



BEHAVIOUR COMPLAINTS COMMITTEE

AGENDA

27 MAY 2024

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CITY OF GREATER GERALDTON
BEHAVIOUR COMPLAINTS COMMITTEE MEETING
BEING HELD ON MONDAY 27 MAY 2024 AT 2PM
IN THE GREENOUGH ROOM – CIVIC CENTRE, CATHEDRAL AVENUE,
GERALDTON

A G E N D A

1 DECLARATION OF OPENING

2 ACKNOWLEDGEMENT OF COUNTRY

I would like to respectfully acknowledge the Yamatji people who are the Traditional Owners and First People of the land on which we meet/stand. I would like to pay my respects to the Elders past, present and future for they hold the memories, the traditions, the culture and hopes of Yamatji people.

3 RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

Committee Members

Mayor J Clune

Deputy Mayor Cr N Colliver

Cr J Critch

Cr J Denton

Cr S Cooper, *Deputy Member for Cr V Tanti*

Officers:

Ross McKim, Chief Executive Officer

S Moulds, PA to the Chief Executive Officer / Minute Secretary

Members of Public:

Apologies:

Cr V Tanti

Leave of Absence:

4 REVIEW OF TERMS OF REFERENCE

At the Ordinary Meeting of Council on 28 November 2023 (report CEO110) Council resolved that each Committee review their Terms of Reference. Council Policy 4.32 Behaviour Complaints Terms of Reference (the Policy) is also due for its biennial review.

Council Policy 4.32 Behaviour Complaints Committee Terms of Reference (TOR) sets out the Committee functions, membership, governance and the extent of authority of the Committee, under delegation - section 5.16 of the *Local Government Act 1995*.

There are no changes to the Policy, therefore it is recommended that the Committee endorse the TORs, as per Attachment BCC003C. This Policy will then be submitted to Council for consideration.

EXECUTIVE RECOMMENDATION:

That the Committee by Simple Majority pursuant to Section 2.7 of the *Local Government Act 1995* RESOLVES to:

1. ADOPT Council Policy 4.32 Behaviour Complaints Terms of Reference; and
2. SUBMIT Council Policy 4.32 Behaviour Complaints Terms of Reference Council for formal consideration.

5 DELEGATION 1.1.1 BEHAVIOUR COMPLAINTS COMMITTEE – for noting.

1. 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 that it did not occur [*MCC.cl.12(1) and (3)*].
In making any finding the Committee must also determine reasons for the finding [*MCC.cl.12(7)*].
2. Where a finding is made that a breach has occurred, authority to:
 - a. take no further action [*MCC.cl.12(4(a))*]; or
 - b. prepare and implement a plan to address the behaviour of the person to whom the complaint relates [*MCC.cl.12(4)(b), (5) and (6)*].
3. Authority to dismiss a complaint and if dismissed, the Committee must also determine reasons for the dismissal [*MCC.cl.13(1) and (2)*].

Conditions on Delegation:

- a. The Committee will make decisions in accordance with the principles and specified requirements established in Council Policy 4.30 Code of Conduct Behaviour Complaints Management.
- 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 this Delegation where a Committee Member in attendance at a Committee meeting is either the Complainant or Respondent to the Complaint subject of a Committee agenda item.

- d. In the event of (c) above, the Committee may resolve to defer consideration to a future meeting at which the conflicted Committee Member is absent and a Deputy Committee Member is in attendance.

Note to Conditions (c) and (d):

The purpose of this Condition is to require that 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.

6 DISCLOSURE OF INTERESTS

7 PUBLIC QUESTION TIME

8 APPLICATIONS FOR LEAVE OF ABSENCE

Committee Member	From	To (inclusive)	Date Approved
--	--	--	--

Members are required to put in leave of absence for all Committee Meetings – Any leave approved at a Council Meeting are for those meetings only.

9 CONFIRMATION OF PREVIOUS MINUTES

RECOMMENDED that the minutes of the Behaviour Complaints Committee of 26 March 2024, as previously circulated, be adopted as a true and correct record of proceedings.



BEHAVIOUR COMPLAINTS
COMMITTEE

MINUTES

26 MARCH 2024

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Attachment - 03 - MINUTES - PUBLIC Behaviour Complaints Committee - 26 March 2024 BCC002

CITY OF GREATER GERALDTON

**BEHAVIOUR COMPLAINTS COMMITTEE MEETING
HELD ON TUESDAY 26 MARCH 2024 AT 11AM
IN THE GREENOUGH ROOM – CIVIC CENTRE, CATHEDRAL AVENUE,
GERALDTON**

MINUTES

1 DECLARATION OF OPENING

The Chief Executive Officer (CEO) is to preside at this meeting until the office is filled for Presiding Member.

Local Government Act 1995 Division 1 schedule 2.3 (3). As at 1 July 2023

The CEO declared the meeting open at 11am.

2 ACKNOWLEDGEMENT OF COUNTRY

I would like to respectfully acknowledge the Yamatji people who are the Traditional Owners and First People of the land on which we meet/stand. I would like to pay my respects to the Elders past, present and future for they hold the memories, the traditions, the culture and hopes of Yamatji people.

3 RECORD OF ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE

Attendance by Electronic Means

In accordance with the Local Government (Administration) Regulations 1996 regulation 14C (2)(iii), Cr J Critch has been authorised by the Mayor to attend this meeting by electronic means.

Committee Members

Mayor J Clune

Deputy Mayor Cr N Colliver

Cr J Critch – via Teams

Cr J Denton

Cr V Tanti

Deputy Committee Member in attendance as an non-participating observer:

Cr S Cooper

Officers:

Ross McKim, Chief Executive Officer

S Moulds, PA to the Chief Executive Officer / Minute Secretary

M Adam, Coordinator Governance

Members of Public: 0

Apologies: Nil.

Leave of Absence: Nil.

4 APPOINTMENT OF PRESIDING MEMBER / DEPUTY PRESIDING MEMBER

4.1 Call for Nominations of Presiding Member and Deputy Presiding Member

Nominations for Presiding Member/Deputy Presiding Member are to be made in writing to the CEO before the meeting or during the meeting before the close of nominations.

