



City of Rockingham

MINUTES

Special Meeting of Council Minutes

Held on Monday 3 May 2021 at 4:30pm
City of Rockingham Council Chambers



City of Rockingham
Special Council Meeting
4:30pm Monday 3 May 2021



CONTENTS

1.	Declaration of Opening/Announcement of Visitors	3
2.	Record of Attendance/Apologies/Approved Leave of Absence	3
3.	Public Question Time	4
4.	Declaration of Member's and Officer's Interest	8
5.	Petitions/Deputations/Presentations/Submissions	8
6.	Matters for which the Meeting may be Closed	8
7.	Reports of Officers	9
	General Management Services	9
	GM-019/21 City of Rockingham code of conduct for council members, committee members and candidates (<i>Absolute Majority</i>)	9
8.	Matters Behind Closed Doors	16
9.	Closure	16

A handwritten signature in black ink, appearing to read 'B W Sammels', written over a horizontal line.

City of Rockingham
Special Meeting of Council Minutes
Monday 3 May 2021 – Council Chambers



1. Declaration of Opening

The Mayor declared the Council Meeting open at **4:30pm**, welcomed all present, and delivered the Acknowledgement of Country.

The Mayor noted that the meeting would be audio recorded in accordance with Council's Recording and Streaming Council Meetings policy.

2. Record of Attendance/Apologies/Approved Leave of Absence

2.1 Executive

Cr Barry Sammels (Mayor)	Rockingham/Safety Bay Ward
Cr Deb Hamblin (Deputy Mayor)	Rockingham/Safety Bay Ward
Cr Sally Davies	Baldivis Ward
Cr Hayley Edwards	Baldivis Ward
Cr Lorna Buchan	Comet Bay Ward
Cr Mark Jones	Comet Bay Ward
Cr Craig Buchanan	Rockingham/Safety Bay Ward
Cr Rae Cottam	Rockingham/Safety Bay Ward
Cr Leigh Liley	Rockingham/Safety Bay Ward
Cr Joy Stewart	Rockingham/Safety Bay Ward

2.2 Executive

Mr Michael Parker	Chief Executive Officer
Mr Sam Assaad	Director Engineering and Parks Services
Mr John Pearson	Director Corporate Services
Mr Michael Holland	Director Community Development
Mr Peter Ricci	A/Director Planning and Development Services
Mr Peter Varris	Manager Governance and Councillor Support
Ms Sarah Mylotte	Administration Officer – Governance and Councillor Support

2.3 Members of the Gallery: 5

2.4 Apologies: Nil

2.5 Approved Leave of Absence: Nil

3.	Public Question Time
	<p>Note: In accordance with regulation 7(4)(b) of the Local Government (Administration) Regulations 1996 questions at a Special Council Meeting need to relate to the purpose of that meeting.</p> <p>4:31pm The Mayor opened Public Question Time and invited members for the Public Gallery to ask questions.</p> <p>4.1 Ms Dawn Jecks, Safety Bay</p> <p>The Mayor invited Ms Jecks to present her questions to the Council. Ms Jecks asked the following questions:</p> <p>I went along to the Corporate and Community Development Committee Meeting in February when the new Model Code of Conduct for Council Members was discussed. At the Feb meeting I was disturbed about having council employees fulfilling Complaints Officer related roles.</p> <p>Before that meeting, as I have also done for today's meeting, I carefully read the officers reports and the relevant sections and references in LG Act etc. My concerns remain.</p> <p>In fact I have so many concerns about this proposed policy and processes that it's hard to know where to start. It's been terribly rushed through and as an interested and engaged ratepayer I am not convinced that good governance is being served here.</p> <p>The quote "Can't see the wood for the trees" sprang to mind when I read the documents for today's meeting.</p> <p>Just to clarify, this quote means that, one is so involved in the details of something, that they do not notice what is important about the thing as a whole.</p> <p>This policy proposes having council employees fulfilling Complaints Officer related roles. This means that we would have council employees investigating stakeholders whom which they are employed to work with or serve essentially. This would not be accepted in industry so why are we considering doing so at COR?</p> <p>It is my contention that having COR employees fulfilling Complaints Officer related roles is no guarantee of natural justice or due process. To ensure natural justice is served we must have an independent external Complaints Officer.</p> <p>The public are directly affected by this policy. The public could make a complaint. They could run for office and be affected by it.</p> <ol style="list-style-type: none">1. Why haven't we been allowed more time to deal with this hugely important policy and process? Council Officers knew this was coming since last year? Where is the community input? <p><i>The Mayor advised the statements that 'Council officers knew this was coming since last year' is not quite correct. The local government industry was not aware of the form or context of the legislative model code of conduct that was promulgated by the State Government on 3 February 2021 (without consultation with the industry) would be in. The Model Code is now law. The complaints process had to be developed based on that which the State Government introduced. The timeframes set by the State Government to adopt a Code of Conduct was very limited; and it is considered appropriate to have a complaint management process adopted simultaneously.</i></p> <ol style="list-style-type: none">2. Why can't we engage an independent complaints officer to deal with complaints, to receive complaint, investigate and provide report? <p><i>The Mayor advised the preference will be for complaints to be assessed independently where possible. Some complaints may not warrant this level of cost.</i></p>

