

MINUTES
OF THE
SPECIAL MEETING OF THE COUNCIL
HELD ON
6.00PM, MONDAY, 3 MAY 2021

Due to the State of Emergency declared in Western Australia, effective 16 March 2020 and the subsequent government directives with regard to public gatherings and physical distancing only a limited number of the public were able to physically attend this meeting.

This meeting was publically broadcast to the community and the minutes and the audio recording of the meeting available on the City's website as soon as practicable after the meeting to meet the requirements of Regulation 14E(3)(b)(i) and (ii) of the *Local Government (Administration) Regulations 1996*.

The City of Melville acknowledges the Bibbulmun people as the Traditional Owners of the land on which the City stands today and pays its respect to the Whadjuk people, and Elders both past and present.

DISCLAIMER

PLEASE READ THE FOLLOWING IMPORTANT DISCLAIMER BEFORE PROCEEDING:

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Any statement, comment or decision made at a Council or Committee meeting regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.

Any person or entity who has an application before the City must obtain, and should only rely on, written notice of the City's decision and any conditions attaching to the decision, and cannot treat as an approval anything said or done at a Council or Committee meeting.

Any advice provided by an employee of the City on the operation of written law, or the performance of a function by the City, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the City. Any advice on a matter of law, or anything sought to be relied upon as representation by the City should be sought in writing and should make clear the purpose of the request.

In accordance with the Council Policy CP- 088 Creation, Access and Retention of Audio Recordings of the Public Meetings this meeting is electronically recorded. All recordings are retained as part of the City's records in accordance with the State Records Act 2000 and the General Disposal Authority for Local Government Records.

The Audio Recording will be available within 10 days of the meeting and may be accessed at www.melvillecity.com.au/agendas in accordance with the provisions of the Policy.

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MINUTES OF THE SPECIAL MEETING OF THE COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 6:00PM ON 3 MAY 2021.

1. OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and officially declared the meeting open at 6:00pm and advised those present of the Disclaimer that is on the front page of these Minutes, the Affirmation of Civic Duty and Responsibility and advised that this meeting is being recorded and invited Cr Steve Kepert to read the Acknowledgement of Country.

“The City of Melville acknowledges the Bibbulmun people as the Traditional Owners and custodians of the lands on which the City stands today and pays its respect to the Whadjuk people, and Elders both past, present and emerging.”

2. PRESENT

Mayor Honourable G Gear

COUNCILLORS

WARD

| | |
|----------------------------|--|
| Cr J Barton (Deputy Mayor) | Bicton – Attadale – Alfred Cove (<i>electronic attendance</i>) |
| Cr G Barber | Bicton – Attadale – Alfred Cove |
| Cr D Macphail | Bateman – Kardinya - Murdoch |
| Cr N Robins | Bateman – Kardinya - Murdoch |
| Cr C Robartson | Bull Creek - Leeming |
| Cr M Woodall | Bull Creek – Leeming (<i>electronic attendance</i>) |
| Cr S Kepert | Applecross – Mount Pleasant |
| Cr N Pazolli | Applecross – Mount Pleasant (<i>electronic attendance</i>) |
| Cr K Mair | Central |
| Cr M Sandford | Central (<i>electronic attendance</i>) |
| Cr T Fitzgerald | Palmyra – Melville – Willagee (<i>electronic attendance</i>) |
| Cr K Wheatland | Palmyra – Melville – Willagee |

3. IN ATTENDANCE

| | |
|---------------|--|
| Mr M Tieleman | Chief Executive Officer |
| Mr B Taylor | A/ Executive Manager Governance and Legal Services |
| Ms C Newman | Governance Coordinator |
| Ms R Davis | A/Governance Officer |

At the commencement of the meeting, there were no members of the public in the Council Chambers, one member of the public in attendance electronically and no representatives from the Press.

4. APOLOGIES AND APPROVED LEAVE OF ABSENCE**4.1 APOLOGIES**

| | |
|----------------|---|
| Mr M McCarthy | Director Technical Services |
| Mr A Ferris | Director Corporate Services |
| Ms C Young | Director Community Development |
| Mr S Cope | Director Urban Planning |
| Mr L Hitchcock | Executive Manager Governance and Legal Services |

4.2 APPROVED LEAVE OF ABSENCE

Nil.

5. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION) AND DECLARATIONS BY MEMBERS**5.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil.

5.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ THE ELECTED MEMBERS BULLETIN.

Nil.

6. QUESTION TIME

Nil.

7. DECLARATIONS OF INTEREST**7.1 FINANCIAL INTERESTS**

- Nil.

7.2 DISCLOSURE OF INTEREST THAT MAY CAUSE A CONFLICT

- Nil.

8. DEPUTATIONS

Nil.

9. APPLICATIONS FOR NEW LEAVES OF ABSENCE

At 6:04pm Cr Kepert moved, seconded Cr Wheatland –

That the application for a new leave of absence submitted by Cr Robartson on 3 May 2021 be granted.

At 6:04pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

10. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

Nil.

11 REPORTS OF THE CHIEF EXECUTIVE OFFICER

M21/5835 – NEW POLICY CP-117 - STANDARDS FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION (AMREC) (ATTACHMENT)

Ward : All
 Category : Policy
 Subject Index : Legislation
 Customer Index : City of Melville
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : M21/5810 New and Amended Regulations – Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations (16 March 2021 Ordinary Meeting of Council)
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Corrine Newman
 Governance Coordinator

AUTHORITY / DISCRETION

DEFINITION

| | | |
|-------------------------------------|--------------------|---|
| <input type="checkbox"/> | Advocacy | <i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
| <input type="checkbox"/> | Executive | <i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i> |
| <input checked="" type="checkbox"/> | Legislative | <i>Includes adopting local laws, town planning schemes & policies.</i> |
| <input type="checkbox"/> | Review | <i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i> |
| <input type="checkbox"/> | Quasi-Judicial | <i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |
| <input type="checkbox"/> | Information | <i>For the Council/Committee to note.</i> |

**M21/5835 – NEW POLICY CP-117 - STANDARDS FOR CEO RECRUITMENT,
PERFORMANCE AND TERMINATION (AMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- On 2 February 2021 the *Local Government (Administration) Amendment Regulations 2021* (CEO Standards) were gazetted and came into effect on 3 February 2021.
- At the Ordinary Meeting of Council held 16 March 2021, the Council noted the introduction of the new legislation.
- The City is required to adopt Standards for the Recruitment, Performance Review and Termination of CEOs by 3 May 2021.
- The Western Australian Local Government Association (WALGA) have produced a template Standards for CEO Recruitment, Performance and Termination.
- Information associated with the template Standards has been circulated and presented to Elected Members at a Meeting of Elected Members held 27 April 2021.
- This report recommends the adoption of the template standards as Council Policy with a review to be held by 28 February 2022.

BACKGROUND

At the Ordinary Meeting of Council held 16 March 2021, the Council noted the introduction and gazettal of the *Local Government (Administration) Amendment Regulations 2021*.

These Amendment Regulations bring into effect section 22 of the Amendment Act by introducing mandatory minimum standards that cover the:

- Recruitment;
- Selection;
- performance review; and
- early termination of local government Chief Executive Officers.

Key features of these regulations include the requirement;

- to establish a selection panel comprised of council members and at least one independent person to conduct the recruitment and selection process for the position of CEO;
- to establish the performance review process by agreement between the local government and the CEO; and
- on expiry of the CEO's contract to conduct a recruitment and selection process where the incumbent CEO has held the position for a period of ten or more consecutive years.

The City is required, by absolute majority decision, to adopt a policy, incorporating the CEO Standards within three months of these regulations coming into effect (i.e. by 3 May 2021).

M21/5835 – NEW POLICY CP-117 - STANDARDS FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION (AMREC) (ATTACHMENT)**DETAIL**

WALGA have produced a Template Standards for CEO Recruitment, Employment and Termination, which incorporate the new model CEO Standards as prescribed, in relation to:

- (a) the recruitment of CEOs;
- (b) the review of the performance of CEOs;
- (c) the termination of the employment of CEOs.

The WALGA Draft Standards for CEO Recruitment, Performance and Termination have been circulated to Elected Members via the Elected Members Bulletin and presented to Elected Members for discussion.