5 ELECTION OF PRESIDING MEMBER

The election of presiding member of the Behaviour Complaints Committee was conducted in accordance with the provisions of section 5.12, Schedule 2.3, Schedule 4.1 and section 4.55 of the Local Government Act 1995. One nomination was received from Mayor J Clune.

The CEO as Presiding Member called for any further nominations for the Committee Presiding Member.

There were no further nominations.

COMMITTEE DECISION

MOVED CR COLLIVER, SECONDED CR DENTON

That the Behaviour Complaints Committee appoint Mayor J Clune as the Presiding Member for the Term of Office 26 March 2024 to 18 October 2025.

ELECTED UNOPPOSED

The CEO handed the meeting over to the Presiding Member Mayor J Clune.

6 ELECTION OF DEPUTY PRESIDING MEMBER

The election of deputy presiding member of the Behaviour Complaints Committee was conducted in accordance with the provisions of section 5.12, Schedule 2.3, Schedule 4.1 and section 4.55 of the Local Government Act 1995. One nomination was received from Deputy Mayor Cr N Colliver.

The Presiding Member called for further nominations for Deputy Presiding Member.

There were no further nominations.

COMMITTEE DECISION

MOVED MAYOR, SECONDED CR TANTI

That the Behaviour Complaints Committee appoint Deputy Mayor Cr N Colliver as Deputy Presiding Member for the Term of Office 26 March 2024 to 18 October 2025.

ELECTED UNOPPOSED

M Adam left the meeting at 11.06am.

7 DELEGATION 1.1.1 BEHAVIOUR COMPLAINTS COMMITTEE – for noting.

1. 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 that it did not occur [MCC.cl.12(1) and (3)].

In making any finding the Committee must also determine reasons for the finding [MCC.cl.12(7)].

2. Where a finding is made that a breach has occurred, authority to:
 - a. take no further action [MCC.cl.12(4(a)); or
 - b. prepare and implement a plan to address the behaviour of the person to whom the complaint relates [MCC.cl.12(4)(b), (5) and (6)].
3. Authority to dismiss a complaint and if dismissed, the Committee must also determine reasons for the dismissal [MCC.cl.13(1) and (2)].

Conditions on Delegation:

- a. The Committee will make decisions in accordance with the principles and specified requirements established in Council Policy 4.30 Code of Conduct Behaviour Complaints Management.
- 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 this Delegation where a Committee Member in attendance at a Committee meeting is either the Complainant or Respondent to the Complaint subject of a Committee agenda item.
- d. In the event of (c) above, the Committee may resolve to defer consideration to a future meeting at which the conflicted Committee Member is absent and a Deputy Committee Member is in attendance.

Note to Conditions (c) and (d):

The purpose of this Condition is to require that 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.

8 DISCLOSURE OF INTERESTS

There were none.

9 PUBLIC QUESTION TIME

There were no questions from the public.

10 APPLICATIONS FOR LEAVE OF ABSENCE

Committee Member	From	To (inclusive)	Date Approved
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Members are required to put in leave of absence for all Committee Meetings – Any leave approved at a Council Meeting are for those meetings only.

11 CONFIRMATION OF PREVIOUS MINUTES

The Minutes of the [then] Behaviour Complaints Committee of 1 August 2023 were accepted on 29 August 2023, to close the matter off, as this Committee is only required to meet when a Division 3 Complaint is submitted for consideration.

12 MEETING CLOSED TO THE PUBLIC

Please note pursuant to Clause 5.2 of the *Meeting Procedures Local Law 2011 (Consolidated)*, this part of the meeting may need to be closed to the public if confidential discussion is required.

PROCEDURAL MOTION

MOVED CR COLLIVER, SECONDED CR DENTON

The Behaviour Complaints Committee by Simple Majority pursuant to Section 5.23(2)(b) and (d) of the *Local Government Act 1995* and Clause 5.2(2) of the *Meeting Procedures Local Law 2011 (Consolidated)* RESOLVES to:

1. **CLOSE** the meeting to members of the public to allow the Committee to discuss Confidential Item BCC002 – Code of Conduct Division 3 Complaint, as it deals with the personal affairs of a person, and legal advice obtained by the local government which relate to the matter.

CARRIED 5/0

Name	Vote (For or Against)
Mayor Clune	For
Cr. Colliver	For
Cr. Critch	For
Cr. Denton	For
Cr. Tanti	For

The meeting was closed to the public at 11.08am.

13 CONFIDENTIAL ITEM FOR BEHAVIOUR COMPLAINTS COMMITTEE REVIEW

BCC002 CONFIDENTIAL – CODE OF CONDUCT DIVISION 3 COMPLAINT
(Public Version)

AGENDA REFERENCE:	D-24-032809
AUTHOR:	R McKim, Chief Executive Officer / Complaints Officer
EXECUTIVE:	R McKim, Chief Executive Officer / Complaints Officer
DATE OF REPORT:	14 March 2024
FILE REFERENCE:	GO/6/0032
ATTACHMENTS:	Yes (x4) 1 x Confidential A. Council Policy 4.2 Code of Conduct B. Council Policy 4.30 Behaviour Complaints Management C. Council Policy - 4.32 Behaviour Complaints Committee Terms of Reference D. Strictly Confidential - Report by Independent Assessor

Item No. BCC002 was provided to the Committee under separate cover.

Item No. BCC002 was considered and determined behind closed doors and the Behaviour Complaints Committee decision only is available for the public record.

Item No. BCC002 remains confidential as it deals with the personal affairs of any person and legal advice obtained by the local government which relates to a matter to be discussed at the meeting (s.5.23(2)(b)(d) Local Government Act 1995).