3. Is this policy going out for public consultation? If not, why not?

The Mayor advised that it has not been proposed to do so, however it is before Council for consideration this afternoon. Council may wish to consider the option to seek public consultation.

4. In the process, who appoints a mediator and in what circumstances? What are the criteria?

The Mayor advised that in accordance with fair practice any mediator would be appointed with the mutual consent of each party.

The Chief Executive Officer advised that the Alternate Dispute Resolution process required both the complainant and respondent to agree to a mediator. It is expected that WALGA will establish a panel of qualified persons to deal with complaints from which the CEO will draw upon. Should there not be agreement the normal complaint process would be pursued.

4.2 Mr Tom Mannion, Safety Bay

The Mayor invited Mr Mannion to present his questions to the Council. Mr Mannion asked the following questions:

The author of this code of conduct identified that there are some shortcomings with the Model Code -

1. Where are these shortcomings identified in the code?

The Manager Governance and Councillor Support advised that two specific shortcomings are evident should the whole Council be the determining body of a complaint under the Code. First a Councillor who is a complainant or respondent could (under law) be able to sit in judgement of a complaint they are subject to – thereby preventing natural justice due to a perception of bias. Secondly there is no appeal process should full Council be the deciding body.

2. How are Elected Members, future candidates and or committee members to be made aware of these shortcomings?

The Manager Governance and Councillor Support advised the Model Code of Conduct which is the Council's Code of Conduct currently and which is proposed to be formally adopted this afternoon is currently published on the City's website. It will be part of the City's induction program for new elected members, it will be included in the Candidate Briefing Session conducted by Council and it would be expected that the Department of Local Government will include it in the mandatory Candidate pre-nomination training.

Historical information is abundant with councils being sacked, individual councillors facing charges after CCC investigations for embezzlement misappropriation of funds conflict of interest etc.

3. Why was there no Risk Assessment completed to evaluate the potential impact to the city's reputation, financial impact and or the health and safety of those people implied within the code of conduct?

The CEO advised that the minimum provisions of the Model Code of Conduct is law. The City is working within the confines of the legislation and industry advocates such as WALGA have expressed concerns to the State Government repeatedly regarding the now mandatory Code.

WALGA has endeavoured to assist local government by producing a number of templates, policies and similar documents to manage complaints appropriately including the reduction of the perception of bias (eg: Behaviour Complaint Committee).

No risk assessment has been seen to be necessary.

