



City of Rockingham

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# Code of Conduct

**for Council Members, Committee Members  
and Candidates**

April 2021



[rockingham.wa.gov.au](http://rockingham.wa.gov.au)

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## Introduction

Individuals who are, or seek to be, members of the council and council committees are entrusted by their community to represent local views, make sound decisions, and utilise public funds effectively to deliver services and amenities for their community. As such, a high standard of professional and ethical conduct is expected of council members and committee members, as well as candidates in local government elections.

The Model Code of Conduct established by the *Local Government (Model Code of Conduct) Regulations 2021* (which is set out in Schedule 1) has been adopted by Council and prescribes the expected standards (**Code of Conduct**).

The purpose of the Code of Conduct is to guide decisions, actions and behaviours of council members, elected and unelected committee members, and candidates in local elections and for the City to address behaviour through education rather than sanctions.

The Code of Conduct comprises three main parts –

- **Division 2 – General Principles**  
These are the overarching guiding behaviours expected.
- **Division 3 – Behaviours**  
These are the behaviours enforceable by Council for a breach in conduct.
- **Division 4 – Rules of Conduct**  
These are the behaviours enforceable by the Local Government Standards Panel.

Critical to the management of complaints under the Code of Conduct are –

- **Confidentiality**
- **Timeliness**
- **Natural justice and due process**
- **Fairness and impartiality**

It is essential that only genuine complaints be made and that there is a willingness to admit fault in an appropriate case, a preparedness to make amends or apologise, and to ensure that behaviours which fall short of the expected standards do not re-occur. As a result complaints such as the following are inappropriate –

- Complaints made with the intent of addressing personal grievances or disagreements
- Complaints made to express dissatisfaction with a council member's lawfully-made decisions or performance of their role
- Complaints made as a political tool or in an attempt to limit freedom of political expression

Early intervention and mediation is key to resolving alleged breaches of the Code of Conduct. Where possible the City will seek to deal with conduct concerns relating to council member, committee members and candidates outside of a formal breach complaint process.

A Code of Conduct Complaints Management Process policy is established to guide the complaints officer and Council in dealing with a complaint under the code of conduct.

NOTE: City of Rockingham employees (including the Chief Executive Officer) are subject to a separate Code of Conduct which can be found on the City of Rockingham website [www.rockingham.wa.gov.au](http://www.rockingham.wa.gov.au).

## Schedule 1 —Model code of conduct

### Division 1 — Preliminary provisions

#### 1. Citation

This is the *City of Rockingham 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 behaviour 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; and
- (b) act with honesty and integrity; and
- (c) act lawfully; and
- (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; and
- (b) participate in decision-making in an honest, fair, impartial and timely manner; and
- (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; and
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
- (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; and
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and
- (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; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and
- (c) must not repeatedly disrupt the meeting; and
- (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; and
- (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 and withdrawals of 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 behaviour 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.

## 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; or
- (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; or
  - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
  - (c) that is already in the public domain; or
  - (d) to an officer of the Department; or
  - (e) to the Minister; or
  - (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.

## Instructions for:

## Making a complaint about an alleged breach of the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates

### Complaint

Please read the City of Rockingham's Council Policy - Code of Conduct Complaints Management Process on our website [Local laws, Council policies and delegations - City of Rockingham](#) before submitting a complaint. This Policy details:

- How the City of Rockingham will process and determine a Complaint; and
- How confidentiality of the complaint will be handled.

To make a valid **Complaint**:

- 
- ☐ The allegation must relate to a breach of the behaviour standards in Division 3 of the City of Rockingham's Code of Conduct for Council Members, Committee Members and Candidates.
- 
- ☐ Complete all sections of the Complaint Form attached, including any additional information that will support assessment of the complaint. *The Complaints Officer may contact you to clarify or ask for more information.*
- 
- ☐ The completed Complaint Form **MUST** be lodged with the City of Rockingham Complaints Officer within one (1) month of the alleged behaviour breach.
- 

### Rules of Conduct Complaint

A **Rules of Conduct Complaint** refers to a breach of the Rules of Conduct outlined in Division 4 of the City of Rockingham's Code of Conduct for Council Members and Candidates, including Council Members when acting as a Committee Member. This type of complaint is determined by the Local Government Standards Panel, administered through the Department of Local Government, Sport and Cultural Industries. Further information about Rules of Conduct Complaints may be obtained from:

- Department of Local Government, Sport and Cultural Industries: (08) 6552 7300 or [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au); OR
- The City of Rockingham's Rules of Conduct Complaints Officer: (08) 9528 0333 or [complaints.officer@rockingham.wa.gov.au](mailto:complaints.officer@rockingham.wa.gov.au)