COMMITTEE DECISION

MOVED CR TANTI, SECONDED MAYOR

That the Behaviour Complaints Committee by Simple Majority pursuant to Council Policy 4.2 Code of Conduct for Council Members, Committee Members and Candidates adopted in accordance with Section 5.104 of the *Local Government Act 1995* and Council Policy 4.30 Behaviour Complaints Management, RESOLVES to:

- 1. RECEIVE the Investigation Report (Strictly Confidential Attachment No. BCC002D) as undertaken by an Independent Assessor;**
- 2. AGREE with the findings of the Report;**
- 3. ACKNOWLEDGE that none of the allegations have been substantiated;**
- 4. TAKE no further action on this matter; and**
- 5. ADVISE the Complainant and Respondent in writing of the outcome.**

CARRIED 5/0

Name	Vote (For or Against)
Mayor Clune	For
Cr. Colliver	For
Cr. Critch	For
Cr. Denton	For
Cr. Tanti	For

Attachment - 03 - MINUTES - PUBLIC Behaviour Complaints Committee - 26 March 2024 BCC002

14 MEETING REOPENED TO THE PUBLIC

PROCEDURAL MOTION

MOVED MAYOR, SECONDED CR CRITCH

The Behaviour Complaints Committee by Simple Majority pursuant to Clause 5.2(3)(b) of the *Meeting Procedures Local Law 2011 (Consolidated)* RESOLVES to:

1. REOPEN the meeting to members of the public.

CARRIED 5/0

Name	Vote (For or Against)
Mayor Clune	For
Cr. Colliver	For
Cr. Critch	For
Cr. Denton	For
Cr. Tanti	For

The meeting was reopened to the public at 11.39am.

15 MEETING CLOSURE

There being no further business the Presiding Member closed the meeting at 11.39am.

10 MEETING CLOSED TO THE PUBLIC

Please note pursuant to Clause 5.2 of the *Meeting Procedures Local Law 2011 (Consolidated)*, this part of the meeting may need to be closed to the public if confidential discussion is required.

PROCEDURAL MOTION

The Behaviour Complaints Committee by Simple Majority pursuant to Section 5.23(2)(b) and (d) of the Local Government Act 1995 and Clause 5.2(2) of the Meeting Procedures Local Law 2011 (Consolidated) RESOLVES to:

- 1. CLOSE the meeting to members of the public to allow the Committee to discuss Confidential Item BCC003 – Code of Conduct Division 3 Complaint, as it deals with the personal affairs of a person, and legal advice obtained by the local government which relate to the matter.*

11 CONFIDENTIAL ITEM FOR BEHAVIOUR COMPLAINTS COMMITTEE REVIEW

BCC003 CONFIDENTIAL – CODE OF CONDUCT DIVISION 3 COMPLAINT (Public Version)
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AGENDA REFERENCE:	D-24-059202
AUTHOR:	R McKim, Chief Executive Officer / Complaints Officer
EXECUTIVE:	R McKim, Chief Executive Officer / Complaints Officer
DATE OF REPORT:	14 May 2024
FILE REFERENCE:	GO/6/0032
ATTACHMENTS:	Yes (x4) 1 x Confidential
	A. Council Policy 4.2 Code of Conduct for Council Members, Committee Members and Candidates
	B. Council Policy 4.30 Code of Conduct Behaviour Complaints Management
	C. Council Policy - 4.32 Behaviour Complaints Committee Terms of Reference
	D. Strictly Confidential - Report by Independent Assessor

Item No. BCC003 was provided to the Committee under separate cover.

Note: This report to the Committee has been listed as confidential, as it deals with the personal affairs of any person and legal advice obtained by the local government which relates to a matter to be discussed at the meeting (s.5.23(2)(b)(d) Local Government Act1995).

Item No. BCC003 will remain confidential and the Behaviour Complaints Committee decision only will be available for the public record.

City of Greater Geraldton Council Policy

4.2 CODE OF CONDUCT FOR COUNCIL MEMBERS COMMITTEE MEMBERS AND CANDIDATES

SUSTAINABILITY THEME

Leadership

OBJECTIVES

To guide decisions actions and behaviours of council members, elected and unelected committee members and candidates in local elections. The intent is that local governments will address behaviour through education rather than sanctions.

POLICY STATEMENT

The Code of Conduct applies to council members, committee members, elected and unelected, and candidates in local elections.

POLICY DETAILS

Division 1 - Preliminary provisions

1. Citation

This is the City of Greater Geraldton's Code of Conduct for Council Members, Committee Members and Candidates.

2. Terms used

(1) In this code –

Act means the Local Government Act 1995;

candidate means a candidate for election as a council member;

complaint means a complaint made under clause 11(1);

publish includes to publish on a social media platform.

(2) Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

Division 2 - General principles

3. Overview of Division

This Division sets out general principles to guide the behavior of council members, committee members and candidates.

4. Personal Integrity

(1) A council member, committee member or candidate should:

(a) act with reasonable care and diligence;

(b) act with honesty and integrity;

(c) act lawfully;

(d) identify and appropriately manage any conflict of interest; and

- (e) avoid damage to the reputation of the local government.
- (2) A council member or committee member should:
 - (a) act in accordance with the trust placed in council members and committee members;
 - (b) participate in decision-making in an honest, fair, impartial and timely manner;
 - (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
 - (d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

5. Relationship with others

- (1) A council member, committee member or candidate should:
 - (a) treat others with respect, courtesy and fairness; and
 - (b) respect and value diversity in the community.
- (2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.

6. Accountability

A council member or committee member should:

- (a) base decisions on relevant and factually correct information;
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness;
- (c) read all agenda papers given to them in relation to council or committee meetings; and
- (d) be open and accountable to, and represent, the community in the district.

Division 3 - Behaviour

7. Overview of Division

This Division sets out:

- (a) requirements relating to the behaviour of council members, committee members and candidates; and
- (b) the mechanism for dealing with alleged breaches of those requirements.

8. Personal integrity

- (1) A council member, committee member or candidate:
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
- (2) A council member or committee member:
 - (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
 - (b) must comply with all policies, procedures and resolutions of the local government.