	<p>Division 2 sets out general principles to guide the behaviour of council members, committee members and candidates.</p> <p>This Division continually refers to "Should" rather than "Shall". So division 2 is written as an interpretation only of what a council member, committee member or candidate should comply with?</p> <p>4. Who is responsible for interpreting what "Should" means in possible breaches?</p> <p>5. Is there a definition on what is meant by "Should" to guide those interpreting this code?</p> <p>6. Why is the code not clearer, is stating "Shall"?</p> <p><i>The Manager Governance and Councillor Support advised that Division 2 of the Model Code of Conduct provides the general principles expected relating to the behaviour of Council members, committee members and candidates. They are unenforceable and cannot be subject to a complaint under the Code.</i></p> <p>Division 3 sets out the requirements relating to the behaviour of council members, committee members and candidates; and the mechanism for dealing with alleged breaches of those requirements. This division is clearer in the requirements.</p> <p>Part (2) states: A council member or committee member -</p> <p>(a) must not be impaired by alcohol or drugs in the performance of their official duties;</p> <p>7. Can you confirm that this is at all city functions and while this code of conduct is directed to those identified in this policy will it be applied to city officers as well?</p> <p><i>The CEO advised, Yes. Whenever a council or committee member is representing the City in their role. Employees are subject to a separate Code of Conduct.</i></p> <p>8. Will the city be performing Drug and Alcohol testing prior to all meetings attended by those identified in this code of conduct to ensure compliance?</p> <p><i>The CEO advised No, this is not considered necessary.</i></p> <p>9. If not why not?</p> <p><i>The CEO advised that any complaint will be dealt with on its merits.</i></p> <p>An impaired person in the workplace could be affected by a number of personal factors, fatigue, prescription drugs.</p> <p>10. What is meant by impaired?</p> <p><i>The Manager Governance and Councillor Support advised that 'impaired' could be considered to be where the person is unable to effectively perform their role</i></p> <p>If the city determines a person is impaired the mechanism in this division has not identified what action is to be taken to ensure the health, wellbeing and safety of that person. Rather it is wholly focussed on charging the person. It might be worth considering the risks involved with that decision to the individual or city making that assertion.</p> <p>11. What is being put in place to ensure the health and safety of the effected person?</p> <p>a) Are they to be removed from the immediate environment or premise?</p> <p>b) Dealt with after being removed?</p> <p>12. Why is "Zero Tolerance" not being applied?</p> <p><i>The CEO advised that such an approach is not required and any complaint will be dealt with on its merits with evidence provided by both parties to a complaint. Should an impairment be noted and concern raised at a meeting it could be dealt with by the presiding member at the time through Standing Orders.</i></p>
--	--

4.3 Ms Teresa Ong, Singleton

The Mayor invited Ms Ong to present her questions to the Council. Ms Ong asked the following questions:

How many Councillors have read this document from cover to cover and made any notes. For those of you who haven't, I urge you not to approve this document tonight, it needs to go back to the drawing board with consultation from the residents.

1. This document states it will not be sent out for public consultation, why not?

The CEO advised that the proposed Code of Conduct is the Model Code of Conduct and therefore the minimum standards set by law; as such public consultation will have no influence on its content.

The timeframes provided by the State Government to adopt the Code was prohibitive for public comment.

2. Why the long delay?

Why has this document been left to the last minute to rush this through? To state it has to be passed tonight, why? If it's not ready tell the Minister you have failed to meet the deadline and do the document correctly with consultation.

The Mayor noted the comment and referred to the previous answer.

3. The March 2021 engagement session:

How many Councillors were present at the engagement session?

Was this 100% agreement or majority voting?

The Mayor asked Councillors to indicate their attendance and noted that the majority were in attendance. Council is prohibited from voting in an Engagement Session which is designed to obtain feedback on matters only.

4. I note that the Code of Conduct is not mandatory, this was demonstrated when 6 Council members clearly broke the rules. All the relevant clauses have the word "should" preceding them, this infers a recommendation rather than a rule of Law. If it is truly a Code, then the word "shall" must be used, then it is enforceable.

Page 7 section 4

"It is fundamental to the Complaint process that there be no bias or perception of bias. Council (as a whole) determining each Complaint presents difficulty in that the subject (or the maker) of a Complaint will, more often than not, be involved in the determination of a Complaint."

Does this mean residents can sit on the complaints panel, as this implies Councillors will be making more complaints than residents?

