provisions specified to be rules of conduct;

and may include provisions about how to deal with alleged breaches of the behaviour requirements.

Section 5.104 of the Act provides that a local government must prepare and adopt by absolute majority a code of conduct to be observed by council members, committee members and candidates, and which incorporates the Model Code.

The *Local Government (Model Code of Conduct) Regulations 2021* prescribe the Model Code of Conduct for Council Members, Committee Members and Candidates.

Relevant Plans and Policies

The officer recommendation aligns to the City's Code of Conduct for Council Members, Committee Members and Candidates.

Financial Implications

There are no specific financial implications associated with the appointment of members to Committees/groups, as the costs associated with attendance at these Committees/groups have been allocated in the current budget.

Stakeholder Consultation

Officers consulted with the Western Australian Local Government Association (WALGA) and the documents and processes developed by the City of Rockingham have all formed part of the research undertaken by officers in preparing this report and the associated documents.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. The following risks have been identified. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation, the Council could choose not to establish a Behaviour Complaints Committee under section 5.8 of the Act. However, officers do not recommend this course of action, as leaving the complaints management process in its current form may result in the perception of bias with Council as a whole responsible for determining complaints of alleged breaches of behaviour.

CONCLUSION

Council are asked to endorse the establishment of a committee of Council, Behaviour Complaints Committee, in accordance with section 5.8 of the Act, to make findings and/or dismiss complaints of alleged breaches of Part 3 of the Code; adopt the Terms of Reference and Delegation of Authority as per attachments A and B; appoint membership to the Committee; and adopt the amended Council policy: Management of Complaints of Alleged Breaches of Behaviour.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Behaviours Complaints Committee, membership of the committee and amended policy will be in effect immediately upon adoption of Council.

THE LOCAL GOVERNMENT ACT 1995	
DA 11 - 03	Behaviour Complaints Committee

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.16 Delegation of some powers and duties to certain committees s.5.17 Limits on delegations of some powers and duties to certain committees
DELEGATED TO	Behaviour Complaints Committee
POWER / DUTY DELEGATED	<i>Local Government (Model Code of Conduct) Regulations 2021</i> Clause 12 Clause 13
FUNCTION	<p>Clause 12(1) <u>After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.</u></p> <p>Clause 12(4) <u>If the local government makes a finding that the alleged breach has occurred, the local government may –</u> (a) <u>Take no further action; or</u> (b) <u>Prepare and implement a plan to address the behaviour of the person to whom the complaint relates</u></p> <p>Clause 12(7) <u>If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of –</u> (a) <u>Its findings and the reasons for its findings; and</u> (b) <u>If its finding is that the alleged breach has occurred – its decision under subclause (4)</u></p> <p>Clause 13 <u>Dismissal of complaint</u></p>
CONDITIONS	<ol style="list-style-type: none"> 1. The Committee will make decisions in accordance with Council Policy: Management of Complaints of Alleged Breaches of Behaviour and these Terms of Reference. 2. That part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act. 3. The Committee is prohibited from exercising its delegated power where a Committee Member in attendance at a

	Committee meeting is either the complainant or respondent to the Complaint under consideration by the Committee.
POLICY	Council policy: Management of Complaints of Alleged Breaches of Behaviour
REFERENCE DOCUMENTS	City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
SUB DELEGATION	Nil

RECORD KEEPING	ECM – GOVN001 ‘Authorised Delegation of Power/Authority’	
VERIFICATION	Initial Council Resolution	Recent Council Resolution
RECENT ALTERATIONS	Implementation October 2021	
PREVIOUS DELEGATION REFERENCE	NA	



1. INTRODUCTION

- 1.1. The Council of the City of Busselton has established a Behaviour Complaints Committee (the Committee) pursuant to section 5.8 of the *Local Government Act 1995* (the Act).
- 1.2. The Committee is established for the purpose of dealing with complaints submitted under Part 3, clause 13 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

2. OBJECTIVE

- 2.1. The objective of the Committee is to dismiss or make findings in relation to complaints received of alleged breaches of Part 3 - Behaviour, of the Code, in a fair, impartial and timely manner, following natural justice and due process principles.