The Template Standards have been converted to a proposed new [Council Policy CP-117 Standards for CEO Recruitment, Performance and Termination](#), a copy of which is attached, for the consideration and adoption of the Council as required under section 5.39B of the *Local Government Act 1995*:

“5.39B. Adoption of model standards

- (3) *Within 3 months after the day on which regulations amending the model standards come into operation, the local government must amend* the adopted standards to incorporate the amendments made to the model standards.”*

The proposed new policy addresses the standards to be observed by the local government in relation to the recruitment, performance review and termination of City of Melville CEOs including, but not limited to:

- Determination of selection criteria and job description form;
- Advertising of the position;
- Establishment selection panel for employment of CEO;
- Contract variations;
- Agreement of Performance Review processes;
- Undertaking and endorsement of Performance Review processes;
- Principals to be applied during termination.

Following the adoption of this new policy the existing contract with the CEO contains express provisions that incorporates and addresses any inconsistencies in the contract with the Act being an incorporated reference:

Clause 1.4.2

- (2) *In the event of any conflict or inconsistency between any part of –*
 - a) *the terms and conditions contained in the clauses of this Contract;*
 - b) *a Schedule;*
 - c) *an annexure, and*
 - d) *a document incorporated by reference, if any,*

the material mentioned in any one of paragraph (a)-(d) of this clause 1.4(2) has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

M21/5835 – NEW POLICY CP-117 - STANDARDS FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION (AMREC) (ATTACHMENT)

The next CEO Performance Review is scheduled to be undertaken in July/August 2021, to ensure its completion before the October 2021 Local Government Elections and its preceding Caretaker Period.

It is recommended that this Performance Review include a comparison against the *Local Government (Administration) Amendment Regulations 2021* and the new Policy to ensure consistency and compliance and that feedback on the application of the new policy be provided to enable a review of the policy to be undertaken before the end of the February 2022, before a new CEO Performance Review process commences.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

The Department of Local Government conducted extensive community consultation as part of the Review of the Local Government Act. This new legislation is an outcome of that review process.

II. OTHER AGENCIES / CONSULTANTS

The Department of Local Government conducted extensive consultation with local government sector and associated stakeholders as part of the Review of the Local Government Act. This new legislation is an outcome of that review process.

STATUTORY AND LEGAL IMPLICATIONS

Division 4 – of the *Local Government Act 1995*- Local Government Employees - deals with the appointment of the CEO and makes reference to the model standards required to be adopted by a local government as proposed in this new policy.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with the introduction of the new policy.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

| Risk Statement & Consequence | Level of Risk | Risk Treatment |
|---|--|---|
| That the local government does not comply with the new legislation required for the recruitment, performance review and termination of the CEO. | Moderate consequences which are likely, resulting in a Medium level of risk | Adoption of appropriate template standards with a practical review and feedback within a suitable time period to enable update. |

M21/5835 – NEW POLICY CP-117 - STANDARDS FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION (AMREC) (ATTACHMENT)**POLICY IMPLICATIONS**

This report seeks the introduction of a new policy to meet the requirements of the *Local Government Act 1995*. Once introduced, existing policies and processes and the CEO's current contract will need to be reviewed to ensure alignment with the new model standards and the Council's adopted policy.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

This report is to advise the Council of the gazettal and introduction of the new legislation and proposes the introduction of the WALGA template policy to meet the implementation requirements of the Department of Local Government.

A CEO Performance Review Process is due to commence in the near future, it would be beneficial for the new policy to be in place to provide an opportunity for practical review and amendment to the policy, if required.

CONCLUSION

It is acknowledged that this is a complex and significant issue for the City and officers recommend the adoption of the model standards to provide for consistency in the Local Government Sector and transparency to the wider community.