9. Relationship with others

A council member, committee member or candidate:

- (a) must not bully or harass another person in any way;
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government;
- (c) must not use offensive or derogatory language when referring to another person;
- (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and
- (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.

10. Council or committee meetings

When attending a council or committee meeting, a council member, committee member or candidate:

- (a) must not act in an abusive or threatening manner towards another person;
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading;
- (c) must not repeatedly disrupt the meeting;
- (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings;
- (e) must comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

11. Complaint about alleged breach

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made:
 - (a) in writing in the form approved by the local government; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints.

12. Dealing with complaint

- (1) 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.
- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

- (4) If the local government makes a finding that the alleged breach has occurred, the local government may:
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behavior of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
 - (a) engage in mediation;
 - (b) undertake counselling;
 - (c) undertake training;
 - (d) take other action the local government considers appropriate.
- (7) 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:
 - (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

13. Dismissal of complaint

- (1) The local government must dismiss a complaint if it is satisfied that:
 - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either:
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) 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.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

14. Withdrawal of complaint

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be:
 - (a) In writing; and
 - (b) Given to a person authorised under clause 11(3).

15. Other provisions about complaints

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as a council member.
- (2) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

15 A. Fraud Control

- (1) The City of Greater Geraldton (the City) is committed to the highest possible standards of openness, probity and accountability in all its operations. The City has zero tolerance to fraud, corruption or misconduct (fraud or corruption). Suspected fraud or corruption will be reported, investigated and resolved in accordance with internal policies and procedures of the City, and the *Corruption, Crime and Misconduct Act 2003*. All legal obligations to the principles of procedural fairness will be met.
- (2) Fraud is defined by Australian Standard AS8001:2021
'dishonest activity causing actual or potential gain or loss to any person or organization including theft of moneys or other property by persons internal and/or external to the organization and/or where deception is used at the time, immediately before or immediately following the activity.'
- (3) Corruption is defined by Australian Standard AS8001:2021
'dishonest activity in which a person associated with an organization (e.g. director, executive, manager, employee or contractor) acts contrary to the interests of the organization and abuses their position of trust in order to achieve personal advantage or advantage for another person or organization. This can also involve corrupt conduct by the organization, or a person purporting to act on behalf of and in the interests of the organization, in order to secure some form of improper advantage for the organization either directly or indirectly.'
- (4) Fraud and corruption constitute a significant risk to the City of Greater Geraldton, and therefore a culture of ethical conduct must be developed to recognise and avoid fraud and corruption and to deal appropriately with any cases which may occur.
- (5) Council members and committee members are expected to behave ethically and honestly when performing their functions and during their interactions with each other, the community and all stakeholders of the City. They have a duty to ensure that City assets are safeguarded from fraud and corruption and to ensure that council's powers, duties and responsibilities are exercised in an open, fair and proper manner to the highest standards of probity. These issues need to be borne in mind when considering reports, making decisions and scrutinising council's activities.
- (6) Council members and committee members must consider and support all policies and measures taken to prevent, deter, detect and resolve instances, or suspected instances, of fraud or corruption throughout the City including:
 - The City of Greater Geraldton Fraud and Corruption Control Plan
 - Council policy 4.22 Fraud Control, Write off Debts & Waive Fees and Charges
 - Other relevant policies and procedures

Reporting Suspected Unethical, Fraudulent, Dishonest, Illegal or Corrupt Behaviour

- (1) Council members and committee members may report suspected unethical, fraudulent, dishonest, illegal or corrupt behaviour to the Chief Executive Officer (CEO). In accordance with the *Corruption, Crime and Misconduct Act 2003*, if the CEO suspects on reasonable grounds that the alleged behaviour may constitute misconduct as defined in that Act, the CEO will notify:
 - The Corruption and Crime Commission, in the case of serious misconduct; or
 - The Public Sector Commissioner, in the case of minor misconduct.
- (2) Suspected serious misconduct may also be reported directly to the Corruption and Crime Commission or suspected minor misconduct to the Public Sector Commissioner. Council members or committee members may also choose to make a Public Interest Disclosure to report suspected unethical, fraudulent, dishonest, illegal or corrupt behaviour, using the City of Greater Geraldton Public Interest Disclosure Procedures, published on the City of Greater Geraldton's website.

Division 4 - Rules of conduct

Notes for this Division:

- (1) Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct. This extends to the contravention of a rule of conduct that occurred when the council member was a candidate.
- (2) A minor breach is dealt with by a standards panel under section 5.110 of the Act.

16. Overview of Division

- (1) This Division sets out rules of conduct for council members and candidates.
- (2) A reference in this Division to a council member includes a council member when acting as a committee member.

17. Misuse of local government resources

- (1) In this clause -

electoral purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*;

resources of a local government includes:

 - (a) local government property; and
 - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

18. Securing personal advantage or disadvantaging others

- (1) A council member must not make improper use of their office:
 - (a) to gain, directly or indirectly, an advantage for the council member or any other person; or
 - (b) to cause detriment to the local government or any other person.

- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.

19. Prohibition against involvement in administration

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

20. Relationship with local government employees

- (1) In this clause -
local government employee means a person -
- (a) employed by a local government under section 5.36(1) of the Act; or
 - (b) engaged by a local government under a contract for services.
- (2) A council member or candidate must not:
- (a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee;
 - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or
 - (c) act in an abusive or threatening manner towards a local government employee.
- (3) Subclause (2) (a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (4) If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means:
- (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use an offensive or objectionable expression when referring to a local government employee.
- (5) Subclause (4)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

21. Disclosure of information

- (1) In this clause -
closed meeting means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;
- confidential document* means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;
- document* includes a part of a document;
- non-confidential document* means a document that is not a confidential document.

- (2) A council member must not disclose information that the council member:
 - (a) derived from a confidential document; or
 - (b) acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subclause (2) does not prevent a council member from disclosing information:
 - (a) at a closed meeting;
 - (b) to the extent specified by the council and subject to such other conditions as the council determines;
 - (c) that is already in the public domain;
 - (d) to an officer of the Department;
 - (e) to the Minister;
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.