3. MEMBERSHIP

- 3.1. The Council shall appoint five elected members to the Committee.
- 3.2. The Council shall appoint four elected members as deputy members of the Committee.

4. PRESIDING MEMBER

- 4.1. The Committee shall appoint a Presiding Member and Deputy Presiding Member to conduct its business.

5. MEETINGS

- 5.1. The Committee shall meet as required.
- 5.2. The part of the meeting that deals with a complaint will be held behind closed doors in accordance with s.5.23(2)b of the Act.
- 5.3. An appointed Committee member must not attend a Committee meeting if they are a complainant or respondent to a complaint under consideration by the Committee.
- 5.4. A Committee Member who is identified as either the complainant or respondent is required to recuse themselves by notifying the Presiding Member of their intention to be an apology for the meeting at which the Complaint is an agenda item.
- 5.5. The Committee may resolve to defer consideration to a future meeting at which any conflicted Committee Member is absent and a Deputy Committee Member is in attendance.

6.1 Attachment B Proposed Terms of Reference - Behaviour Complaints
Committee

- 5.6. Notice of meetings shall be given to members at least five days prior to each meeting, with the agenda papers to be provided to members not less than 72 hours prior to the meeting.
- 5.7. The Presiding Member shall ensure that detailed minutes of all meetings are kept in accordance with the *City of Busselton Standing Orders Local Law 2018*.
- 5.8. All members of the Committee shall have one vote. If the vote of the members present is equally divided, the Presiding Member shall cast a second vote.
- 5.9. The Chief Executive Officer shall ensure that the outcomes of the Committee meeting will be on the agenda of the next practicable ordinary Council meeting for noting purposes.

6. QUORUM

- 6.1. The quorum for a meeting shall be at least 50% of the number of offices of membership, whether vacant or not.

7. DELEGATED POWERS

- 7.1. Pursuant to section 5.17 of the Act, the Committee is delegated the powers in accordance with the *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations), clause 12(1), 12(4), and 12(7) and clause 13.
- 7.2. The Committee has the delegated power to:
 - a. make a finding as to whether an alleged breach the subject of a complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur and determine reasons for any finding.
 - b. where a finding is made that a breach has occurred, the power to:
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
 - c. dismiss a complaint and determine the reasons for the dismissal.
- 7.3. The delegated powers of the Committee are subject to the following conditions:
 - a. the Committee will make decisions in accordance with Council Policy: Management of Complaints of Alleged Breaches of Behaviour and these Terms of Reference.
 - b. that part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s.5.23(2)(b) of the Act.
 - c. the Committee is prohibited from exercising its delegated power where a Committee Member in attendance at a Committee meeting is either the complainant or respondent to the Complaint under consideration by the Committee.

8. APPROVAL

Council Adoption	DATE		Resolution #	



Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour

Responsible Directorate: Finance and Corporate Services **Version:** ~~Adopted~~**PROPOSED**

1. PURPOSE

1.1. The purpose of this Policy is to outline the City’s approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates ([the Code](#)).

2. SCOPE

2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.

2.2. A breach of ~~Part 4 of the Code~~ ~~the Rules of Conduct in the Code~~ is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:

- a. complaints made with the intent of addressing personal grievances or disagreements;
- b. complaints made to express dissatisfaction with a council or committee member’s lawfully made decisions or performance of their role;
- c. minor breaches under section 5.105(1) of the Act;
- d. serious breaches under section 5.114 of the Act; and
- e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	The Behaviour Complaints Committee established under section 5.8 of the Local Government Act 1995 and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
City’s Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to investigate complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled “Management of Complaints of Alleged Breaches of Behaviour”.