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (5835)**ABSOLUTE MAJORITY**

At 6:05pm Cr Robins moved, seconded Cr Wheatland –

That the Council

- 1. by absolute majority decision adopt new Council Policy CP-117 - Standards for CEO Recruitment, Performance and Termination and that this policy be published on the City of Melville website.**
- 2. Review CP-117 – Standards for CEO Recruitment Performance and Termination before the end of February 2022, based on feedback from CEO Performance Review Process scheduled to be completed by the end of August 2021.**

At 6:15pm the Mayor declared the motion

CARRIED BY ABSOLUTE MAJORITY (13/0)

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP-118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)**

Ward : All
 Category : Policy
 Subject Index : Legislation
 Customer Index : City of Melville
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : M21/5810 New and Amended Regulations – Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations (16 March 2021 Ordinary Meeting of Council)
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Corrine Newman
 Governance Coordinator

AUTHORITY / DISCRETION

DEFINITION

| | | |
|-------------------------------------|--------------------|---|
| <input type="checkbox"/> | Advocacy | <i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
| <input type="checkbox"/> | Executive | <i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i> |
| <input checked="" type="checkbox"/> | Legislative | <i>Includes adopting local laws, town planning schemes & policies.</i> |
| <input type="checkbox"/> | Review | <i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i> |
| <input type="checkbox"/> | Quasi-Judicial | <i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |
| <input type="checkbox"/> | Information | <i>For the Council/Committee to note.</i> |

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP-118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- On 2 February 2021 the *Local Government (Model Code of Conduct) Regulations 2021* were gazetted and came into effect on 3 February 2021.
- At the Ordinary Meeting of Council held 16 March 2021, the Council noted the introduction of the new legislation.
- The City is required to adopt:
 - A Code of Conduct for Elected Members, Committee Members and Candidates
 - A policy for the management of behaviour complaints lodged under the Code of Conduct.
 - A form for the lodgement of behaviour complaints.
- The Western Australian Local Government Association (WALGA) have produced a template Policy for the management of behaviour complaints and a form for the lodgement of behaviour complaints.
- The template policy and form have been circulated and presented to Elected Members at a Meeting of Elected Members held 27 April 2021.

BACKGROUND

At the Ordinary Meeting of Council held 16 March 2021, the Council *and resolved:*

- “3. *Notes the introduction and gazettal of the Local Government (Model Code of Conduct) Regulations 2021; and*
- *adopts the attached “5810 Complaint About Alleged Breach Form” in accordance with clause 11(2) of the Regulations;*
 - *by absolute majority decision delegates authority to the CEO to appoint officers to receive and withdraw complaints in accordance with clause 11(3) of the Regulations*
 - *directs the Chief Executive Officer to commence a process to develop a complaints handling, investigation and determination policy and procedures in alignment with the new Model Code of Conduct for Elected Members to be presented to the Council for adoption before implementation.”*

The City is, by absolute majority decision, required to adopt a Code of Conduct for Elected Members, Committee Members and Candidates, within three months of the regulations coming into effect (by 3 May 2021) and develop and adopt a:

- policy for the management of behaviour complaints under the Code of Conduct; and
- form for the lodgement of behaviour complaints under the Code of Conduct.

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)****DETAIL**Code of Conduct for Elected Member, Committee Members and Candidates

The *Local Government (Model Code of Conduct) Regulations* repealed and replaced the *Local Government (Rules of Conduct) Regulations 2007* and the City of Melville Code of Conduct for Elected Members. The Model Code sets standards for the behaviour and conduct of Elected Members, Committee Members and Candidates.

Each local government is required to adopt a Code of Conduct that reflects the Model Code, and may add to the Model Code if it considers additional behavioural requirements are necessary. The Model Code also applies standards of conduct to external members of Committee and Candidates for local government elections. A complaint about a Candidate may only be dealt with if they are elected.

Elected Members have not provided any indication that it intends to add any additional behaviour requirements to the Model Code of Conduct and officers recommend that the City adopt the Model as its [5836 Code of Conduct for Elected Members, Committee Members and Candidates](#), as attached.

New Policy CP-118 – Code of Conduct Behaviour Complaints Policy

WALGA have produced a template policy for behaviour complaints under the Model Code of Conduct for Elected Member, Committee Members and Candidates. The template policy covers:

- Principles of procedural fairness;
- Submitting and withdrawing a complaint;
- Confidentiality;
- The role of the Behaviour Complaints Officer;
- The appointment and role of the Complaints Assessor;
- The role of the role of the Behaviour Complaints Committee;
- The involvement of the Respondent;
- Alternative Dispute Resolution process;
- Decision making and Plan requirements.