### Need Advice?

If you require advice in making a Complaint, please contact the City of Rockingham's Complaints Officer on (08) 9528 0333 or by email [complaints.officer@rockingham.wa.gov.au](mailto:complaints.officer@rockingham.wa.gov.au)

## Complaint Form

### City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates

Name of Person Making the Complaint			
<b>Complainant Name:</b> <i>Given Name/s and Family Name</i>			
Contact Details			
<b>Residential Address:</b>			
<b>Postal Address:</b>			
<b>Phone:</b>	Day-time:		Mobile:
<b>Email:</b>			

Complaint Details:			
1.	<b>Insert Name of Person alleged to have committed a behavior breach:</b>		
2.	<b>Select the position that the person was fulfilling at the time the person committed the alleged behaviour breach:</b>	Council Member of the City of Rockingham	<input type="checkbox"/>
		Member of a Committee of the City of Rockingham	<input type="checkbox"/>
		Candidate for election at the City of Rockingham	<input type="checkbox"/>
3.	<b>Date that the alleged behaviour breach occurred:</b>		
4.	<b>Location where the alleged behaviour breach occurred:</b>		

5.	<b>Which of the behaviours prescribed in Division 3 of the City of Rockingham's Code of Conduct do you allege this person has breached?</b>	
	<b>Clause 8. Personal integrity</b>	
	(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	<input type="checkbox"/>
	(b) must only publish material that is factually correct	<input type="checkbox"/>
	(2) A council member or committee member —	
	(a) must not be impaired by alcohol or drugs in the performance of their official duties; and	<input type="checkbox"/>
	(b) must comply with all policies, procedures and resolutions of the local government.	<input type="checkbox"/>
	<b>Clause 9. Relationship with others</b>	
	A council member, committee member or candidate —	
	(a) must not bully or harass another person in any way; and	<input type="checkbox"/>
	(b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and	<input type="checkbox"/>
	(c) must not use offensive or derogatory language when referring to another person; and	<input type="checkbox"/>
	(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	<input type="checkbox"/>
	(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.	<input type="checkbox"/>
	<b>Clause 10. Council or committee meetings</b>	
	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; and	<input type="checkbox"/>
	(b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and	<input type="checkbox"/>
	(c) must not repeatedly disrupt the meeting; and	<input type="checkbox"/>
	(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; and	<input type="checkbox"/>
	(e) must comply with any direction given by the person presiding at the meeting; and	<input type="checkbox"/>
	(f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.	<input type="checkbox"/>

<b>6.</b>	<b>State the full details of the alleged breach.</b>

<b>7</b>	<b>List any additional information you have provided as part of this complaint:</b> <i>Please ensure all information relevant to the alleged breach has been attached. This information will be the basis on which the complaint is considered.</i>

<b>8</b>	<b>Have you made any efforts to resolve the complaint with the Respondent?</b> <i>Please note, you MUST complete this section</i>	
<b>YES</b>	<input type="checkbox"/>	<i>If yes, please describe the efforts that you have made.</i>
<b>NO</b>	<input type="checkbox"/>	<i>If no, please include a brief statement explaining why you have not made any efforts to resolve the issue with the person complained about.</i>

<b>9</b>	<p><i>The City of Rockingham has a policy that the Complainant and the Respondent be offered the opportunity to participate in an Alternative Dispute Resolution process, that if agreed to by BOTH parties, will be undertaken before the complaint is dealt with.</i></p> <p><i>The objective is to support both parties to reach a mutually satisfactory outcome that resolves the issues and restores the relationship between them. An outcome may be that as the Complainant, you will have absolute discretion to withdraw or continue with this Complaint.</i></p> <p><i>Please contact the Complaints Officer if you would like more information.</i></p>		
<b>Would you agree to participate in an Alternative Dispute Resolution process?</b>		<b>YES</b>	<input checked="" type="checkbox"/>
		<b>NO</b>	<input type="checkbox"/>



<b>10</b>	<b>Desired outcome of the Complaint</b> <i>Please explain what you would like to happen as a result of lodging this complaint, including the opportunity to participate in Alternative Dispute Resolution.</i>

<b>COMPLAINANT</b> <i>please sign and date</i>	
<b>Signature:</b>	
<b>Date:</b>	

**Please submit completed Complaint to:**

The City of Rockingham's Complaints Officer:

Mailing Address: City of Rockingham  
Civic Boulevard  
PO Box 2142  
Rockingham DC 6967

Email: [complaints.officer@rockingham.wa.gov.au](mailto:complaints.officer@rockingham.wa.gov.au)

In person: City of Rockingham Administration Centre  
Civic Boulevard, Rockingham WA 6168

<b>OFFICE USE ONLY:</b> <i>Received by the Council appointed Complaints Officer</i>	
<b>Authorised Officer's Name:</b>	
<b>Authorised Officer's Signature:</b>	
<b>Date received:</b>	

## Code of Conduct Complaints Management Process

### Council Policy Objective

To ensure that a Complaint received in relation to an alleged breach of *Division 3 – Behaviour*, of the *City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates* is managed on the basis of –

- Confidentiality
- Timeliness
- Natural justice and due process
- Fairness and impartiality

Clause 15(2) of the Code of Conduct provides that the procedure for dealing with Complaints may be determined by the local government to the extent that it is not dealt with by *the Local Government (Model Code of Conduct) Regulations 2021 (Regulations)*. This policy (Policy) meets this objective.

