

CODE OF CONDUCT BEHAVIOUR COMPLAINTS MANAGEMENT POLICY

OBJECTIVE

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

To give effect to the Shire'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.

SCOPE

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

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

DEFINITIONS

Act means the *Local Government Act 1995*.

Complaints Officer means a person authorised in writing *by Council Resolution* 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. The Chief Executive Officer has been appointed by Council as the Complaints Officer.

Breach means a breach of Division 3 of the Shire of Quairading 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.

Code of Conduct means the Shire of Quairading Code of Conduct for Council Members, Committee Members and Candidates.

Committee Member means a Council Member, employee of the Shire of Quairading or other person who has been appointed by the Council to be a member of a 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 Clause 11 of the Code of Conduct.

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

Complaint Assessor means a person appointed by the Complaints Officer in accordance with Part 2.3 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 by Council under clause 11(2)(a) of the Code of Conduct.

Council means the Council of the Shire of Quairading.

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.

Mediator means a person appointed by the Complaints Officer in accordance with Part 2.2 and Part 3.6 of this Policy.

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.

Respondent means a person who is the subject of a Complaint made in accordance with this policy.

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

POLICY

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:

- 1.1.1 the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- 1.1.2 the decision maker should be objective and impartial, with an absence of bias or the perception of bias; and
- 1.1.3 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

The Shire of Quairading 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, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

1.4 Accessibility

The Shire of Quairading will ensure that information on how to make a complaint, including this Policy, is available at the Shire's Administration Centre and on the Shire's website.

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.

2 Roles

2.1 Complaints Officer

The Complaints Officer:

- 2.1.1 is authorised in accordance with clause 11(3) of the Code of Conduct to accept complaints and withdrawal of complaints.
- 2.1.2 is not an advocate for the Complainant or the Respondent. The Complaints Officer provides procedural information and assistance to both Complainant and Respondent.
- 2.1.3 will liaise with and provide administrative support to a Complaint Assessor or Mediator appointed under this Policy.
- 2.1.4 will liaise with the Local Government to facilitate the calling and convening of Council, if required.

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

2.2 Complaints Mediator

The Complaints Mediator:

- 2.2.1 is appointed by the Complaints Officer in accordance with Part 3.6 of this Policy.

- 2.2.2 is an impartial third party who will undertake the functions specified in this Policy and in undertaking their functions will apply the Principles of this Policy.
 - 2.2.3 will liaise with the Complaints Officer to manage the administrative requirements of dealing with the complaint in accordance with this Policy.
- 2.3 Complaint Assessor
- The Complaint Assessor:
- 2.3.1 is appointed by the Complaints Officer in accordance with Part 3.8 of this Policy.
 - 2.3.2 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.
 - 2.3.3 will liaise with the Complaints Officer to manage the administrative requirements of dealing with the complaint in accordance with this Policy.

PROCEDURE

3 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.

A Complaint:

- 3.1.1 must be made within one (1) month after the alleged Breach.
- 3.1.2 must be made by completing the Complaint About Alleged Behaviour Breach Form (Complaint Form) in full and providing the completed forms to the Complaints Officer.
- 3.1.3 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.
- 3.1.4 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 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.

3.2 Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with Part 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:

- 3.2.1 To the Complainant confirming receipt, and advising of the procedure for candidate complaints; and

3.2.2 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.

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.

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:

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

If the Complaint Form indicates that the Complainant agrees to participate in Mediation, 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:

- 3.5.1 advises that a Complaint has been made in accordance with the Code of Conduct and this Policy;
- 3.5.2 includes a copy of the Complaint Documents;
- 3.5.3 outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- 3.5.4 includes a copy of this Policy; and
- 3.5.5 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 Mediation, the Complaints Officer will ask the Respondent if they are also willing to participate in accordance with Part 3.6 of this Policy.

3.6 Mediation

The Shire recognises that Mediation may support both parties reaching a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Mediation 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 Mediation. If both parties agree to participate in Mediation, the Complaints Officer will:

- 3.6.1 pause the formal process and appoint a suitably qualified and experienced Complaint Mediator, in accordance with the Shire's Purchasing Policy
- 3.6.2 Endeavour to appoint a Complaint Mediator within a reasonable period; and
- 3.6.3 Provide written notice of the appointment to the Complainant and the Respondent.

The objective of Mediation 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 Mediation.

If Mediation 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 Mediator.

If Mediation 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.

If Mediation is successful, the Complaints Officer is to provide a Confidential Report to the next Council Meeting.

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 Mediation is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Complaints Officer will:

- 3.8.1 appoint a suitably qualified and experience Complaint Assessor, in accordance with the Shire's Purchasing Policy.
- 3.8.2 endeavour to appoint a Complaint Assessor within a reasonable period.
- 3.8.3 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 Shire'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:

- 3.9.1 the behaviour occurred at a Council or Committee Meeting,
- 3.9.2 the behaviour was dealt with by the person presiding at the meeting.