WALGA have also produced a template Behaviour Complaints Form, which includes the option of Alternative Dispute Resolution as outlined in the template policy.

A draft new policy [5836 CP-118 Conduct Behaviour Complaints Policy](#) and a [5836 Behaviour Complaints Form](#) have been developed based on the WALGA templates to support the Code of Conduct and circulated to Elected Members via the Elected Members Bulletin and presented to Elected Members for discussion.

It is recommended that the “Complaint About Alleged Breach Form” adopted by the Council at the 16 March 2021, be revoked and replaced with the new Behaviour Complaints Form which provides for an Alternative Dispute Resolution process.

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)**

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

The Department of Local Government conducted extensive community consultation as part of the Review of the Local Government Act. This new legislation is an outcome of that review process.

II. OTHER AGENCIES / CONSULTANTS

The Department of Local Government conducted extensive consultation with local government sector and associated stakeholders as part of the Review of the Local Government Act. This new legislation is an outcome of that review process.

STATUTORY AND LEGAL IMPLICATIONS

The *Local Government (Model Code of Conduct) Regulations 2021* set out the requirements for the City to adopt a Code of Conduct for Elected Members, Committee Members and Candidates, and supporting documentations. This report makes recommendations to ensure compliance with those requirements.

FINANCIAL IMPLICATIONS

The appointment of External Complaints Assessors would need to be considered in future budget allocations, including the 2021/2022 budget process.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

| Risk Statement & Consequence | Level of Risk | Risk Treatment |
|--|--|--|
| That the local government does not comply with the new legislation requirements to have a Code of Conduct for Elected Members, Committee Members and Candidates and the appropriate policy and supporting document in place. | Moderate consequences which are likely, resulting in a Medium level of risk | Adoption of appropriate Model Code of Conduct and the template documents to ensure the consistent implementation of the requirements of the legislation. |

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)****POLICY IMPLICATIONS**

This report seeks to meet the requirement of the *Local Government Act 1995* through the adoption of the Model Code of Conduct and the introduction of policy and supporting documents to assist with the transition of the management of behaviour complaints against Elected Members, Committee Members and Candidates by the City of Melville.

The introduction of this policy will mean there is a consistent manner in how behaviour complaints are managed.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

New legislation has been introduced that requires the City to implement a Code of Conduct for Elected Members, Committee Members and Candidates by 3 May 2021. This also requires the Council to adopt a process for dealing with behavioural complaints against Elected Members. Not adopting the proposed documents would mean the City does not have an approved process for managing any complaints that may be submitted.

CONCLUSION

The City of Melville seeks to be open and accountable to its community, stakeholders and each other and to display strong leadership in the community. It is recommended that Council adopt the Model Code of Conduct as the City of Melville's Code of Conduct for Elected Members, Committee Members and Candidates and the new Policy CP-118 Code of Conduct for Elected Members, Committee Members and Candidates and the new Behaviour Complaints Form as supporting documents.

OFFICER RECOMMENDATION (5836)**ABSOLUTE MAJORITY**

At 6:19pm Cr Kepert moved, seconded Cr Barber –

That the Council by Absolute Majority Decision

- 1. Adopts the Model Code of Conduct as contained in Local Government (Model Code of Conduct) Regulations 2021 as the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.**
- 2. Adopts new Council Policy [5836 CP-118 Conduct Behaviour Complaints Policy](#) and that this policy be published on the City of Melville website.**
- 3. Revokes the “Complaint About Alleged Breach Form” adopted at the 16 March 2021 Ordinary Meeting of Council and adopts the [5836 Behaviour Complaint Form](#) for making formal behaviour complaints under the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.**

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)****Amendment**

At 6:20pm Cr Wheatland moved, seconded Cr Sandford –

That the Council by Absolute Majority Decision

1. **Adopts the Model Code of Conduct as contained in Local Government (Model Code of Conduct) Regulations 2021 as the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.**

That Points 2. and 3. of the Officer Recommendation be deferred for discussion at an Elected Members Workshop and brought back to the 15 June 2021 Ordinary Meeting of Council:

- “2. *Adopts new Council Policy [5836 CP-118 Conduct Behaviour Complaints Policy](#) and that this policy be published on the City of Melville website.*
3. *Revokes the “Complaint About Alleged Breach Form” adopted at the 16 March 2021 Ordinary Meeting of Council and adopts the [5836 Behaviour Complaint Form](#) for making formal behaviour complaints under the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.”*

and that the Mayor and Deputy Mayor deal with complaints in the interim.

