



MINUTES

Behaviour Complaints Committee Meeting

19 April 2023

Shire of Victoria Plains
Council Chambers, Calingiri
AND
via E-Meeting Protocol

Commencing – 2.10PM

PUBLIC UNCONFIRMED MINUTES

DISCLAIMER:

The recommendations contained in this document are officers' recommendations only and should not be acted upon until Council has resolved to adopt those recommendations.

The resolutions of Council should be confirmed by perusing the minutes of the Council meeting at which these recommendations were considered. Resolutions are not considered final until the minutes of the meeting are confirmed or advised in writing by the CEO or authorised person.

Members of the public should also note that they act at their own risk if they enact any resolution prior to receiving official written notification of Council's decision.

Recording of Meeting

Members of the public are advised that meetings of Council are audio recorded to assist with ensuring an accurate record of the meeting is provided for the formal minutes of the meeting. In terms of the Privacy Act 1998 this may involve the recording of personal information provided at the meeting. The provision of any information that is recorded is voluntary, however if any person does not wish to be recorded they should not address or request to address the meeting. By remaining in this meeting, you consent to the recording of the meeting.

You are not permitted to record this meeting with any recording device, unless you have the express authorisation of the Council of the Shire of Victoria Plains.

E – Disclaimer

It is the Presiding Member's responsibility to preserve order in the meeting and this can be more difficult in an eMeeting. Therefore, each Council Member must consistently and respectfully follow the Local Government's Meeting Procedures Local Law, any additional eMeeting guidance provided by the Local Government and support the Presiding Member in their conduct of the eMeeting.

The pace of an eMeeting should be slow and orderly. The following practices will help avoid confusion and support effective eMeetings:

Speak clearly and slowly, as connections may be distorted or delayed;

Always state your name to indicate to the Presiding Member that you wish to speak. Restate your name if the Presiding Member has not heard you at first;

In debate, only speak after the Presiding Member has acknowledged you. Then state your name, so that others know who is speaking;

Follow the Presiding Member's directions and rulings;

If you are unclear about what is happening in an eMeeting, immediately state your name to draw the Presiding Member's attention and enable you to then seek clarification from the Presiding Member;

Avoid looking for opportunities to call Points of Order; instead, politely and respectfully gain the Presiding Member's attention and explain any deviation from your Meeting Procedures, the Local Government Act or any other relevant matter.

Commonly-used abbreviations	
AAS / AASB	Australian Accounting Standard / Australian Accounting Standards Board
BF Act	Bush Fire Act 1954
BFB	Bush fire brigade
CEO	Chief Executive Officer
CDO	Community Development Officer
DBCA	Dept of Biodiversity, Conservation and Attractions
DFES	Dept of Fire and Emergency Services
DPLH	Dept of Planning, Lands and Heritage
DWER	Dept of Water and Environmental Regulation
EHO	Environmental Health Officer
EFT	Electronic Funds Transfer
FAM	Finance and Administration Manager
JSCDL	Parliamentary Joint Standing Committee on Delegated Legislation
LEMA	Local Emergency Management Arrangements
LEMC	Local Emergency Management Committee
LG Act	Local Government Act 1995
LGGC	WA Local Government Grant Commission
LPP	Local Planning Policy
LPS	Local Planning Scheme
MOU	Memorandum of Understanding
MRWA	Main Roads WA
NNTT	National Native Title Tribunal
OAG	Office of Auditor General
OCM	Ordinary Council Meeting
PTA	Public Transport Authority
RRG	Regional Roads Group
RTR	Roads to Recovery
SAT	State Administrative Tribunal
SEMC	State Emergency Management Committee
SGC	Superannuation Guarantee Contribution
SJAA	St John Ambulance Association
SWALSC	South West Aboriginal Land and Sea Council
WAEC	WA Electoral Commission
WALGA	WA Local Government Association
WSM	Works and Services Manager