22. Disclosure of interests

- (1) In this clause -
 - Interest*
 - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
 - (b) includes an interest arising from kinship, friendship or membership of an association.
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must disclose the nature of the interest:
 - (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know:
 - (a) that they had an interest in the matter; or
 - (b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then:
 - (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.

- (6) Subclause (7) applies in relation to an interest if -
 - (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or
 - (b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
- (7) The nature of the interest must be recorded in the minutes of the meeting.

23. Compliance with plan requirement

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.

KEY TERM DEFINITION

As provided within the Code of Conduct.

ROLES AND RESPONSIBILITIES

The Director of Corporate Services is responsible for implementing this policy.

WORKPLACE INFORMATION

- Local Government Act 1995*
- Local Government (Model Code of Conduct) Regulations 2021*
- City of Greater Geraldton Local Laws
- The Criminal Code Act Compilation Act 1913*

POLICY ADMINISTRATION

Directorate		Officer	Review Cycle	Next Due
Corporate Services		Manager Corporate Compliance and Safety	Biennial	2024
Version	Decision Reference	Synopsis		
2.	CCS736 29/11/2022	Policy Review		

City of Greater Geraldton Council Policy

4.30 CODE OF CONDUCT BEHAVIOUR COMPLAINTS MANAGEMENT POLICY

SUSTAINABILITY THEME

Leadership

OBJECTIVES

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates.

To give effect to the City of Greater Geraldton's commitment to an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

The assessment of the complaint will be conducted purely on the basis of all documents provided, the complaint documents, any local government records identified by the Behaviour Complaints Officer, and the response documents

POLICY STATEMENT

This Policy applies to complaints made in accordance with Clause 11 of the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates.

This Policy applies to Council Members, Committee Members, Candidates and any person who submits a complaint in accordance with this Policy.

POLICY DETAILS

1. Principles

1.1. Procedural Fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a Complaint under this Policy. In particular:

- the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- the decision maker should be objective and impartial, with an absence of bias or the perception of bias; and
- any findings made will be based on proper and genuine consideration of the evidence.

WALGA Note:

Local Governments may wish to refer to the Ombudsman WA Guidelines: [Procedural fairness \(natural justice\)](#) for detailed commentary on these principles.

1.2. Consistency

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

1.3. Confidentiality

The City of Greater Geraldton will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, Local Government 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 of the level of confidentiality they can expect, as detailed below, and that breaches of confidentiality on their part may prejudice the progress of their Complaint:

- In order to allow the Respondent to understand and respond to the complaint against them, the name of the Complainant will be provided to the Respondent, unless the Complainant provides reasons this should not occur.
- The Complainant's contact information will not be provided to the Respondent.
- The Complainant's name and contact information will not be included in any publicly available documents such as meeting agenda or minutes.
- The Complainant should be aware that Complaint Documents may be subject to an FOI request, noting that they must be consulted before any documents are released, and exemptions may apply.

WALGA Note:

In accordance with Local Government (Administration) Regulations 1996, r.11(d) the details of decisions made at Council or Committee meetings must be included in the minutes. Local Governments should consider how resolutions are drafted to ensure that they are suitable for inclusion in the public record.

A breach of confidentiality by council members or committee members under an adopted Complaints Policy would breach the Code of Conduct clause 8(2)(b) requirement to comply with all Local Government Policies. In the case of council members, this may also be a breach of Rule of Conduct 18(1).

1.4. Accessibility

The City of Greater Geraldton will ensure that information on how to make a complaint, including this Policy, is available at the City of Greater Geraldton's Administration Building and on the City's website. The City of Greater Geraldton will make information available in alternative formats if requested. Complaints are acknowledged in a timely manner, addressed promptly and according to order of urgency with the complainant kept informed throughout the process.

Any person wishing to make a complaint may contact the Behaviour Complaints Officer if they require assistance in completing the complaint form or otherwise navigating the complaints process.

2. Roles

2.1. Behaviour Complaints Officer

The Behaviour Complaints Officer is authorised in accordance with clause 11(3) of the Code of Conduct to accept complaints and withdrawal of complaints.

The Behaviour Complaints Officer is not an advocate for the complainant or the respondent. The Behaviour Complaints Officer provides procedural information and assistance to both Complainant and Respondent.

The Behaviour Complaints Officer will liaise with and provide administrative support to a Complaint Assessor appointed under this Policy.

The Behaviour Complaints Officer will liaise with the Local Government to facilitate the calling and convening of Behaviour Complaints Committee meetings if required.

In undertaking their functions, the Behaviour Complaints Officer will apply the Principles of this Policy.

2.2. Complaint Assessor

The Complaint Assessor is appointed by the Behaviour Complaints Officer in accordance with Part 3.8 of this Policy.

The Complaint Assessor is an impartial third party who will undertake the functions specified in this Policy. In undertaking their functions, the Complaint Assessor will apply the Principles of this Policy.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

2.3. Complaints Committee

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the Act for the purpose of dealing with Complaints.

The Behaviour Complaints Committee is a Committee of council members only. The membership and purpose of the Behaviour Complaints Committee is outlined in Council Policy 4.32 Behaviour Complaints Committee Terms of Reference

WALGA Resources:

WALGA has developed a template Behaviour Complaints Committee Terms of Reference and template Behaviour Complaints Committee Delegation to assist the implementation of Part 2.3 of this Policy.

The Behaviour Complaints Committee is proposed to operate under delegated authority in accordance with s.5.16 of the Act with a critical condition prohibiting the Behaviour Complaints Committee from exercising its delegated authority if the Complainant or Respondent attend a meeting as a Behaviour Complaints Committee Member.

The Terms of Reference for the Behaviour Complaints Committee provides that it is a requirement before the Committee can exercise delegated authority that a Committee Member will submit an apology for any meeting of the Behaviour Complaints Committee that will consider a Complaint in which they are either the Complainant or Respondent.