Page 7, section 4. Second last line in 2nd paragraph, could should be replaced with Must.

Last paragraph, 7.4 Why the committee? Should it be the whole council?

The Mayor took the question on notice.

5. Implications to Consider.

Who decided Public Consultation was not seen as necessary?

The Manager Governance and Councillor Support advised that given the timeframes and nature of the Code and processes being subject to legislative compulsion it was not considered that public consultation was required, however council may choose to adopt the Complaint Management Process in principle for any complaints, seek public comment and review afterwards.

	<p>6. "Going forward, Council may consider appointing an independent non council member".</p> <p>Page 9 The two additional City officers should be one City Officer, Mr Peter Le, a lawyer, and this 2nd place should be an independent external person. The use of email, zoom and other media/data facilities it is not essential for this 2nd person to be a City officer. To make this process truly independent and impartial an external person must be appointed.</p> <p><i>The Mayor took the question on notice.</i></p> <p><i>The CEO advised that the Complaints Officer will ensure the process is applied and most investigation would be through independent third parties.</i></p> <p>7. With such a fractured Council, how can 5 members be on a committee. There is so much conflict and complaints by some that retribution is going to occur.</p> <p>In using the absolute majority vote, do you intend to use the absentee votes or only votes of councillors present?</p> <p><i>The Mayor took the question on notice.</i></p> <p>8. Page 10. 5.2</p> <p>Where a finding that a breach has occurred, an option is to take no further action.</p> <p>Why no action if a breach has occurred?</p> <p>12.4 and 12.7 Do you give a decision in writing explaining why no action taken.</p> <p><i>The CEO advised that sometimes no action is necessary should earlier amends have been made.</i></p> <p><i>Decisions are to be supported by the reasons of the decisions.</i></p> <p>9. <u>Division 3</u></p> <p>8 Personal integrity</p> <p>1b A councillor regularly publishes material that is factually INCORRECT. When one attempts to correct the Councillor on this, they are blocked. So the only avenue is to go to the CEO.</p> <p>Who is going to monitor this Councillor going into the future as it will probably be a standing order for Div 3s.</p> <p><i>The Mayor noted Ms Ong's comment.</i></p> <p>10. <u>Personal Benefit</u></p> <p>4.4.1 Who is nominated to check the disclosure of gifts are registered. It is a known issue that some ex councillors and employees received gifts and have not declared them. Going forward this needs to be squeaky clean.</p> <p><i>The Mayor took the question on notice.</i></p> <p>4:54pm There being no further questions the Mayor closed Public Question Time.</p>
4.	Declarations of Members and Officers Interests
	<p>4:54pm The Mayor asked if there were any interests to declare.</p> <p>There were none.</p>
5.	Petitions/Deputations/Presentations/Submissions
	Nil
6.	Matters for which the Meeting may be Closed
	Nil

7. Reports of Officers

General Management Services

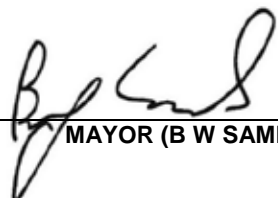
General Management Services Governance and Councillor Support		
Reference No & Subject:	GM-019/21	City of Rockingham code of conduct for council members, committee members and candidates (<i>Absolute Majority</i>)
File No:	GOV/92	
Proponent/s:		
Author:	Mr Peter Varris, Manager Governance and Councillor Support	
Other Contributors:	Mr Michael Parker, Chief Executive Officer	
Date of Council Meeting:	3 May 2021	
Previously before Council:		
Disclosure of Interest:		
Nature of Council's Role in this Matter:	Executive	
Site:		
Lot Area:		
Attachments:	<ol style="list-style-type: none">1. Draft City of Rockingham Code of Conduct for council members, committee members and candidates2. Draft Council Policy – Code of Conduct Complaints Management Process3. Delegation – Behaviour Complaints Committee4. Revised Code of Conduct Breach Form5. Delegation – Appointing External Complaints Officers	
Maps/Diagrams:		

Purpose of Report

For Council to adopt a Code of Conduct for Council Members, Committee Members and Candidates as required by the Local Government Act 1995 and to –

- Adopt a policy for the management of complaints made under the Code of Conduct (Complaints)
- Establish a committee of Council to determine Complaints (Complaints Committee)
- Delegate authority to the Complaints Committee to determine Complaints
- Approve a revised Complaints Form

Confirmed at a Council meeting held
on Tuesday 25 May 2021


MAYOR (B W SAMMELS)

- Appoint additional Complaints Officers
- Delegate authority to the CEO to appoint external Complaints Officers.