At 6:31pm the mover and seconder consented to amend the motion by deleting the words “and that the Mayor and Deputy Mayor deal with complaints in the interim.”

At 6:40pm, the mover and seconder consented to voting on the items separately.

COUNCIL RESOLUTION

At 6:20pm Cr Wheatland moved, seconded Cr Sandford –

That the Council by Absolute Majority Decision

1. **Adopts the Model Code of Conduct as contained in Local Government (Model Code of Conduct) Regulations 2021 as the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.**
[5836 Code of Conduct for Elected Members, Committee Members and Candidates](#)

At 6:40pm the Mayor declared the motion

CARRIED BY ABSOLUTE MAJORITY (13/0)

**M21/5836 – CODE OF CONDUCT FOR ELECTED MEMBERS AND NEW POLICY CP118
– CODE OF CONDUCT BEHAVIOUR COMPLAINTS POLICY (AMREC) (ATTACHMENT)****Procedural Motion****COUNCIL RESOLUTION**

At 6:20pm Cr Wheatland moved, seconded Cr Sandford –

That Points 2. and 3. of the Officer Recommendation be deferred, for discussion at an Elected Members Workshop and brought back to the 15 June 2021 Ordinary Meeting of Council:

- “2. Adopts new Council Policy [5836 CP-118 Conduct Behaviour Complaints Policy](#) and that this policy be published on the City of Melville website.*”**
- 3. Revokes the “Complaint About Alleged Breach Form” adopted at the 16 March 2021 Ordinary Meeting of Council and adopts the [5836 Behaviour Complaint Form](#) for making formal behaviour complaints under the City of Melville Code of Conduct for Elected Members, Committee Members and Candidates.”*”**

At 6:41pm The Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

| | |
|----------------------------|---|
| Ward | : All |
| Category | : Council Meetings |
| Subject Index | : Legislation |
| Customer Index | : City of Melville |
| Disclosure of any Interest | : No Officer involved in the preparation of this report has a declarable interest in this matter. |
| Previous Items | : M21/5810 New and Amended Regulations – Local Government (Model Code of Conduct) Regulations 2021, Local Government (Administration) Amendment Regulations (16 March 2021 Ordinary Meeting of Council) |
| Works Programme | : Not Applicable |
| Funding | : Not Applicable |
| Responsible Officer | : Corrine Newman Governance Coordinator |

AUTHORITY / DISCRETION

DEFINITION

| | | |
|-------------------------------------|--------------------|---|
| <input type="checkbox"/> | Advocacy | <i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
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| <input checked="" type="checkbox"/> | Legislative | <i>Includes adopting local laws, town planning schemes & policies.</i> |
| <input type="checkbox"/> | Review | <i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i> |
| <input type="checkbox"/> | Quasi-Judicial | <i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |
| <input type="checkbox"/> | Information | <i>For the Council/Committee to note.</i> |

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)****KEY ISSUES / SUMMARY**

- On 2 February 2021 the *Local Government (Model Code of Conduct) Regulations 2021* were gazetted and came into effect on 3 February 2021.
- At the Ordinary Meeting of Council held 16 March 2021, noted the introduction of the new legislation.
- A previous report on this Agenda recommends the introduction of a new Council Policy CP-118 Code of Conduct Behaviour Complaints, which provides direction and guidance to a Behaviour Complaints Committee with delegated authority to determine behaviour complaints made under the Code of Conduct for Elected Members, Committee Members and Candidates.
- This report recommends the establishment of the Behaviour Complaints Committee, its Terms of Reference and membership.