The Complaints Assessor is to provide the Complainant and 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 Complaint Assessor is to 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 is to ensure that the Complainant and Respondent are provided with a reasonable opportunity to be heard before forming any opinions, or drafting the Complaint Report or recommendations.

3.11 Complaint Report

The Complaint Assessor will prepare a Complaint Report that will:

- 3.11.1 outline the process followed, including how the Complainant and Respondent were provided with an opportunity to be heard;
- 3.11.2 include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
- 3.11.3 include recommendations on each decision that may be made by Council; and
- 3.11.4 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 Complaints Officer to include the Complaint Report in the Agenda for a meeting of the Council. The Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The Officer Report is to be presented no later than 1 month after receipt of the Complaint Report from the Complaints Assessor.

Report to include:

- 3.11.5 A copy of the Complaint
- 3.11.6 The Complaint Report from the Complaints Assessor
- 3.11.7 Any submissions received or other communications from the Complainant and Respondent during the complaint assessment process;
- 3.11.8 A recommendation on the question whether a behaviour breach has occurred;
- 3.11.9 A recommendation as to whether any and if so, what further action is required; and
- 3.11.10 If further action is required, a recommendation must be provided to Council on an action plan to address the behaviour of the person that the complaint relates to.

3.12 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 Council of any failure to comply with a requirement included in a Plan.

3.13 Action Plan

The Proposed Action Plan:

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

3.13.1.1 engage in mediation;

3.13.1.2 undertake counselling;

3.13.1.3 undertake training;

3.13.1.4 take other action the Council considers appropriate (e.g. an apology);
and

3.13.2 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; and

3.13.3 may also outline:

3.13.3.1 the actions to be taken to address the behaviour(s);

3.13.3.2 who is responsible for the actions;

3.13.3.3 any assistance the Local Government will provide to assist achieve the intent of the Plan; and

3.13.3.4 a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

4 Decision Making

4.1 Objective and Principles

All decisions made under this Policy are to reflect the Policy Objectives and the Principles included in Part 1 of this Policy and in reference to Division 2 – General Principles of the Code of Conduct.

4.2 Dismissal of Complaint

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

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

4.2.2 either —

4.2.2.1 the behaviour was dealt with by the person presiding at the meeting;
or

4.2.2.2 the Respondent has taken the required remedial action.

4.3 Finding

A Finding that the alleged behaviour 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. 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. The Council will have due regard to the Findings of the Complaints Assessor, however are not bound to adopt the recommendations provided within the Complaint Report.

In determining whether an alleged breach has occurred, Council may resolve to:

4.3.1 dismiss the Complaint in accordance with Part 4.2 of this Policy; or

4.3.2 find that the alleged breach has not occurred and take no further action; or

4.3.3 find that the alleged breach has occurred.

The Council meeting minutes are to reflect the Council's Finding and the reasons for the Council's Finding.

4.4 Actions resulting from determining an Alleged Breach has occurred

If the Council makes a finding that the alleged breach has occurred, it must:

4.4.1 resolve to take no further action; or

4.4.2 resolve to prepare and implement an action plan to address the behaviour of the person to whom the Complaint relates.

In determining whether to take no further action or prepare and implement an Action Plan, the Council may consider:

4.4.3 the nature and seriousness of the breach(es);

4.4.4 the Respondent's submission in relation to the contravention;

4.4.5 whether the Respondent has breached the Code of Conduct knowingly or carelessly;

4.4.6 whether the Respondent has breached the Code of Conduct on previous occasions;

4.4.7 likelihood or not of the Respondent committing further breaches of the Code of Conduct;

4.4.8 personal circumstances at the time of conduct;

4.4.9 need to protect the public through general deterrence and maintain public confidence in Local Government; and

4.4.10 any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

If the Council resolves to prepare and implement an action plan to address the behaviour of the person to whom the Complaint relates, the action plan can either be:

4.4.11 The proposed action plan as recommended by the Complaints Assessor without modifications; or

- 4.4.12 The proposed action plan as recommended by the Complaints Assessor with modifications; or
- 4.4.13 An action plan determined by Council, in consideration of the requirements of Part 3.13 of this policy.

Prior to resolving to prepare and implement an action plan which is materially different from any proposed action plan recommended (if any) by the Complaints Assessor, the Council will provide an opportunity to the Respondent to make a submission on the Council's proposed action plan. In providing an opportunity for the Respondent to make a submission, Council may adjourn any further consideration on the matter for no more than 14 days.

The Council meetings minutes are to reflect the actions resolved by Council to address the behaviour of the person to whom the Complaint relates, if it has resolved an alleged breach has occurred.