Background

The *Local Government (Model Code of Conduct) Regulations 2021 (Regulations)* came into effect on 3 February 2021.

The *Regulations* replace the *Local Government (Rules of Conduct) Regulations 2007 (repealed)* and prescribe the Model Code of Conduct for local government council members, committee members and candidates (Model Code).

Within three months of the gazettal of the *Regulations*, Council is obliged to adopt a code of conduct for council members, committee members and candidates which includes the Model Code. In the interim, the Model Code is treated as Council's Code of Conduct.

At its February 2021 meeting, Council approved the form for making Complaints and appointed the CEO as the Complaints Officer for complaints under Division 3 of the *Regulations* – Behaviour.

The City provided an Engagement Session for Councillors in early March 2021 to outline the requirements for a proposed Code of Conduct and feedback from that session indicated a preference for adopting the Model Code without modification.

Council is required to adopt a Code of Conduct by 3 May 2021, hence the special Council meeting called for this purpose.

Details

Following the February 2021 Council meeting, the City commenced preparation of the Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct) based on the feedback of Councillors.

The City considered that an introduction to the Code of Conduct was prudent to provide context and to highlight the following principles which are fundamental to fairly and efficiently responding to a Complaint–

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

The City also commenced preparing a complaints management process (Complaints Management Process) underpinned by the above principles. This process was informed by information obtained from the Western Australian Ombudsman; the procedures for the administration of code of conduct complaints involving NSW local governments; the Australian Human Rights Commission and procedures used by other Australian local governments (Prior Research).

During this period, the City was aware that the Western Australian Local Government Association (WALGA) was also preparing a template Code of Conduct and a template Complaints Management Process. While WALGA's template Code was similar to that developed by the City, its template Complaints Management Process (first published by WALGA on 20 April 2021) had some differences.

Councillors were provided a copy of the City's draft Code of Conduct and the WALGA template Complaints Management Process the following day. The WALGA template is a preferred base document because it is likely to become an industry standard and is broadly consistent with the Prior Research.

The City's proposed Complaints Management Process reflects the structure (and to some extent the terminology of the WALGA template) and is informed by the Prior Research.

The key structure of the City's proposed Complaints Management Process policy is set out below –

1. Principles
 - Procedural fairness, consistency, confidentiality, accessibility, and perception of bias

2. Roles

- Complaints Officer, Complaints Assessor, Behaviour Complaints Committee

3. Complaint process

- How to make a Complaint, candidate complaints, withdrawing a Complaint, notices to complainants and respondents, Alternative Dispute Resolution, Complaints assessment and report, and meetings to determine a complaint.

4. Decision making

- Objectives and principles, dismissal of complaint, findings, action and Plan requirements.

It is fundamental to the Complaint process that there be no bias or perception of bias. Council (as a whole) determining each Complaint presents a difficulty in that the subject (or the maker) of a Complaint will, more often than not, be involved in the determination of a Complaint. WALGA's template is predicated on a Committee determining each Complaint.

The City's draft Complaints Management Process permits the Council to establish a committee to processes Complaints and to prescribe its terms of reference, membership as well as delegate to that committee the power to make determinations (Behaviour Complaints Committee). If a member of that committee were to be the maker or the subject of a Complaint he or she could recuse themselves from the deliberative process, with their deputy taking their place.

As identified at the Engagement Session, early intervention and resolution is critical to efficiently responding to Complaints. The City's proposed Complaints Management Process provides an opportunity for 'Alternate Dispute Resolution' should this be agreed by both parties to the complaint. This may lead to a withdrawal of a Complaint, obviating the need for formal consideration and determination.