CONTENTS

1.	DECLARATION OF OPENING	5
1.1	Opening.....	5
1.2	Announcements by Presiding Member	5
2.	REMOTE ATTENDANCE BY ELECTED MEMBERS	5
3.	RECORD OF ATTENDANCE	6
4.	DISCLOSURES OF INTEREST	6
5.	PUBLIC QUESTION TIME.....	6
5.1	Public Questions With Notice	6
5.2	Public Questions Without Notice	6
6.	CONFIRMATION OF MINUTES	7
6.1	Confirmation of Council Meeting Minutes	7
7.	REPORTS REQUIRING DECISION.....	8
7.1	Update on The Function of the Behaviour Complaints Committee	8
7.2	Matters Behind Closed Doors.....	12
7.2.1	Confidential Item - Complaints BC-001/22	14
7.2.2	Confidential Item - Complaints BC-002/22	15
8.	CLOSURE OF MEETING	17

PUBLIC UNCONFIRMED MINUTES



MINUTES

Behaviour Complaints Committee Meeting of the Victoria Plains Shire Council

Held in the Calingiri Shire Chambers and via E-meeting Protocol
on 19 April 2023 commencing at 2. 10PM

1. DECLARATION OF OPENING

1.1 Opening

Meeting declared open at 2.10pm.

1.2 Announcements by Presiding Member

The Presiding Member reminded Committee Members that the meeting was being recorded for the purposes of Minute Taking and uploading of the recording to the Shire Website for public viewing and the meeting will be run in accordance with the Shire's Meeting Procedures Law 2018.

2. REMOTE ATTENDANCE BY ELECTED MEMBERS

THAT:

- Under regulation 14C (2)(b) of the Admin Regulations, the Shire President can approve Elected Member attendance by electronic means;
- In doing so, under r.14C (5) the Shire President must have regard as to whether the location that the Elected Member intends to attend the meeting, and the equipment intended to be used to attend the meeting, are suitable;
- Electronic means includes, as per r.14CA(2) by telephone or video conference;
- Suitable equipment would include an electronic device that can hold a Teams meeting, and perhaps, the use of headphones;
- In accordance with r.14CA (5) the Elected Member must declare that they are able to maintain confidentiality during the meeting. Under r.14CA(7), the declaration by the Elected Member is recorded in the minutes of the meeting;
- Summarily, according to Departmental guidance, a suitable location is one that is quiet and private e.g. a private room in your house. If there are other people at the location at the time of the meeting, an Elected Member may be required to close a door and wear headphones.

Approval to Attend and Declaration of Confidentiality

N/A

3. RECORD OF ATTENDANCE

Members present	Cr N Clarke – Presiding Member Cr S Woods Cr D Lovelock
Staff attending	CEO – Mr S Fletcher Council Support Officer – Ms J Klobas
Observers	Cr J Kelly – (Observer) – withdrew from meeting at 2.15pm Cr G O’Brien – (Observer) - withdrew from meeting at 2.15pm
Apologies	Cr P Bantock
Approved leave of absence	N/A
Visitors	Nil
Members of the public	Mrs R Kelly Mr M Hemsley Mr D Hall Mr M Palmer Mr G Bookham

4. DISCLOSURES OF INTEREST

Refer – Local Government Act, Regulations, Code of Conduct, and Declaration Forms in Councillor folders.

	Type	Item	Person / Details
3.1	Financial		Nil
3.2	Proximity		Nil
3.3	Impartiality		Nil

5. PUBLIC QUESTION TIME

Refer – Local Government Act, Regulations, Local Law and Submission Form & Guidelines circulated.

5.1 Public Questions With Notice

Nil

5.2 Public Questions Without Notice

Q1. Mr M Palmer queried comments made in social media and the District Newsletter regarding Cr Kelly being charged. Now that he has been cleared of those charges, will the Council be issuing an apology to Cr Kelly?

