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STRATEGIC POLICY: **SERIOUS AND SUBSTANTIAL COMPLAINTS POLICY**

STATUS: Draft  
ADOPTED BY: Council  
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**OBJECTIVES**

Blue Mountains City Council is committed to promoting itself as an ethical and customer service oriented organisation. The Council recognises that complaints provide an opportunity to:

- identify management practices or procedures that need improvement;
- review the conduct of staff and councillors;
- respond effectively to individual cases of dissatisfaction; and
- provide an opportunity to strengthen public perceptions about the integrity of the Council.

**BACKGROUND**

This Policy deals with complaints of a serious and substantial nature made by members of the public, Councillors, Council staff and others.

This Policy complements and interacts with the following BMCC documents:

- Code of Conduct;
- Fraud Prevention Plan;
- Grievance Policy; and
- Commonwealth and State employment legislation.

A serious and substantial complaint is a complaint against a Councillor or Council employee that breaches the Code of Conduct. Complaints that are about a Council employee performance may alternatively be dealt with under the Grievance Policy depending on the severity of the issue. The objective of the Grievance Policy is:

*To provide a fair, equitable and transparent process for addressing inappropriate performance and to assist Managers and Supervisors appropriately manage disciplinary issues related to their staff.*

Any complainant can choose to make a complaint under the Protected Disclosures legislation and be provided with the statutory roles, responsibilities and rights of that legislation.

It is recognised that some allegations are made with the intent of harassment or with no evidence other than hearsay or one person's word against another. The complaints handling process, outlined in this Policy, will not be used for this end. The decision making process

within this Policy recognises the rights of any person who is the subject of the complaint as it does those making the complaint.

While this Policy establishes a reporting system for dealing with serious and substantial complaints, it also acknowledges the rights of any person who is the subject of a complaint. The principles of Natural Justice will be observed which is a tenet of common law.

In promoting good customer service practices, Councillors and every member of staff have a potential role in assisting and directing persons who may wish to lodge complaints of the nature espoused by this Policy. As such, all Councillors and staff should be aware of the content of this Policy and how complaints of this nature are handled within Council.

Where there is doubt about the policy or procedures contact should be made with the General Manager or Executive Officer.

## POLICY STATEMENT

This Policy deals with the procedure to make a complaint and how complaints will be investigated and managed.

## THE CONDUCT OF COUNCIL AND COUNCIL OFFICERS

All Council staff and Councillors are bound to comply with the Council Code of Conduct. The Code of Conduct is designed to outline to Council employees and Councillors the standards of behaviour that the Council and the community expect from them in conducting their duties. Council has adopted companion policies such as the:

- Code of Meeting Practice;
- Code of Conduct;
- Statement of Ethical Business Practices; and
- Fraud Prevention Plan.

In addition there are State and Commonwealth legislation, guidelines and criteria to consider:

- NSW Ombudsman Guidelines
- NSW ICAC Act;
- Privacy Act; and
- Protected Disclosures Act 1994.

These policies assist both Councillors and Council staff in dealing with ethical problems that they may encounter in their work, or in their role as a representative of Council.

## DEFINING A COMPLAINT

This Policy covers Serious and Substantial Complaints only. For the purposes of this Policy a complaint is defined as an allegation of unacceptable conduct of a serious and substantial nature raised against Council, a Councillor or a Council officer by the public, another Agency or a staff member, that has substantive evidence.

Serious and substantial complaints involve allegations of abuse of office or powers, maladministration, or breaches of legislation. This may include the following types of complaints, which is not an exhaustive list:

- Corruption, theft, harassment, discrimination, threat;
- Negligence of public duty;
- Extorting and taking bribes or corrupt payments;

- Unregistered gifts;
- Conflicts of Interest;
- Material or significant waste of resources;
- Decisions and/or actions contrary to law;
- Unauthorised decisions or actions eg improper record management, collusion;
- Misuse of resources;
- Using position within the Council for personal gain;
- Breach of Confidentiality;
- Breach of Privacy;
- Improper influence of Councillors and/or staff; and
- Other significant breaches of the Code of Conduct.