3. Procedure

3.1. Making a complaint

Any person may make a Complaint alleging that a council member, committee member or candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct [clause 11(1) of the Code of Conduct].

A Complaint must be made within one (1) month after the alleged Breach [clause 11(2)(c) of the Code of Conduct].

A Complaint must be made by completing the Complaint Form in full and providing the completed form to the Behaviour Complaints Officer.

A Complaint must be made in accordance with the Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached.

A Complaint is required to include the name and contact details of the Complainant therefore anonymous complaints cannot be accepted.

Where a Complaint Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed.

Where a Complaint is made more than 1 month after the alleged breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be made [clause 11(2)(c) of the Code of Conduct].

3.2. Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with 3.1, above, but cannot be dealt with unless the Candidate is subsequently declared elected as a council member.

Within 7 days after receiving a Candidate Complaint, the Behaviour Complaints Officer will provide written notice:

- To the Complainant confirming receipt, and advising of the procedure for candidate complaints; and
- To the Respondent, including a summary of the complaint, and advising of the procedure for candidate complaints.

No action will be taken until the results of the election are declared by the Returning Officer. If the respondent is elected, then the complaint will be dealt with in accordance with this Policy. Timeframes that would otherwise commence on the receipt of a Complaint will be taken to commence on the election date.

If the Respondent is not elected, the Behaviour Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with [clause 15(1) of the Code of Conduct].

3.3. Withdrawing a Complaint

A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint [clause 14 of the Code of Conduct].

A Complainant may withdraw a Complaint by advising the Behaviour Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Behaviour Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

3.4. Notice to Complainant

Within 10 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Complainant that:

- confirms receipt of the Complaint;
- outlines the process that will be followed and possible outcomes;
- explains the application of confidentiality to the complaint;
- includes a copy of this Policy; and
- if necessary, seeks clarifications or additional information.

If the Complaint Form indicates that the Complainant agrees to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will advise the Complainant of the process in accordance with Part 3.6 of this Policy.

3.5. Notice to Respondent

Within 14 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Respondent that:

- advises that a Complaint has been made in accordance with the Code of Conduct and this Policy;
- includes a copy of the Complaint Documents;
- outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- includes a copy of this Policy; and
- if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

If the Complainant has agreed to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6 of this Policy.

3.6. Alternative Dispute Resolution

The City of Greater Geraldton recognises that Alternative Dispute Resolution may support both parties reach a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Alternative Dispute Resolution requires the consent of both parties to the Complaint and may not be appropriate in all circumstances.

To commence the process, the Behaviour Complaints Officer will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the Behaviour Complaints Officer will pause the formal process.

The objective of Alternative Dispute Resolution will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with Part 3.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a Complaint, even in the absence of a request from the Complainant, qualifies for consideration as Alternative Dispute Resolution.

If Alternative Dispute Resolution is commenced, both the Complainant and Respondent may decline to proceed with the process at any time. The process may also be terminated on the advice of a third party who is providing assistance to the Local Government, such as a facilitator or mediator.

If Alternative Dispute Resolution is terminated or does not achieve an agreed outcome that results in the withdrawal of the Complaint, the Behaviour Complaints Officer will resume the formal process required under this Policy.

3.7. Order of Complaints

Complaints will normally be dealt with in the order in which they are received. If more than one Complaint is received that relates to the same alleged behaviour, the Behaviour Complaints Officer may decide to progress those Complaints concurrently.

3.8. Appointment of Complaints Assessor

If Alternative Dispute Resolution is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Behaviour Complaints Officer will appoint a suitably qualified and experienced Complaint Assessor, in accordance with the City of Greater Geraldton's Purchasing Policy.

The Behaviour Complaints Officer will endeavour to appoint a Complaint Assessor within a reasonable period. The Behaviour Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.

3.9. Search of Local Government Records

The Complaint Assessor may request the Behaviour Complaints Officer to search for any relevant records in the City of Greater Geraldton's Record Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Officer will be requested to identify any Local Government records that provide evidence that may support a decision as to whether:

- the behaviour occurred at a Council or Committee Meeting,
- the behaviour was dealt with by the person presiding at the meeting, and/or
- the Respondent has taken remedial action in accordance with the City of Greater Geraldton Meeting Procedures Local Law 2011.

The Complaints Assessor must provide the Respondent with a copy of any records that are identified. In addition, where a clarification or additional information has been sought from the Complainant by either the Behaviour Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

3.10. Assessment of the Complaint

The Complaint Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under Part 3.4 and Part 3.5 of this Policy

The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to be heard before forming any opinions, or drafting the Complaint Report or recommendations. The Complaint assessor will request that the respondent provide a written response including any evidence or information that the Respondant considers relevant. The Complaint Assessor will advise the Respondant of the time period within which to respond.

The assessment of the complaint will be conducted purely on the basis of all documents provided, the complaint documents, any local government records identified by the Behaviour Complaints Officer, and the response documents.

WALGA Note:

As outlined in the WALGA Note at Part 2.2, Local Governments may wish to include details of their assessment process in their Policy. This may empower the Complaint Assessor to undertake an investigation within defined parameters. Alternatively, the Policy may require that Complaint Assessor to request that the Respondent provide a written response, including any evidence or information that the Respondent considers relevant. The assessment would then be conducted purely on the basis of all documents provided (the Complaint Documents, any Local Government Records identified by the Behaviour Complaints Officer, and Response Documents).

The Code of Conduct requires that a Respondent is provided with a reasonable opportunity to be heard. What may be considered reasonable may depend on the process that is followed, and on the circumstances. For example, if the Complaints Assessor is empowered to gather additional evidence or information, the Respondent must be presented with this information, and have an opportunity to respond. If a Respondent is asked for a written response, the Complaint Assessor should ensure they are given a reasonable period in which to respond. It may also be reasonable to accept responses in other formats. Given this variation, Local Governments may wish to specify minimum requirements, and/or direct the Complaint Assessor to exercise their professional skill and judgment.