The City's draft Complaints Management Process also provides the capacity for the CEO to appoint an external person to assess a Complaint and provide a report with recommendations to the Committee.

Implications to Consider

a. **Consultation with the Community**

Nil

b. **Consultation with Government Agencies**

City officers have consulted with the Department of Local Government and the Western Australian Local Government Association (WALGA) in respect to the Model Code of Conduct.

c. **Strategic**

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2019-2029:

Aspiration 4: *Deliver Quality Leadership and Business Expertise*

Strategic Objective: *Effective governance – Apply systems of governance which empower the Council to make considered and informed decisions within a transparent, accountable, ethical and compliant environment.*

d. **Policy**

This report provides for the adoption of a policy to guide the management of complaints related to the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates. This policy could be considered a 'Legislative' Policy as it underpinned by legislative requirements of the *Local Government (Model Code of Conduct) Regulations 2021*.

While the Policy Framework recommends a minimum public consultation period prior to formal adoption of a policy by Council, given the policy's reflection of the WALGA template and the legislative imperatives, public consultation is not seen as necessary on this occasion.

e. Financial

A budget provision to the value of \$7,500 has been allowed for costs associated with the establishment of a Code of Conduct in accordance with the regulations. This will include preparation of a draft code and training of council members, and development of other documentation.

A further budget will be required to cover the cost of independent external complaint officers / and complaint assessment officers.

f. Legal and Statutory

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

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

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

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

The *Local Government (Model Code of Conduct) Regulations 2021* prescribe the Model Code of conduct for council members, committee members and candidates.

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Nil

Comments

As has been previously noted, while the consultation by the State Government on the review of the *Local Government Act 1995* (including the proposal to implement a mandatory code of conduct for council members) has been ongoing for some time, the promulgation of the *Local Government (Model Code of Conduct) Regulations 2021 (Regulations)* was sudden and without any notice.

While the author considers there are some shortcomings with the Model Code, the City is obliged to adopt a Code of Conduct that includes all the provisions of the Model Code. Further, the City cannot delete any provision from the Model Code, nor can it add any provision that conflicts with any provision of the Model Code.

The *City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates* has been prepared based on the feedback from the Councillor Engagement Session.

In adopting the Code of Conduct it is essential that a Complaints Management Process is established. To this end the *Council Policy - Code of Conduct Complaints Management Process* has been developed. This is based upon the WALGA Template and the Prior Research.

While the draft Complaints Management Process policy provides Council with the ability to retain its deliberative powers in relation to Complaints, it is the author's view that the establishment of a Behaviour Complaints Committee will do much to remove any public perception of bias and will facilitate the efficient determination of Complaints in accordance with the principles of natural justice.

As a consequence, a recommendation is made to establish a Behaviour Complaints Committee (comprising five elected members and five deputy members) with the terms of reference prescribed in the draft Complaints Management Process policy and an appropriate, conditioned delegation of authority to determine Complaints. Going forward, Council may consider appointing an independent non-council member to the Committee with a corresponding reduction in the number of elected members.

It is noted that the Complaints Form earlier approved by Council was prepared prior to the release of the WALGA Template. To ensure consistency with the City's draft Complaints Management Process it is proposed to withdraw the previously approved form and adopt a new form based on the WALGA template.

The CEO seeks to pursue a more 'hands off' role in relation to undertaking the role of Complaints Officer under the proposed Model Code and asks Council to appoint two additional City officers to perform the role of Complaints Officer under the Model Code should the need arise. Senior Legal Officer, Mr Peter Le and Manager Governance and Councillor Support Mr Peter Varris are recommended to Council for appointment.

The CEO has the ability to appoint external Complaint Assessors to assist a Complaints Officer in managing a Complaint, however on occasion it may be preferable to have the entire process managed by an external Complaints Officer. To underpin the desire to resolve Complaints in a timely manner it is proposed to delegate authority to the CEO to appoint an external Complaints Officer, subject to conditions.