### Council Policy Scope

This Policy applies to Council Members, Committee Members, Candidates, Complaints Officers, and Complainants in respect to Complaints of an alleged breach of “Division 3 – Behaviour” of the Code of Conduct (Division 3 Complaints).

The management of Complaints related to Division 4 of the Code of Conduct is prescribed by the *Local Government Act 1995* and not by this policy. The CEO, or a senior officer nominated by the CEO, is the Complaints Officer for the purpose of Complaints related to Division 4.

### Council Policy Statement

#### 1. Principles

##### 1.1 Procedural fairness

The principles of procedural fairness and natural justice will apply when dealing with a Division 3 Complaint under this Policy. In particular:

- a Respondent will be afforded a reasonable opportunity to be heard before any findings are made;
- a Respondent will be afforded a reasonable opportunity to be heard before any Plan is imposed;
- the decision maker must be objective and impartial and must act in an unbiased manner and must not act in a manner likely to give rise to a perception of bias; and
- any findings made will be based on proper and genuine consideration of the evidence.

##### 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

All Complaints must, as far as possible, be dealt with confidentially until such a time as they are required to be reported to Council in accordance with this Policy or are otherwise lawfully made public or disclosed. The City of Rockingham will take all reasonable steps to maintain confidentiality when dealing with a 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, 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 valid reasons why this should not occur. The Complainant's contact information will not be provided to the Respondent.

### 1.4 Accessibility

The City of Rockingham will ensure that information on how to make a complaint, including this Policy, is available at the City's Administration Building and on the City's website. The City will make information available in alternative formats if requested.

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

### 1.5 Perception of Bias

A reasonable perception of bias may arise by virtue of personal, financial or family relationships, evidence of a closed mind or participation in the Complaint process (such as being a Complainant or Respondent).

Where a person's involvement in the decision-making process (whether at Council or Committee level) may reasonably give rise to a perception of bias on their behalf, they must recuse themselves.

## **2. Roles**

### 2.1 Complaints Officer

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

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

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

The Complaints Officer will liaise with the local government to facilitate the calling and convening of Council or Behaviour Complaints Committee meetings if required.

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

### 2.2 Complaints Assessor

The Complaint Assessor is appointed by the 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 Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

### 2.3 Behaviour Complaints Committee

A Behaviour Complaints Committee is a Committee of Council that may be established in accordance with s.5.8 of the Act for the purpose of dealing with Division 3 Complaints.

## Appendix 2 – Code of Conduct Complaints Management Process

Where established, the Behaviour Complaints Committee is a Committee of Council, comprising all Council members. An appointed Committee member must recuse themselves if they are a Complainant or a Respondent.

The authority delegated to the Behaviour Complaints Committee will be specified by Council delegation and may include:

- Conditions to which the delegation is subject.
- Dismissing a Division 3 Complaint in accordance with clause 13 of the Code of Conduct and providing reasons for any such dismissal.
- Making a finding as to whether the conduct specified in a Complaint did or did not occur, and whether a contravention of the Code of Conduct has been established, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur (Finding) *[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:
  - To take no further action; or
  - To Prepare and implement a Plan to address the behaviour of the person to whom the Complaint relates.

### **3. Complaint process**

#### **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 forms to the Complaints Officer.

Save where this Policy otherwise provides, a Complaint will usually be determined by reference to the information provided by the Complainant and the Respondent.

A Complaint must:

- Be specific (including identifying the provisions of the Code of Conduct which the complainant alleges have been breached).
- Provide as much supporting evidence as possible to assist an investigation (including the grounds and circumstances of the Complaint). This may include Statutory Declarations and witness statements.
- Provide the name of the Council Member, Committee Member or Candidate who has allegedly breached the Code of Conduct.
- Provide the name and contact details of the complainant and the name and contact details of the person submitting the complaint (if different to the complainant).

Anonymous complaints will not be investigated by the Complaints Officer unless required by law.

Where a Complaint Form omits required details, the 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 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 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 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 Complaints Officer in writing that they wish to do so.