3.11. Complaint Report

The Complaint Assessor will prepare a Complaint Report that will:

- outline the process followed, including how the Respondent was provided with an opportunity to be heard;
- include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
- include recommendations on each decision that may be made by the Complaints Committee; and
- include reasons for each recommendation, with reference to Part 4 of this Policy.

If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy, the Complaint Report must include a Proposed Plan.

The Complaint Assessor will liaise with the Behaviour Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Behaviour Complaints Committee. The Behaviour Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

WALGA Note:

Local Governments may wish to include in their Policy a requirement that the Respondent is provided with a draft copy of the Complaint Report, and an opportunity to make submissions, before the Complaint Assessor finalises the Complaint Report.

If the Complaint Report includes a Proposed Plan, this may contribute to consultation in accordance with clause 12(5) of the Code of Conduct.

3.12. Behaviour Complaints Committee Meeting

The Agenda report will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with s.5.23(2) of the Act.

The Behaviour Complaints Committee will consider the Complaint Report and attachments and give due regard to the recommendations.

In accordance with Regulation 11(d)(a) of the Local Government (Administration) Regulations 1996, reasons for any decision that is significantly different from the Officer Recommendation must be recorded in the meeting minutes.

WALGA Note:

The Local Government is required to include reasons when providing notice of its decisions under clauses 12(4), 12(7) and 13 of the Code of Conduct. The Complaint Report is required to provide reasons for each of its recommendations, which become the Officer Recommendations.

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Behaviour Complaints Committee will determine whether or not to dismiss the Complaint in accordance with Clause 13 of the Code of Conduct and Part 4.2 of this Policy.

If the Behaviour Complaints Committee dismisses a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 13(2) of the Code of Conduct. This concludes the process for this Complaint.

If the Complaint is not dismissed, the Behaviour Complaints Committee will consider the Complaint and make a Finding as to whether the alleged Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 12 of the Code of Conduct and Part 4.3 of this Policy.

If the Behaviour Complaints Committee finds that the alleged Breach **did not** occur, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This concludes the process for this Complaint.

If the Behaviour Complaints Committee finds that the alleged breach **did** occur, the Behaviour Complaints Committee will decide whether to take no further action in accordance with clause 12(4)(a) of the Code of Conduct or prepare a plan to address the behaviour in accordance with clause 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy.

If the Behaviour Complaints Committee decides to take no further action, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This concludes the process for this Complaint.

If the Behaviour Complaints Committee decides to prepare a Plan, the Behaviour Complaints Committee will first consult with the Respondent in accordance with clause 12(5) of the Code of Conduct. The Behaviour Complaints Committee will consider any submissions made by the Respondent before preparing and implementing a Plan.

WALGA Note:

**In actioning clause 12(5) of the Code of Conduct, the Respondent may be invited to make an oral submission or provide a written response. If the final decision to implement a Plan is referred to a subsequent meeting of the Committee, the Complaints Assessor or Behavioural Complaints Officer may provide a report attaching the written response and potentially make an associated recommendation as to the effect of a Plan.*

The Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding and its decision under subclause 12(4)(b) in accordance with clause 12(7)(a) and 12(7)(b) of the Code of Conduct.

3.13. Compliance with Plan Requirement

The Behaviour Complaints Officer will monitor the actions in timeframes set out in a Plan.

Failure to comply with a requirement included in a Plan is a minor breach under section 5.105(1) of the Act and clause 23 of the Code of Conduct. A minor breach is dealt with by the standards panel under section 5.110 of the Act

The Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

4. Decision Making

4.1. Objectives and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 1 of this Policy.

4.2. Dismissal

The Behaviour Complaints Committee must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct if it is satisfied that -

(a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and

(b) either —

(i) the behaviour was dealt with by the person presiding at the meeting; or

(ii) the Respondent has taken remedial action in accordance with the City of Greater Geraldton Meeting Procedures Local Law 2011.

4.3. Finding

A Finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur [clause 12(3) of the Code of Conduct].

This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of Division 3 of the Code of Conduct.

4.4. Action

In deciding whether to take no further action, or prepare and implement a Plan, the Behaviour Complaints Committee may consider:

- the nature and seriousness of the breach(es);
- the Respondent's submission in relation to the contravention;

- whether the Respondent has breached the Code of Conduct knowingly or carelessly;
- whether the Respondent has breached the Code of Conduct on previous occasions;
- likelihood or not of the Respondent committing further breaches of the Code of Conduct;
- personal circumstances at the time of conduct;
- need to protect the public through general deterrence and maintain public confidence in Local Government; and
- any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

4.5. Plan Requirements

The Proposed Plan may include requirements for the Respondent to do one (1) or more of the following:

- engage in mediation;
- undertake counselling;
- undertake training;
- take other action the Council considers appropriate (e.g. an apology).

The Proposed Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Code of Conduct.

The Proposed Plan may also outline:

- the actions to be taken to address the behaviour(s);
- who is responsible for the actions;
- any assistance the Local Government will provide to assist achieve the intent of the Plan; and
- a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

KEY TERM DEFINITION

Act means the *Local Government Act 1995*.

Behaviour Complaints Officer means a person authorised in writing (by Council resolution or by the CEO exercising delegated authority) under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints. The role of the Behaviour Complaints Officer is addressed in Part 2.1 of this Policy.

Behaviour Complaints Committee means the Committee established by the Council in accordance with s.5.8 of the Act for the purpose of dealing with Complaints. The Behaviour Complaints Committee is a Committee of council members only under s.5.9 (2)(a) of the Act. The role of the Behaviour Complaints Committee is outlined in Part 2.3 of this Policy.

Breach means a breach of Division 3 of the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates.

The City means the City of Greater Geraldton.

Chief Executive Officer (CEO) means the CEO of the City of Greater Geraldton.

Candidate means a candidate for election as a council member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act, but does not include a council member who

has nominated for re-election. A person is a candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act.

Candidate Complaint means a Complaint alleging a Breach by a Candidate. Candidate Complaints are dealt with in Part 3.2 of this Policy.

Code of Conduct means the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates, Council Policy 4.2.