This policy excludes complaints about service delivery.

## MAKING A COMPLAINT

The Council will initially treat all matters as confidential as outlined later within this section. Contact details to make complaints under this Policy are found in Attachment I.

Complaints under this Policy should be referred to the General Manager either verbally or in writing. Verbal complaints are then followed up in writing subsequent to the initial report. This is usually in the form of a signed interview report. This is important as even a slight change of wording can significantly affect the emphasis or seriousness of a complaint. Having the complaint in written form will avoid any later dispute about the nature of the complaint.

**Comment [V1]:** Refer 11.6 C of C

**Deleted:** Executive Officer or Internal Auditor

Should a staff member or councillor receive a complaint (whether in writing or otherwise) of a nature falling within the ambit of this Policy, that person should refer the matter or information received to the General Manager.

**Deleted:** Executive Officer or Internal Auditor

Where the complaint is against the General Manager, the matter should be reported to the Mayor in writing.

**Comment [V2]:** Refer 11.7 C of C

Whilst the Protected Disclosure Acts 1994 allows for anonymous complaints, an anonymous complaint can often make analysis and identification of the issues more difficult to substantiate. However, all complaints irrespective of the manner of receipt will be investigated to their fullest capacity based on the information available.

## MANAGING A COMPLAINT

All complaints will be properly reviewed and a course of action taken in line with the Management of Complaints Flowchart in Attachment II.

The Conduct Review Committee/Reviewer (CRC) will act as an independent review body. The CRC, as outlined in the Code of Conduct, is formed when there is a complaint against the Mayor, a Councillor or the GM. In the case of BMCC, a Blue Mountains Panel of Independent Reviewers has been established and can be called upon to undertake an investigation of this type.

**Deleted:** or Complaints Review Panel (CRP)

**Comment [V3]:** See 12.9 of C of C

The Complaints Review Panel (CRP) is convened for all complaints about staff and has the Executive Officer, HR Manager and an unrelated Group Manager. Once there is substantiation of a complaint the staff member's Manager becomes a member to the CRP in terms of relevant management and disciplinary requirements.

**Comment [V4]:** See 12.6 of C of C

The key Terms of Reference for both the CRC and the CRP are as follows:

- Define the type of complaint and any statutory reporting requirements;
- Define the parameters of the review to be undertaken;

- Develop and manage the Plan of Action for the Review eg stages of the review, file analysis, interviews;
- Preparation of a report to the relevant decision-maker for that type of complaint; and
- Take any further actions to bring closure to the complaint.

Where the complaint is not substantiated the relevant documents will be archived in a confidential repository and the complainant will be notified. The person who is the subject of the complaint is not notified as the complaint cannot be substantiated. Where the complaint is substantiated during the review there are a number of outcomes that can occur, dependent on the nature of the issue:

- Censure;
- Require the person to apologise to any person adversely affected by the breach;
- Counselling;
- Prosecution for any breach of the law;
- Revising of any of Council's policies, procedures and/or the code of conduct;
- In the case of staff, remove or restrict the person's delegation;
- In the case of Councillors or the General Manager, make public findings of inappropriate conduct.

The CRP is set-up to ensure an objective review and investigation of complaints against staff that are deemed to be breaches of the Code of Conduct is conducted. Once the process has gathered all of the information and a clear account of the complaint is compiled, it is necessary to engage the relevant Group Manager in discussions around any disciplinary action/s.

**Comment [V5]:** See 12.8 & 12.26

**Deleted:** <#>Refer the complaint, under legislative requirements, to the relevant Agency eg Theft to the Police, Corruption to ICAC; or¶  
<#>Notify the complainant that an internal code of conduct issue has arisen and undertake the relevant organisational action.¶

### CONFIDENTIALITY

The Council Officers involved in managing the complaint will ensure our efforts in maintaining confidentiality throughout the process in relation to the complainant and the person who is the subject of the complaint to:

- minimise the risk of harm to these parties including any potential harassment;
- Ensure the integrity of the investigation;
- Maximise the information provided to assist the review;
- Reduce the risk of contamination of information or evidence; and
- Meet statutory requirements in cases of protected disclosures.