4.5 Plan Requirements

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

- 4.5.1 engage in mediation;
- 4.5.2 undertake counselling;
- 4.5.3 undertake training;
- 4.5.4 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:

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

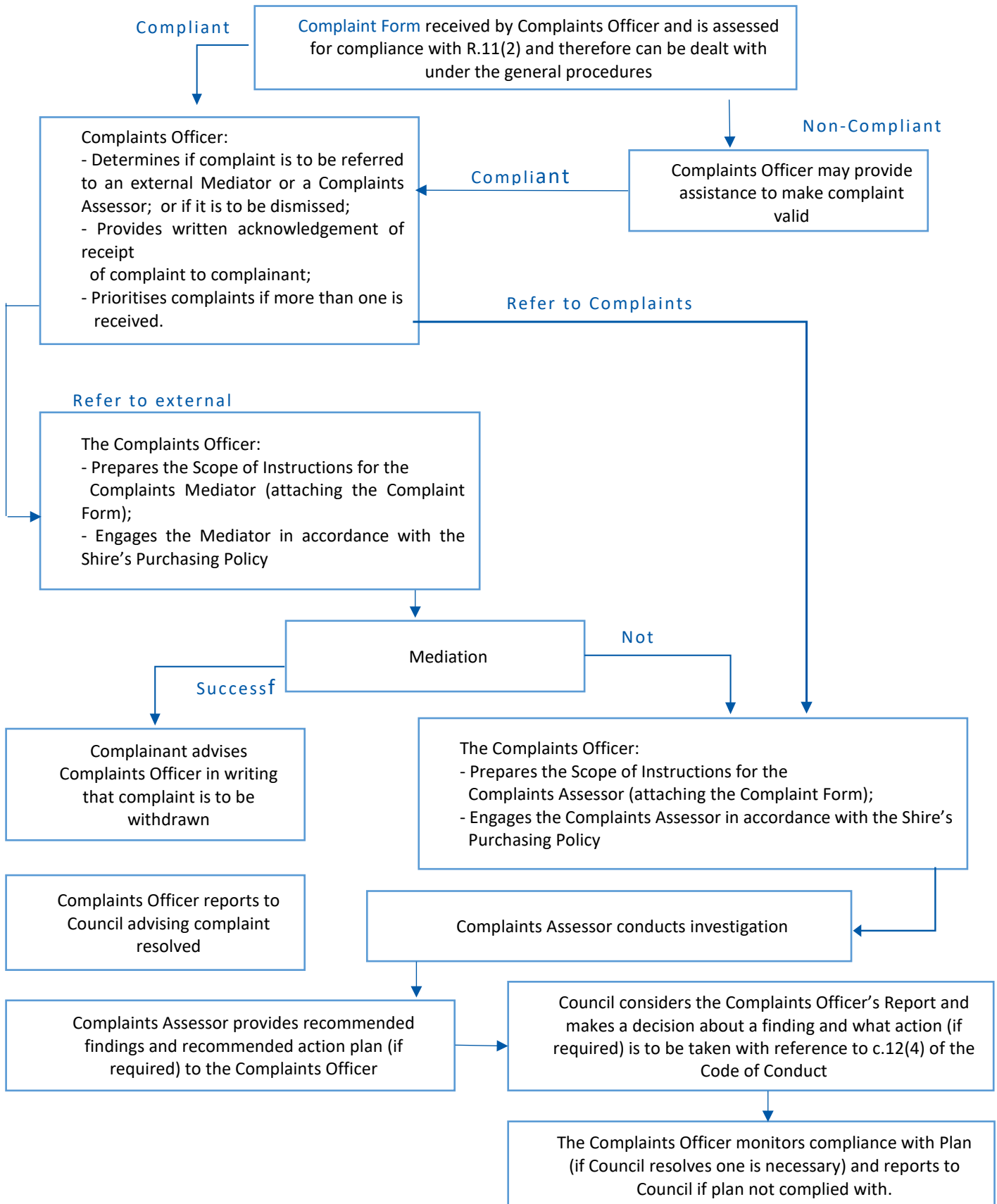
5 Implementing Council's Findings and Actions

5.1 Advice to Complainant and Respondent on Council's Findings

When the Council makes a finding in relation to a Complaint, the Complaints Officer must give the Complainant and the Respondent written notice of –

- 5.1.1 the finding and the reasons for the finding as determined under Part 4.3 of this Policy; and
- 5.1.2 if the finding is that the alleged breach has occurred, Council's decision on the Actions determined under Part 4.4.

COMPLAINTS PROCESS



GUIDELINES

Local Government Act (1995)

Local Government (Model Code of Conduct) Regulations 2021

STATUTORY ENVIRONMENT

Local Government Act (1995)

Local Government (Model Code of Conduct) Regulations 2021

Record of Policy Review					
Version	Author	Council Adoption	Resolution	Reason for Review	Review Date
01	CEO Graeme Fardon	29 th July 2021	07-21/22	New Legislation	01