

27 April 2021

Complaints Handling Procedure

For Council



Table of Contents

1	Complaints Handling Overview	2
1.1	Receipt of Complaint.....	2
1.1.1	Advice of Complaint	2
2	Confidentiality	2
3	Mediation	2
4	Report of Investigation of Complaint	2
4.1	Consultation by the CEO	2
4.2	Report from the Chief Executive Officer.....	3
5	Consideration of the Complaint.....	3
5.1	CEOs report to the Council	3
5.2	Questions in relation to the CEO report	3
5.3	Consideration of CEO Report	3
5.4	Consultation with the person to whom the complaint relates.....	3
5.5	Dismissal of complaint	3
5.6	Withdrawal of complaint.....	3
6	Making a Finding	4
6.1	Council Decision	4
6.2	Advise to complainant and the person to whom the complaint relates	4
7	Plan to Address Behaviour	4
7.1	Meeting to prepare the plan	4
7.2	Consultation on the Plan.....	4
7.3	Preparation of the Plan	4
7.4	Adoption of the Plan	5
7.5	Monitor and review	5
8	Where Agreement cannot be reached	5
9	When a Complaint cannot be dealt with	5

1 Complaints Handling Overview

This complaints handling procedure provides the Council with an effective procedure and process for the handling of complaints of an alleged breach of conduct, by either council members, committee members, or candidates, in accordance with the provisions of Division 3 of Council Policy 4.2 Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct). The procedure aligns with the provisions of Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021*.

1.1 Receipt of Complaint

The Chief Executive Officer (CEO) is the person authorised by the local government to receive complaints and withdrawals of complaints under the provisions of clause 11(3) of the Code of Conduct.

1.1.1 Advice of Complaint

Upon receipt of a complaint the CEO will advise council members via confidential briefing note that a complaint of an alleged breach has been received and that a report will be prepared by the CEO for council consideration.

2 Confidentiality

The City will take all reasonable steps to maintain confidentiality when dealing with the complaint, in order to protect the complainant and the respondent. Council members, City employees and contractors who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely, and must not disclose or inappropriately use this information.

Complainants will be advised that breaches of confidentiality on their part may prejudice the progress of their complaint.

3 Mediation

The option of mediation may be offered to the complainant and the member about whom the complaint has been made. Mediation may resolve any specific issues before the Council is required to make a finding, or lead to a withdrawal of the complaint. Council members may liaise with each other via email through the Mayor and the Mayor may advise the CEO that mediation is to be offered.

4 Report of Investigation of Complaint

The CEO is the person delegated by the local government to prepare a report for the Council on the complaint of alleged breach.

4.1 Consultation by the CEO

The CEO may consult in confidence with third parties, on behalf of the local government, to obtain information and evidence in relation to the alleged breach. The CEO **will** consult with the person to whom the complaint relates to give them a reasonable opportunity to be heard. Details of consultations will be included in the CEO report to the Council.

4.2 Report from the Chief Executive Officer

The CEO will investigate the complaint of an alleged breach in accordance with the provisions of the Code of Conduct and the process - Complaints Handling – Complaint about Alleged Breach, and compile a Council report, for consideration at an Ordinary Meeting of Council. The Council report will be prepared on the basis that the part of the meeting that deals with the complaint will be held behind closed doors in accordance with s.5.23(2) of the Act.

5 Consideration of the Complaint

5.1 CEOs report to the Council

The confidential CEO report, and recommendations for Council consideration will be included in the Council Agenda Forum agenda, which is issued to councillors on the Friday prior to the Agenda Forum Meeting.

5.2 Questions in relation to the CEO report

Council members may forward questions via email directly to the CEO to seek clarification of information within the report. Questions may also be directed to the CEO at the Agenda Forum meeting, held a week prior to the Ordinary Meeting of Council.

Council may seek assistance from the CEO to prepare motions for alternative recommendations, for council consideration at the Ordinary Meeting of Council.

5.3 Consideration of CEO Report

At the Ordinary Meeting of Council the Council must consider the CEOs report, including details of the investigation and any evidence relating to the complaint. The Council must ensure, before making a finding on the alleged breach that the person to whom the complaint relates has been given a reasonable opportunity to be heard.