BACKGROUND

In June 2019 the Local Government Legislation Amendment Act was passed by Parliament, which introduced a range of new legislative requirements for local governments, with the first phase of reforms coming into operation during 2020.

On 2 February 2021 the *Local Government (Model Code of Conduct) Regulations 2021*; were gazetted and came into effect on 3 February 2021, with an implementation phase of up to three months, during which time the City will be required to undertake a series of actions to operationalise the new requirements.

Elected Members were advised of the introduction of the new legislation via the 5 February 2021 edition of the Elected Member Bulletin and the new legislation has been published to the website.

At the Ordinary Meeting of Council held 16 March 2021, the Council *and resolved*:

- “3. *Notes the introduction and gazettal of the Local Government (Model Code of Conduct) Regulations 2021; and*
 - *adopts the attached “5810 Complaint About Alleged Breach Form” in accordance with clause 11(2) of the Regulations;*
 - *by absolute majority decision delegates authority to the CEO to appoint officers to receive and withdraw complaints in accordance with clause 11(3) of the Regulations*
 - *directs the Chief Executive Officer to commence a process to develop a complaints handling, investigation and determination policy and procedures in alignment with the new Model Code of Conduct for Elected Members to be presented to the Council for adoption before implementation.”*

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

The new legislation requires the City to, by absolute majority decision, adopt a Code of Conduct for Elected Members, Committee Members and Candidates within three months of the regulations coming into effect (i.e. by 3 May 2021) and develop and adopt a:

- policy for the management of behaviour complaints under the Code of Conduct; and
- form for the lodgement of behaviour complaints under the Code of Conduct with these matters being dealt with in the preceding reports.

DETAIL

The new Policy CP-118 Code of Conduct Behaviour Complaints covers matters including, but not limited to:

- Principles of procedural fairness;
- Submitting and withdrawing a complaint;
- Confidentiality;
- The role of the Behaviour Complaints Officer;
- The appointment and role of the Complaints Assessor;
- The role of the role of the Behaviour Complaints Committee;
- The involvement of the Respondent;
- Alternative Dispute Resolution process;
- Decision making and Plan requirements.

The Council is required to establish the Behaviour Complaints Committee, with delegated authority in accordance with section 5.8 of the *Local Government Act 1995*:

“5.8. Establishment of committees

A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.”*

** Absolute majority required.*

Terms of Reference and Delegated Authority

Draft Terms of Reference for the Behaviour Complaints Committee have been prepared, [5837 Terms of Reference Behaviour Complaints Committee](#), and provide for the extent of the authority provided to the Behaviour Complaints Committee as including:

- Dismissing a behaviour complaint in accordance with clause 13 of the Code of Conduct and providing reasons for any such dismissal.
- Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur [*clause 12(3) of the Code of Conduct*].
- Determining reasons for such a Finding.
- Where a Finding is made that a breach has occurred, determining:
 - To take no further action; or
 - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority, which prescribes that if an appointed Committee Member is identified in the Complaint as either the Complainant or the Respondent, they are to recuse themselves from the Committee's function by providing an apology and to be replaced by a Deputy. The full delegation of authority is attached, [5837 Delegation of Authority Behaviour Complaints Committee](#).

Committee Membership

The Behaviour Complaints Committee is a Committee of Council in accordance with section 5.9(2) of the *Local Government Act 1995*:

“5.9. Committees, types of

- (2) *A committee is to comprise —*
- (a) *council members only; or*
 - (b) *council members and employees; or*
 - (c) *council members, employees and other persons; or*
 - (d) *council members and other persons; or*
 - (e) *employees and other persons; or*
 - (f) *other persons only.”*

It is recommended that the Behaviour Complaints Committee be established as a “council members only” Committee with three Elected Members being appointed to the Committee. It is also recommended that three Elected Members be appointed as Deputies to the Committee under section 5.11A of the *Local Government Act 1995*:

“5.11A. Deputy committee members

- (1) *The local government may appoint* a person to be a deputy of a member of a committee and may terminate such an appointment* at any time.*

** Absolute majority required.*

- (2) *A person who is appointed as a deputy of a member of a committee is to be —*
(a) if the member of the committee is a council member — a council member;”

Membership on the Committee would be for a term of determined by the Council, with officers recommending an initial term of six months through to the 2021 Local Government Elections.