Committee means a committee of Council, established in accordance with s.5.8 of the Act.

Committee Member means a council member employee or the City of Greater Geraldton or other person who has been appointed by the Council to be a member of a committee in accordance with s.510(1) of the Act. A person is a committee member from the date on which they are appointed, until their appointment expires or is terminated by Council resolution.

Complaint means a complaint made under clause 11 of the City of Greater Geraldton Code of Conduct for Council Members, Committee Members and Candidates.

Complainant means a person who has submitted complaint in accordance with this policy.

Complaint Assessor means a person appointed by the Behaviour Complaints Officer in accordance with Part 2.2 and Part 3.8 of this Policy.

Complaint Documents means the Complaint Form and any supporting information, evidence, or attachments provided by the Complainant.

Complaint Form means the form approved under clause 11(2)(a) of the Code of Conduct [by Council resolution or by the CEO exercising delegated authority].

Council or Committee Meeting means a formal meeting of the Council or a Committee that is called and convened in accordance with the Act. It does not include informal meetings, such as workshops or briefings.

Council Member means a person who is currently serving a term of office as an elected member of the Council in accordance with the Act.

Finding means a finding made in accordance with clause 12(1) of the Code of Conduct as to whether the alleged Breach has or has not occurred.

Local Government means the Council of the City of Greater Geraldton.

Plan means a Plan that may be prepared and implemented under clause 12(4)(b) of the Code of Conduct, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.

Publish includes to publish on a social media platform.

Response Documents means the response provided by the Respondent to the Complaint, and includes any supporting information or evidence that is supplied.

Respondent means the person about whom the complaint has been made.

ROLES AND RESPONSIBILITIES

The CEO is responsible for the implementation of this policy.

WORKPLACE INFORMATION

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

Department of Local Government Sport and Cultural Industries - Guidelines on the Model Code of Conduct for Council Members Committee Members and Candidates

Ombudsman Western Australia - Investigation of Complaints

Ombudsman Western Australia - Guidelines - Effective handling of complaints made to your organisation - An Overview

Ombudsman Western Australia - Procedural fairness (natural justice)

POLICY ADMINISTRATION

Directorate		Officer	Review Cycle	Next Due
Office of the CEO		Chief Executive Officer	Biennial	2025
Version	Decision Reference	Synopsis		
2.	CS021 28/02/2023	Policy Review		

City of Greater Geraldton Council Policy

4.32 BEHAVIOUR COMPLAINTS COMMITTEE TERMS OF REFERENCE

SUSTAINABILITY THEME

Leadership

OBJECTIVES

To establish Terms of Reference for the Behaviour Complaints Committee of the City of Greater Geraldton.

POLICY STATEMENT

This Policy applies exclusively to the City of Greater Geraldton Behaviour Complaints Committee.

POLICY DETAILS

1. Committee Function

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the Local Government Act 1995 (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the City of Greater Geraldton's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct).

The extent of authority provided to the Behaviour Complaints Committee is specified in the relevant Delegated Authority, and includes:

- Dismissing a behaviour complaint in accordance with clause 13 of the Code of Conduct and providing reasons for any such dismissal.
- Making a Finding as to whether an alleged 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 [clause 12(3) of the Code of Conduct].
- Determining reasons for such a Finding.
- Where a Finding is made that a breach has occurred, determining:
 - o To take no further action; or
 - o Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority.

2. Membership

The Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act.

Membership of the Behaviour Complaints Committee will comprise of 5 Council Members, appointed by Council in accordance with s.5.10 of the Act. In addition, at least 5 Council Members will be appointed as Deputy Committee Members in accordance with s.5.11A of the Act.

The Delegated Authority Condition prescribes that if an appointed Committee Member is identified in the Complaint as either the Complainant or the Respondent, they are to recuse themselves from the Committee's Function by providing an apology. They are to be replaced for the duration of the handling of the subject Complaint by a Deputy Committee Member, selected by the Presiding Member of the Committee.

3. Meeting Schedule

Meetings are to be scheduled as required by the CEO or Behaviour Complaints Officer in consultation with the Committee Presiding Member.

4. Delegated Authority

The Behaviour Complaints Committee will act under Delegated Authority in accordance with s.5.16 of the Act. The delegation is recorded in the City of Greater Geraldton Register of Delegations to Committees.

It is a Condition of Delegated Authority that the Behaviour Complaints Committee will be unable to exercise delegated authority if the Complainant or Respondent attend as a Complaints Committee Member.

5. Committee Governance

Complaints Behaviour Committee meetings are required to:

- be called and convened by the CEO, as required, in consultation with the Committee's Presiding Member;
- include public question time [Admin.r.5]
- make the Committee Notice Papers and Agenda publicly available [s.5.94(p), s.5.96A(f)], with the exception of agenda content that relates to that part of the meeting which will be closed to members of the public under s.5.23(2) [Admin.r.14]; and
- make Committee minutes publicly available [s.5.94(n), s.5.96A(h)], with the exception of Minutes content that relates to that part of the meeting which was closed to the public or was determined as confidential under s.5.23(2).

KEY TERM DEFINITION

City is City of Greater Geraldton

ROLES AND RESPONSIBILITIES

The Chief Executive Officer is responsible for implementing this policy

WORKPLACE INFORMATION

Council Policy 4.2 Code of Conduct for Council Members, Committee Members and Candidates

Council Policy 4.30 Code of Conduct Behaviour Complaints Management

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

POLICY ADMINISTRATION

Directorate		Officer	Review Cycle	Next Due
Office of the CEO		Chief Executive Officer	Biennial	2024
Version	Decision Reference	Synopsis		
1.	CS04Z 27/06/2023	New Policy		

12 MEETING REOPENED TO THE PUBLIC*PROCEDURAL MOTION*

The Behaviour Complaints Committee by Simple Majority pursuant to Clause 5.2(3)(b) of the Meeting Procedures Local Law 2011 (Consolidated) RESOLVES to:

- 1. REOPEN the meeting to members of the public.*

13 MEETING CLOSURE