Witnesses interviewed in the course of an investigation will be asked not to discuss the matter with other witnesses or third parties.

Notwithstanding the above, confidentiality of the complainant or other sources of information cannot be guaranteed.

### DECLINING TO FURTHER INVESTIGATE COMPLAINTS

The Council undertakes to conduct a thorough review of a complaint. However, the Council will not investigate matters that are deemed to be vexatious or frivolous in nature following the initial review by the relevant panel.

If the complainant is dissatisfied with the outcome of the investigation and seeks a further investigation into the complaint the General Manager will make a decision as to whether this is warranted or appropriate. Where the complaint is about the General Manager and the outcome is unacceptable to the General Manager, representation can be made either by the General Manager or on behalf of the General Manager to the Mayor through a relevant third party.

In a small number of cases it will become clear that a complainant will not accept the Council decision on a matter even though all appropriate avenues of internal review or appeal have been exhausted. In these circumstances where the complainant continues to request action and is causing an impact on resource allocation, the General Manager's has discretion to classify the person under the Serial Complainants guidelines, produced by NSW ICAC, and the following program can be put in place:

- No phone calls will be accepted or interviews granted concerning the specific matter already reviewed;
- All further correspondence with the Council must be in writing and to the Executive Officer; and
- Correspondence will be received, read, noted and filed but only acknowledged or responded to if the person provides significant, new information relating to their complaint or concern or raises new issues which, in the Executive Officer's opinion, warrant fresh action.

### UNSATISFIED COMPLAINANTS

Should a complainant not be satisfied as to the outcome of an investigation or the Council decision to decline to further investigate a complaint, they may wish to take the matter up with external agencies such as the Independent Commission Against Corruption, Department of Local Government or NSW Ombudsman's Office. Contact details of these organisations are set out in Annexure 2.

### NOTIFICATION OF A COMPLAINT AGAINST YOU

Staff will be notified of a complaint when an issue is seen to have some validity. If there are no substantiated issues the staff or Councillor will not be contacted.

Staff can request information from the Executive Officer or the HR Manager on whether any complaints have been received relative to themselves or their role.

### OUTCOMES

There are two discrete outcomes as a result of a complaint (see Attachment 2).

- A. Panel convened, initial review, no action; OR
- B. Panel convened, initial review, full investigation, sanctions e.g. disciplinary action, referral to ICAC or report to the police.

The sanctions are dependant on the nature of the complaint.



# **ATTACHMENT I**

## **How to make a complaint?**

**A. How to Make a Complaint to Council?**

In writing and marked/addressed as follows:

Private and Confidential  
For the Attention of the General Manager  
Blue Mountains City Council  
Locked Bag 1005  
Katoomba NSW 2780

Deleted: Executive Officer

In person: by making an appointment to see the General Manager. This can be arranged by telephone on 4780 5518. The appointment can be arranged either at Council premises or at the person's home/place of business or other appropriate place.

Deleted: Executive Officer and/or the Internal Auditor

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Deleted: 09 or 47 805503 respectively

By telephone: by contacting the General Manager, on the above number.

Deleted: Executive Officer or the Internal Auditor

**B. How to make a complaint to an external agency?**

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Independent Commission Against Corruption (ICAC)

The ICAC may investigate allegations of Corrupt Conduct of Councils, Councillors and its Officers. ICAC may be contacted on 02 8281 5999 or by writing to:

ICAC  
GPO Box 500  
Sydney NSW 2001

Department Of Local Government

The DLG may investigate complaints concerning the conduct and management of Councils. They may also investigate complaints concerning the disclosure or non-disclosure of pecuniary interest matters. The Department may be contacted on 02 4428 4100 or by writing to:

The Director General  
Department of Local Government  
Locked Bag 3015  
NOWRA NSW 2541

NSW Ombudsman

The Ombudsman may be contacted on 02 92861000 or by writing to

The Office of the Ombudsman  
Level 24 580 George St  
Sydney NSW 2000

# **ATTACHMENT II**

## **Management of Complaints Flowchart**

Attachment II  
 Serious & Substantial Complaints Policy