A1. The Presiding Member and CEO noted that this question is in regard to confidential material to be addressed in this meeting and / or perhaps a Council related matter, at which point Mr Palmer noted he would put his question in writing for the April 2023 Council meeting.

6. CONFIRMATION OF MINUTES

6.1 Confirmation of Council Meeting Minutes

2304-01	Officer Recommendation / Committee Decision
----------------	--

Moved: Cr J Kelly

Seconded: Cr D Lovelock

That the Minutes of the following meetings:

- *Behaviour Complaints Committee Meeting held 22 February 2023*

as circulated, be **CONFIRMED** as a true and correct record,

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

PUBLIC UNCONFIRMED MINUTES

7. REPORTS REQUIRING DECISION**7.1 Update on The Function of the Behaviour Complaints Committee**

File reference	13.3.15		
Report date	11 April 2023		
Applicant/proponent	CEO (Complaints Officer)		
Officer disclosure of interest	Nil		
Previous meeting references	22 February 2023: Item 6.1; 2203-02		
Prepared by	Sean Fletcher, CEO		
Authorised by	CEO		
Attachments			
Attachment 1	Page		Nil

PURPOSE

The purpose of this report is to provide a further overview of the Behaviour Complaints Committee on its status and function, including that of the Behaviour Complaints Officer (CEO).

BACKGROUND

The current membership of the Behaviour Complaints Committee was appointed by Council on 27 October 2021 in accordance with Sections 5.10 and 5.11A of the *Local Government Act 1995*, as follows:

Members (3):

1. Cr N Clarke (Presiding Member)
2. Cr Bantock
3. Cr D Lovelock

Deputy Members (4)

1. All other Elected Members

The Committee's terms of reference (Council Policy 1.1B) under membership also states:

- The Delegated Authority Condition 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. They are to be replaced for the duration of the handling of the subject Complaint by a Deputy Committee Member, selected by the Presiding Member of the Committee.
- Meetings are to be scheduled as required by the CEO or Behaviour Complaints Officer in consultation with the Committee Presiding Member. At the first meeting of the Committee held on 22 February 2023, Cr Clarke was elected as the Presiding Member.

COMMENT

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the *Local Government Act 1995* (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the Shire of Victoria Plain's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct).

The extent of authority provided to the Behaviour Complaints Committee is specified in the relevant Delegated Authority, and includes:

- 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.

The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority.

Committee Governance

Function of Meetings

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).

Role of CEO

The role of the CEO in this instance is as the Behaviour Complaints Officer. Under Policy 1.1A: Code of Conduct Behaviour Complaints Management, the Behaviour Complaints Officer has the following functions:

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

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

Further to the above (page 11 of Policy 1.1A):

The Complaint Assessor will liaise with the Behaviour Complaints Officer (CEO) to include the Complaint Report in the Agenda for a meeting of the Complaints Committee. The Behaviour Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations

The Agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with s.5.23(2) of the Act.

CONSULTATION

Presiding Member, Cr Neville Clarke
Council Support Officer, Mrs Julie Klobas

STATUTORY CONTEXT

Local Government Act 1995

The Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act i.e. elected members only. No staff or external persons can be on the committee.

CORPORATE CONTEXT

Strategic Community Plan and Corporate Business Plan

STRATEGIC PRIORITIES	WE KNOW WE ARE SUCCEEDING WHEN
4. CIVIC LEADERSHIP	
4.3 Proactive and well governed Shire	Council is supported by a skilled team

Both the Behaviour Complaints Committee and the CEO must provide a process based on procedural fairness and natural justice.

Policy

As outlined in the background information and comments sections.