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

### 3.4 Notice to Complainant

Within 7 days after receiving a Complaint, the 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 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 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 Rockingham 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 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 Complaints Officer will resume the formal process required under this Policy.

Examples of Alternate Dispute Resolution include –

- negotiation with the assistance of the Complaints Officer or other appropriate person as intermediary;
- facilitation with a contracted service provider such as a mediator or conciliator;
- other mutually agreed process.

### 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 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 Complaints Officer may appoint a suitably qualified and experienced Complaints Assessor, in accordance with the City of Rockingham Procurement Framework.

A Complaints Assessor may be appointed under the following circumstances -

- Where a complaint relates to a Council Member;
- Where a complaint relates to a Candidate who is elected as a Council Member; and
- Where internal resources are limited and/or the nature of the complaint requires specific expertise.

In appointing a Complaints Assessor, the Complaints Officer will have regard to the qualifications and independence of the person appointed.



The Complaints Officer will endeavour to appoint a Complaint Assessor within a reasonable period. The 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 Complaints Officer to search for any relevant records in the City of Rockingham's Record Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the 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 Rockingham Standing Orders Local Law 2001.

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 Complaints Officer or the Complaint Assessor, copies must also be provided to the Respondent.

### 3.10 Assessment of the Complaint

The Complaints Officer or where appointed, 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 Complaints Officer or where appointed, the Complaints Assessor must ensure that the Respondent is provided with a reasonable opportunity to respond to the Complaint before forming any opinions, or drafting the Complaint Report or recommendations.

### 3.11 Complaint Report

The Complaints Officer or where appointed, the Complaint Assessor will prepare a Complaint Report that will:

- outlines the process followed, including how the Respondent was provided with an opportunity to respond;
- 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 Local Government or a 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 Complaints Officer or where appointed, the Complaint Assessor will include the Complaint Report in the Agenda for a meeting of the Council or where established, the Behaviour Complaints Committee. The Complaints Officer or where appointed, the Complaint Assessor 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.

### 3.12 Complaint Determination Meeting

The Agenda 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 Local Government or 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.

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the local government or 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 Local Government or the Behaviour Complaints Committee dismisses a Complaint, the 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 Local Government or 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 Local Government or the Behaviour Complaints Committee finds that the alleged Breach did not occur, the 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 Local Government or the Behaviour Complaints Committee finds that the alleged breach did occur, the 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 Local Government or the Behaviour Complaints Committee decides to take no further action, the 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 Council or Behaviour Complaints Committee decides to prepare a Plan, it will first consult with the Respondent in accordance with clause 12(5) of the Code of Conduct. Council or the Behaviour Complaints Committee will consider any submissions made by the Respondent before preparing and implementing a Plan.

### 3.13 Compliance with Plan Requirement

The 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.

The Complaints Officer must provide a report advising the 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 Local Government or 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 Rockingham Standing Orders Local Law 2001.

### 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 Local Government or 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 Requirement

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 Complaints Committee 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;

## Appendix 2 – Code of Conduct Complaints Management Process

- 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.

### Definitions

**Act** - means the *Local Government Act 1995*.

**Behaviour Complaints Committee** - means a Committee established by the Council in accordance with s.5.8 of the Act for the purpose of dealing with Complaints. 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 Rockingham Code of Conduct for Council Members, Committee Members and Candidates.

**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.

**CEO** - means the Chief Executive Officer of the City of Rockingham.

**Code** - means the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates.

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

**Committee Member** - means a Council Member, employee of the City of Rockingham or other person who has been appointed by the Council to be a member of an Advisory, Occasional or Standing Committee, in accordance with s.5.10(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 submitted under Division 3, Clause 11 of the Code of Conduct.

**Complainant** - means a person who has submitted a Complaint in accordance with this Policy.

**Complaints Assessor** – means an independent person appointed by the Complaints Officer to assess or manage a complaint in accordance with this policy and the Code of Conduct.

**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]*.

**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 Complaints Officer is addressed in Part 2.1 of this Policy.

**Council** - means the Council of the City of Rockingham.

**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.

**Minor breach** - means a complaint made under Division 4 of the Code of Conduct.

## Appendix 2 – Code of Conduct Complaints Management Process

**Plan** - means a Plan under clause 12(4)(b) of the Code, 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.

**Respondent** – means a Council Member, Committee Member or candidate the subject of a complaint.

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

### **Legislation**

Local Government Act 1995 – Section 5.104 Adoption of model code of conduct:

Local Government Act 1995 – Section 5.105 Breaches by council members

Local Government (Model Code of Conduct) Regulations 2021

### **Other Relevant Policies/ Key Documents**

City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates

### **Responsible Division**

General Management Services

### **Review Date**

May 2022