4. STRATEGIC CONTEXT

4.1. This Policy links to Key ~~Theme 4 - Goal Area 6~~—Leadership of the City’s Strategic Community Plan 2017 2021-2031 and specifically the [Strategic Priority 4.2: Deliver governance systems that facilitate open,](#)

6.1 Attachment C Amended Council policy: Management of Complaints of Alleged Breaches of Behaviour

~~ethical and transparent decision making. Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.~~

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint; specifically the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

Investigating a complaint

- 5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.9, a Mediator.
- 5.5. A complaint cannot be submitted anonymously.
- 5.6. The City's Complaints Officer, within 14 days of receiving a complaint:
 - a. will contact the complainant acknowledging that the complaint has been received;
 - b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
 - c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
 - d. will provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
 - e. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.
- 5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.
- 5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.
- 5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.11.
- 5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

6.1 Attachment C Amended Council policy: Management of Complaints of Alleged Breaches of Behaviour

- 5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.
- 5.13. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.
- 5.14. The Investigator's assessment must be made within 21 days from receiving a copy of the response to the allegations by the person to whom the complaint relates.
- 5.15. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.
- 5.16. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.
- 5.17. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.18. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.
- 5.19. The Investigator may recommend to the ~~Committee -council-~~ to dismiss a complaint in accordance with clause 14.1 of the Code.
- 5.20. If the Investigator assesses that the behaviour is an offence under the *City's Standing Orders Local Law 2018*, the complaint should be referred back to the City's Complaints Officer.
- 5.21. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.

Council-Committee finding

5.22. A meeting of the Committee must be convened within 21 days after receipt of the Investigators assessment, at which theThe City's Complaints Officer must provide a confidential report.

~~provide a confidential report to the council at the next ordinary meeting after receipt of the Investigator's assessment.~~The report is to include:

- a. a copy of the complaint;
- b. the report of the Investigator together with the evidence received and any submissions or other communications from parties;
- c. a recommendation on the question whether or not a breach of behaviour has occurred;
- d. a recommendation as to whether any, and if so what, further action is required; and
- e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.

6.1 Attachment C Amended Council policy: Management of Complaints of Alleged Breaches of Behaviour

~~5-22-5.23.~~ Based on the Investigator’s report, the evidence and any further comments or submissions by the parties, the ~~Behaviour Complaints Committee~~~~council~~ may do one of the following:

- a. dismiss the complaint in accordance with clause 14.1 of the Code; ~~or~~
- b. find the alleged breach has occurred and decide no further action is required; ~~or~~
- c. find the alleged breach has occurred, decide that further action is required and:
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
- ~~or~~
- d. find that the alleged breach has not occurred.

Action plans

~~5-23-5.24.~~ An action plan should outline:

- a. the behaviour/s of concern;
- b. the actions to be taken to address the behaviour/s;
- c. who is responsible for the actions; and
- d. an agreed timeframe for the actions to be completed.

~~5-24-5.25.~~ In deciding whether to implement an action plan, the Committee Council should consider:

- a. the nature and seriousness of the breach(es);
- b. any submission made by the person to whom the complaint relates;
- c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
- d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
- e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

~~5-25-5.26.~~ The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the ~~council~~Committee has reached an outcome in respect of the complaint.

Compliance with plan requirement

~~5-26-5.27.~~ The City’s Complaints Officer is to monitor the actions and timeframes set out in an action plan.

~~5-27-5.28.~~ Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.

~~5-28-5.29.~~ The City’s Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
<u>Council Adoption</u>	<u>DATE</u>		<u>Resolution #</u>	
Council <u>Previous Adoption</u>	<u>DATE</u>	9 June 2021	<u>Resolution #</u>	C2106/113



Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour
Responsible Directorate: Finance and Corporate Services **Version:** Adopted

1. PURPOSE

1.1. The purpose of this Policy is to outline the City’s approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates.

2. SCOPE

2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.

2.2. A breach of the Rules of Conduct in the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:

- a. complaints made with the intent of addressing personal grievances or disagreements;
- b. complaints made to express dissatisfaction with a council or committee member’s lawfully made decisions or performance of their role;
- c. minor breaches under section 5.105(1) of the Act;
- d. serious breaches under section 5.114 of the Act; and
- e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
City’s Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to investigate complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled “Management of Complaints of Alleged Breaches of Behaviour”.