Risk Management

N/A – report is for information only

FINANCIAL IMPLICATIONS

Nil

VOTING REQUIREMENTS

Absolute majority required: No

Note

***This item was AMENDED during the course of the meeting.*

2304-02	Officer Recommendation / Committee Decision
----------------	--

Moved; Cr D Lovelock

Seconded: Cr S Woods

That the Behaviour Complaints Committee:

ACCEPTS the update by the Behaviour Complaints Officer (CEO) regarding the Committee's functions, roles and responsibilities.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

PUBLIC UNCONFIRMED MINUTES

7.2 Matters Behind Closed Doors

File reference	
Report date	11 April 2023
Applicant/proponent	CEO (Complaints Officer)
Officer disclosure of interest	Nil
Previous meeting references	BCC
Prepared by	Sean Fletcher, CEO
Authorised by	CEO
Attachments	
Attachment 1	Page
	Nil

PURPOSE

The purpose of this report is to close the meeting to the public so that the Behaviour Complaints Committee can consider the investigation reports into behavioural complaints BC 001/22 and BC 002/22.

BACKGROUND

In accordance with section 5.23(2)(b) and (f)(i) the meeting is required to be dealt with behind closed doors.

Both of these sections refer to the personal affairs of a person and that if a matter disclosed, will impair the effectiveness of any lawful process regarding the contravention, or possible contravention, of a law.

COMMENT

As per the purpose and background to this report.

CONSULTATION

Council Support Officer

STATUTORY CONTEXT

Local Government Act 1995

As per the background section in this report.

CORPORATE CONTEXT

Nil

FINANCIAL IMPLICATIONS

Nil

VOTING REQUIREMENTS

Absolute majority required: No

2304-03	Officer Recommendation / Committee Decision
----------------	--

Moved: Cr D Lovelock

Seconded: Cr S Woods

That the Behaviour Complaints Committee **CLOSES** the meeting to the public in accordance with sections 5.23(2)(b) and (f)(i) of the *Local Government Act 1995*:

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

Cr Kelly, Cr O'Brien and Members of the Public withdrew from the meeting at 2.19 pm.

2304-04	Committee Recommendation / Committee Decision
----------------	--

Moved: Cr N Clarke

Seconded: Cr S Woods

That the Committee **SUSPEND** standing orders at 2.22 pm to allow for open debate.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

PUBLIC UNCONFIRMED MINUTES

7.2.1 Confidential Item - Complaints BC-001/22

File reference	
Report date	11 April 2023
Applicant/proponent	CEO (Complaints Officer)
Officer disclosure of interest	Nil
Previous meeting references	Nil
Prepared by	Sean Fletcher, CEO
Authorised by	CEO
Attachments	

VOTING REQUIREMENTS

Absolute majority required: No

2304-05 Committee Decision**Moved: Cr S Woods****Seconded: Cr D Lovelock**

That the Committee, regarding BC-001/22, **TAKE NO FURTHER ACTION**, apart from notifying the complainant of the following Reasons that:

1. The Respondent acted reasonably in the circumstances they were faced with at the time, The Committee believes the Respondent treated the Complainant with professional courtesy and that the statement to the Complainant "You can now sit down, thank you" was an acceptable direction to a member of the public so as to bring the meeting back to order.
2. The Complainant has the right to know how their complaint has been dealt with, and that the respondent has been advised of their oversight to fully follow the Shire's Gazetted Meeting Procedures Local Law 2018, specifically in respect to clause 6.7 (8) (b) & (c).
3. The Complainant's concerns raised at the meeting were not dealt with at the meeting and so they should be given the opportunity now to put their concerns in writing so that they can be dealt with by the CEO.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

7.2.2 Confidential Item - Complaints BC-002/22

File reference	13.3.15
Report date	11 April 2023
Applicant/proponent	CEO (Complaints Officer)
Officer disclosure of interest	Nil
Previous meeting references	Nil
Prepared by	Sean Fletcher, CEO
Authorised by	CEO
Attachments	

VOTING REQUIREMENTS

Absolute majority required: No

2304-06 Committee Decision**Moved: Cr S Woods****Seconded: Cr D Lovelock**

That the meeting be **ADJOURNED** at 3.08 pm for a short break, with the Committee **RECONVENING** at 3.11pm with the CEO returning to Chambers at this time.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE**2304-07 Committee Decision****Moved: Cr S Woods****Seconded: Cr D Lovelock**

That the meeting be **ADJOURNED** for 5 minutes at 3.43 pm.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE**2304-08 Committee Decision****Moved: Cr D Lovelock****Seconded: Cr S Woods**

That the meeting **RESUME** at 3.53 pm, with the CEO returning to chambers at that time.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

The Council Support Officer withdrew from the meeting (via teleconference) at 4.19pm, returning via teleconference at 4.29pm.