Committee Administration and Governance

In accordance with section 5.23(1)(b) of the *Local Government Act 1995* the Behaviour Complaints Committee having delegated authority will require meetings to be open to the public:

“5.23. Meetings generally open to public

- (1) *Subject to subsection (2), the following are to be open to members of the public —*
- (a) *all council meetings; and*
 - (b) *all meetings of any committee to which a local government power or duty has been delegated.”*

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

Complaints Behaviour Committee meetings are required to:

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

City officers will:

- Be responsible for coordinating meetings;
- Circulate an agenda before each meeting to Committee Members;
- Take Minutes of the meeting and register them in the City's Document Management System.

STAKEHOLDER ENGAGEMENT**I. COMMUNITY**

There has been no community engagement in relation to this matter.

II. OTHER AGENCIES / CONSULTANTS

The Department of Local Government conducted extensive consultation with local government sector and associated stakeholders as part of the Review of the Local Government Act.

The Western Australian Local Government Association (WALGA) have provided template documents to the sector, which have been used.

STATUTORY AND LEGAL IMPLICATIONS

The *Local Government Act 1995* provides for Committees to be established and for the operation of those Committees.

FINANCIAL IMPLICATIONS

No budget provisions have been allocated to the conduct of a Behaviour Complaints Committee. It is anticipated that initially any associated costs can be accommodated in existing budget allocations.

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

| Risk Statement & Consequence | Level of Risk | Risk Treatment |
|---|--|--|
| That the local government does not comply with the new legislation requirements to have a Code of Conduct for Elected Members, Committee Members and Candidates and the appropriate structure in place to manage complaints in a timely manner. | Moderate consequences which are likely, resulting in a Medium level of risk | The establishment of a Committee of Council with authority to make determinations in relation to behaviour complaints. |

POLICY IMPLICATIONS

The establishment of the Behaviour Complaints Committee will support the implementation of the Council Policy CP-118 Code of Conduct Behaviour Complaints Policy as addressed in the previous report.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

New legislation has been introduced that requires the City to implement a Code of Conduct for Elected Members, Committee Members and Candidates by 3 May 2021. This also requires the Council to adopt a process for dealing with behavioural complaints against Elected Members. Not establishing a Behaviour Complaints Committee would mean that an alternative transparent process would need to be determined for dealing with behaviour complaints made under the Code of Conduct for Elected Members, Committee Members and Candidates.

CONCLUSION

The City of Melville seeks to be open and accountable to its community, stakeholders and each other and to display strong leadership in the community. It is recommended that Council establish a Behaviour Complaints Committee to ensure that complaints made under the Code of Conduct for Elected Members, Committee Members and Candidates are dealt with in a transparent, equitable and timely manner.

**M21/5837 – ESTABLISHMENT OF BEHAVIOUR COMPLAINTS COMMITTEE (AMREC)
(ATTACHMENT)**

OFFICER RECOMMENDATION (5837)

ABSOLUTE MAJORITY

That the Council, by Absolute Majority Decision:

1. in accordance with section 5.8 of the *Local Government Act 1995*, establishes the Behaviour Complaints Committee with the [5837 Terms of Reference Behaviour Complaints Committee](#)
2. delegates authority to the Behaviour Complaints Committee to make decisions in relation to Clauses 12 and 13 of the *Local Government (Model Code of Conduct) Regulations 2021* [5837 Delegation of Authority Behaviour Complaints Committee](#).
3. appoints the following Elected Members to the Behaviour Complaints Committee from May 2021 to October 2021.

Procedural Motion**COUNCIL RESOLUTION**

At 6:49pm, Cr Wheatland moved, Seconded Cr Kepert –

That item M21/5837 be deferred, for discussion at an Elected Members Workshop and be brought back to the 15 June 2021 Ordinary Meeting of Council.

At 6:49pm, The Mayor declared the Motion

CARRIED UNANIMOUSLY (13/0)

12. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

Nil.

13. CLOSURE

There being no further business to discuss, Mayor Honourable George Gear declared the meeting closed at 6:50pm.