5.4 Consultation with the person to whom the complaint relates

The person about whom the complaint has been made may make a request to the Council to be heard during the debate on the CEO report.

5.5 Dismissal of complaint

The Council must dismiss a complaint if it is satisfied that –

- the behaviour to which the complaint relates occurred at a council or committee meeting: and
- either –
 - the behaviour was dealt with by the person presiding at the meeting; or
 - the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures

If the complaint is dismissed the Council must give the complainant and the person to whom the complaint relates written notice of the decision and the reasons or the decision in accordance with clause 13(2) of the Code of Conduct.

5.6 Withdrawal of complaint

A complainant may withdraw a complaint at any time before the Council make a finding in relation to the complaint, the withdrawal must be in writing and given to the CEO. If a complaint is withdrawn the Council are not required to make a finding on the complaint.

6 Making a Finding

To make a finding **as to whether** the alleged breach, the **subject of the complaint** has occurred, **in accordance with clause 12 of the Code of Conduct**, the Council must base the finding on evidence, from which it may be concluded that it is more likely that the breach occurred than that it did not occurred.

Evidence means the available facts or information indicating whether an allegation is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as other relevant information to decide whether an alleged breach of the Model Code has occurred. **The Local government must give the person to whom the complaint relates a reasonable opportunity to be heard.**

6.1 Council Decision

Council must consider the information and recommendations within the confidential CEO report, and make a decision on their finding at the Ordinary Meeting of the Council.

Should the Council find that that alleged breach has occurred they may choose to take no further action or alternatively they may decide to prepare and adopt a plan for implementation, to address the behaviour of the person to whom the complaint relates.

6.2 Advise to complainant and the person to whom the complaint relates

Written notice of the Councils finding in relation to the complaint must be provided to the complainant and the person to whom the complaint relates. The written notice must include:

- the finding
- the Councils reasons for its finding
- If the finding is that an alleged breach occurred the decision on any action to be taken.

7 Plan to Address Behaviour

7.1 Meeting to prepare the plan

The CEO will arrange a confidential meeting of Council Members for the purposes of discussion on the preparation of a plan to address behaviour. The CEO will attend the meeting to assist with procedural and administrative matters.

7.2 Consultation on the Plan

When preparing a plan the local government must consult with the person to whom the complaint relates **in accordance with clause 12(5) of the Code of Conduct**. Therefore the person to whom the complaint relates will be invited to the confidential meeting, for consultation purposes. Consultation on the plan, with the person about whom the behaviour relates may also occur during the Ordinary Meeting of Council at which the plan to address behaviour is to be considered by the council.

7.3 Preparation of the Plan

Council members will prepare a draft plan and implementation schedule at the confidential meeting. The action plan should be designed to provide the member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives. An action plan should not include measures that are intended to be punishment, and instead focus on

mechanisms to encourage positive behaviour and prevent negative behaviour from occurring again in the future. The action plan does not need to be complex, it should outline:

- the behaviour(s) of concern;
- the actions to be taken to address the behaviour(s);
- who is responsible for the actions ; and
- an agreed timeframe for the actions to be completed.

The plan may include a requirement for the person to whom the complaint relates to do 1 or more of the following –

- engage in mediation;
- undertake counselling;
- undertake training;
- take other action the local government considers appropriate.

A Council member Notice of Motion will be prepared and submitted to the CEO for inclusion in the next Agenda for the ordinary meeting of the council.

7.4 Adoption of the Plan

The Council will consider the motion for the proposed plan at the next ordinary meeting of the Council.

7.5 Monitor and review

The Council or the CEO must monitor the actions and timeframes set out in the action plan. Clause 23 of the Code of Conduct provides that if a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6) the council member must comply with the requirement.

8 Where Agreement cannot be reached

If the Council cannot reach agreement on the resolution of a complaint and the complaint cannot be dismissed the Council may decide to engage an independent person to review the complaint and make recommendations on appropriate actions.

9 When a Complaint cannot be dealt with

A complaint about an alleged breach by a candidate cannot be dealt with by the Council unless the candidate has been elected as a council member. A candidate does not include a Council Member who has been nominated for re-election.