The CEO withdrew from the meeting at 4.33pm returning at 4.39pm.

2203-09 Committee Decision**Moved: Cr D Lovelock****Seconded: Cr S Woods**That the Committee **MOVE** back into standing orders at 5.14pm**CARRIED BY UNANIMOUS DECISION OF COMMITTEE****2203-10 Committee Decision****Moved: Cr D Lovelock****Seconded: Cr S Woods**That the Committee **REGARDING** BC 002/22,

- 1 **ACKNOWLEDGES** the complaint regarding Clause 9(a) of Division 3 of the Code of Conduct (Policy 1.1 Code of Conduct for Council Members, Committee Members and Candidates), only as,
 - a. Clause 9(d) is applicable to Elected Members, Committee Members and Candidates and employees;
 - b. Clause 10(a) only applies to Council or Committee Meetings, not workshops.
- 2 Advises the Respondent that they need to fully follow the Shire of Victoria Plains Code of Conduct for Council Members, Committee Members and Candidates Policy 1.1, in particular, Clause 9(a).
- 3 In accordance with Clause 4.5 Plan Requirements of Policy 1.1A: Code of Conduct Behaviour Complaints Management, the proposed plan requires the Respondent to provide a written apology to the person affected regarding any harassment or bullying that may have been perceived at the Meeting on 18 August 2022 because of the Respondent's communication at that meeting. The Respondent will also undertake counselling through the Shire's service provider.
- 4 Advises the Complainant that the complaint has been acknowledged regarding Clause 9(a) and that the Respondent has been advised that they did not fully observe the Shire of Victoria Plains Code of Conduct for Council Members, Committee Members and Candidates Policy 1.1 -Clause 9(a).
- 5 The proposed plan in Point 3 must be issued to the Respondent for oral or written submissions.
- 6 Once the submission(s) referred to in Point 5 has been received from the Respondent, the Committee is to monitor the status of compliance with the plan, accordingly.

Reasons

- 1 The Respondent's conduct towards the person could be considered harassing and bullying and a breach of the Shire's Code of Conduct for Council Members, Committee Members and Candidates Policy 1.1. The Respondent should have left it to the Presiding Officer to control the meeting and should not have responded directly to the person affected in the manner that they did.
- 2 The Complainant has the right to know how their complaint has been dealt with and that the respondent has been advised of the need to fully follow the Shire's Code of Conduct for Council Members, Committee Members and Candidates Policy 1.1.
- 3 Volunteers should be reassured that when participating in future Shire functions, such as the Fire Brigade Workshops of 11 and 18 of August 2022, that meetings will be left in the control of the Chairperson and not overridden by Elected Members of the Council.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

2203-11 Committee Recommendation

Moved: Cr S Woods

Seconded: Cr D Lovelock

That the Committee **RE-OPEN** the meeting to the public at 5.14pm.

CARRIED BY UNANIMOUS DECISION OF COMMITTEE

As there were no Members of the Public present, the Resolutions were taken as being Read Aloud by the Presiding Member.

8. CLOSURE OF MEETING

There being no further business, the Presiding Member declared the meeting closed at 5.22 pm.

CERTIFICATION

These minutes were confirmed at the Behaviour Complaints Committee Meeting held on _____ 2023.

Signed _____ Date _____
(Presiding member at the meeting which confirmed the minutes)

Council Minutes are unconfirmed until they have been adopted at the following meeting of Council.