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 6 – Leadership of the City’s Strategic Community Plan 2017 and specifically the Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint; specifically the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

Investigating a complaint

- 5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.9, a Mediator.
- 5.5. A complaint cannot be submitted anonymously.
- 5.6. The City's Complaints Officer, within 14 days of receiving a complaint:
 - a. will contact the complainant acknowledging that the complaint has been received;
 - b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
 - c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
 - d. will provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
 - e. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.
- 5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.
- 5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.
- 5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.11.
- 5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

6.1 Attachment D Current Council policy: Management of Complaints of Alleged Breaches of Behaviour

- 5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.
- 5.13. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.
- 5.14. The Investigator's assessment must be made within 21 days from receiving a copy of the response to the allegations by the person to whom the complaint relates.
- 5.15. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.
- 5.16. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.
- 5.17. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.18. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.
- 5.19. The Investigator may recommend to the council to dismiss a complaint in accordance with clause 14.1 of the Code.
- 5.20. If the Investigator assesses that the behaviour is an offence under the City's *Standing Orders Local Law*, the complaint should be referred back to the City's Complaints Officer.
- 5.21. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.

Council finding

- 5.22. The City's Complaints Officer must provide a confidential report to the council at the next ordinary meeting after receipt of the Investigator's assessment. The report is to include:
 - a. a copy of the complaint;
 - b. the report of the Investigator together with the evidence received and any submissions or other communications from parties;
 - c. a recommendation on the question whether or not a breach of behaviour has occurred;
 - d. a recommendation as to whether any, and if so what, further action is required; and
 - e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.

6.1 Attachment D Current Council policy: Management of Complaints of Alleged Breaches of Behaviour

- 5.23. Based on the Investigator’s report, the evidence and any further comments or submissions by the parties, the council may:
- a. dismiss the complaint in accordance with clause 14.1 of the Code; or
 - b. find the alleged breach has occurred and decide no further action is required; or
 - c. find the alleged breach has occurred, decide that further action is required and:
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
- or
- d. find that the alleged breach has not occurred.

Action plans

- 5.24. An action plan should outline:
- a. the behaviour/s of concern;
 - b. the actions to be taken to address the behaviour/s;
 - c. who is responsible for the actions; and
 - d. an agreed timeframe for the actions to be completed.
- 5.25. In deciding whether to implement an action plan, Council should consider:
- a. the nature and seriousness of the breach(es);
 - b. any submission made by the person to whom the complaint relates;
 - c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
 - d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
 - e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

- 5.26. The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the council has reached an outcome in respect of the complaint.

Compliance with plan requirement

- 5.27. The City’s Complaints Officer is to monitor the actions and timeframes set out in an action plan.
- 5.28. Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.
- 5.29. The City’s Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	9 June 2021	Resolution #	C2106/113



Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour

Responsible Directorate: Finance and Corporate Services **Version:** Adepted**PROPOSED**

1. PURPOSE

1.1. The purpose of this Policy is to outline the City’s approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates ([the Code](#)).

2. SCOPE

2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.

2.2. A breach of [Part 4 of the Code](#) ~~the Rules of Conduct in the Code~~ is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:

- a. complaints made with the intent of addressing personal grievances or disagreements;
- b. complaints made to express dissatisfaction with a council or committee member’s lawfully made decisions or performance of their role;
- c. minor breaches under section 5.105(1) of the Act;
- d. serious breaches under section 5.114 of the Act; and
- e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	The Behaviour Complaints Committee established under section 5.8 of the Local Government Act 1995 and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
City’s Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to investigate complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled “Management of Complaints of Alleged Breaches of Behaviour”.