The above actions will provide a robust framework for the high standard of professional and ethical conduct of council members, committee members and candidates, and the timely and fair dealing of complaints.

Voting Requirements

Simple Majority to appoint a complaints officer.

Absolute Majority to –

- adopt the code of conduct;
- establish a committee
- appoint persons as committee members
- delegate power to a committee or person.

Officer Recommendation

That Council:

1. **ADOPTS** the *City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates* (Attachment 1);
2. **ADOPTS** *Council Policy – Code of Conduct Complaints Management Process* (Attachment 2);
3. **ADOPTS** 'Code of Conduct Breach Form' (Attachment 3) for the purpose of clause 11 of the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates, and withdraw the form previously adopted;
3. **ESTABLISHES** the *Behaviour Complaints Committee* for the purpose of dealing with complaints under the Council Policy - Code of Conduct Complaints Management Process, the terms of reference and membership composition of which is provided under clause 2.3 of the policy;

4. **APPOINTS** the following five Councillors as members and five deputy members (by rank) of the Behaviour Complaints Committee –

Committee Member

Cr _____

Cr _____

Cr _____

Cr _____

Cr _____

Deputy Member

1. Cr _____

2. Cr _____

3. Cr _____

4. Cr _____

5. Cr _____

5. **DELEGATES** authority to the Behaviour Complaints Committee the following in respect to a complaint related to the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates -

- (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 r.12(1) and (3)].

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

- (2) Where a finding is made that a breach has occurred, authority to:

- (a) take no further action [MCC.r.12(4(a))]; or
(b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates [MCC.r.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.r.13(1) and (2)].

Conditions of Delegation

- (a) The Committee will make decisions in accordance with the principles and specified requirements established in Council Policy – Code of Conduct Complaints Management Process.
(b) That part of a Committee meeting which deals with a Complaint will be held behind closed doors in accordance with s5.23(2)(b) of the Local Government Act 1995.
(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 or otherwise subject to the Complaint forming part of the 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. In addition to the CEO **APPOINTS** the Manager Governance and Council Support, Mr Peter Varris and the Senior Legal Officer, Mr Peter Le as Complaints Officers for the purpose of clause 11(3) of the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates;
7. **DELEGATES** to the Chief Executive Officer the authority to appoint an external Complaints Officer to receive complaints and withdrawal of complaints related to the City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates.

Conditions of Delegation

- (a) Any appointment under this delegation excludes a current or former City of Rockingham Council Member, Committee Member, candidate or employee.

- (b) Any appointed external Complaints Officer must comply with the requirements contained in the –
- City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates
 - Council Policy – Code of Conduct Complaints Management Process

Council Resolution

Moved Cr Jones, seconded Cr Stewart:

That Council **ADOPTS** the *City of Rockingham Code of Conduct for Council Members, Committee Members and Candidates* (Attachment 1)

Carried by Absolute Majority – 10/0

4:56pm Moved Cr Jones, seconded Cr Buchan:

The Council **SUSPENDS** clauses 9.5 and 9.6 of the City of Rockingham Standing Orders Local Law 2001.

Carried – 10/0

5:29pm Note: *Cr Hamblin, having noted a prior commitment for several Councillors, suggested that consideration of Item GM-019/21 be deferred.*

Moved Cr Hamblin, seconded Cr Buchanan:

That Council **DEFERS** consideration of the balance of Item GM-019/21 City of Rockingham code of conduct for council members, committee members and candidates until after the matters are subject to a Councillor Engagement Session.

Carried – 10/0

5:30pm Moved Cr Hamblin, seconded Cr Liley:

The Council **RESUMES** clauses 9.5 and 9.6 of the City of Rockingham Standing Orders Local Law 2001.

Carried – 10/0

The Council's Reason for Varying the Committee's Recommendation

Not Applicable

8.	Matters Behind Closed Doors
	Nil
9.	Closure
	There being no further business, the Mayor thanked those persons present for attending the Special Council Meeting, and declared the meeting closed at 5:30pm .