4. STRATEGIC CONTEXT

4.1. This Policy links to Key [Theme 4 - Goal Area 6](#)—Leadership of the City’s Strategic Community Plan [2017 2021-2031](#) and specifically the [Strategic Priority 4.2: Deliver governance systems that facilitate open,](#)

6.1 Attachment E Amended Council Policy: Management of Complaints of Alleged Breaches of Behaviour with Committee amendments

[ethical and transparent decision making. Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.](#)

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint; specifically the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

Investigating a complaint

- 5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.9, a Mediator.
- 5.5. A complaint cannot be submitted anonymously.
- 5.6. The City's Complaints Officer, within 14 days of receiving a complaint:
 - a. will contact the complainant acknowledging that the complaint has been received;
 - b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
 - c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
 - d. will provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
 - e. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.
- 5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.
- 5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.
- 5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.11.
- 5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

6.1 Attachment E Amended Council Policy: Management of Complaints of Alleged Breaches of Behaviour with Committee amendments

- 5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.
- 5.13. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.
- 5.14. The Investigator's assessment must be made within 21 days from receiving a copy of the response to the allegations by the person to whom the complaint relates.
- 5.15. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.
- 5.16. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.
- 5.17. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.18. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.
- 5.19. The Investigator may recommend to the [Committee or Council](#) ~~to Council~~ to dismiss a complaint in accordance with clause 14.1 of the Code.
- 5.20. If the Investigator assesses that the behaviour is an offence under the City's *Standing Orders Local Law 2018*, the complaint should be referred back to the City's Complaints Officer.
- 5.21. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.

[Council-Committee or Council finding](#)

[5.22. A meeting of the Committee must be convened within 21 days after receipt of the Investigators assessment, at which the](#) The City's Complaints Officer must [provide a confidential report](#).

[5.23. In accordance with clause 5.25, if the Council is required to make a finding on the complaint, the City's Complaints Officer must provide a confidential report at the next practicable Council meeting.](#)

~~provide a confidential report to the council at the next ordinary meeting after receipt of the Investigator's assessment.~~ The [confidential](#) report is to include:

- a. a copy of the complaint;
- b. the report of the Investigator together with the evidence received and any submissions or other communications from parties;
- c. a recommendation on the question whether or not a breach of behaviour has occurred;
- d. a recommendation as to whether any, and if so what, further action is required; and
- e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.

6.1 Attachment E Amended Council Policy: Management of Complaints of Alleged Breaches of Behaviour with Committee amendments

~~5.22-5.24.~~ Based on the Investigator's report, the evidence and any further comments or submissions by the parties, the ~~Behaviour Complaints Committee or Council Council~~ may do one of the following:

- a. dismiss the complaint in accordance with clause 14.1 of the Code; ~~or~~
- b. find the alleged breach has occurred and decide no further action is required; ~~or~~
- c. find the alleged breach has occurred, decide that further action is required and:
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
- ~~or~~
- d. find that the alleged breach has not occurred.

~~5.25.~~ The CEO has the discretion to refer the confidential report, in extraordinary circumstances, to Council to make a finding in relation to an alleged breach of behaviour.

Action plans

~~5.23-5.26.~~ An action plan should outline:

- a. the behaviour/s of concern;
- b. the actions to be taken to address the behaviour/s;
- c. who is responsible for the actions; and
- d. an agreed timeframe for the actions to be completed.

~~5.24-5.27.~~ In deciding whether to implement an action plan, ~~the Committee or Council Council~~ should consider:

- a. the nature and seriousness of the breach(es);
- b. any submission made by the person to whom the complaint relates;
- c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
- d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
- e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

~~5.25-5.28.~~ The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the ~~council Committee~~ has reached an outcome in respect of the complaint.

Compliance with plan requirement

~~5.26-5.29.~~ The City's Complaints Officer is to monitor the actions and timeframes set out in an action plan.

~~5.27-5.30.~~ Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.

~~5.28-5.31.~~ The City's Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Council Previous Adoption	DATE	9 June 2021	Resolution #	C2106/113

8. **GENERAL DISCUSSION ITEMS**

Nil

9. **NEXT MEETING DATE**

Wednesday, 8 December 2021

10. **CLOSURE**

The meeting closed at 10.21am.

THESE MINUTES CONSISTING OF PAGES 1 TO 26 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 8 DECEMBER 2021.

DATE: 8/12/21

PRESIDING MEMBER: Paine