

## GENERAL COMPLAINTS PROCESS

### 1. Title and authorisation

This is the General Complaints Process (the complaints process) of the Esk Shire Council (the council).

The complaints process is made under the *Local Government Act 1993* (the Act) and includes the elements required by Chapter 6, Part 5 of the Act to be included in the council's General Complaints Process.

### 2. Effective date

The complaints process applies from 22 February 2005 being the date of the council resolution of adoption.

### 3. Amendment of the complaints process

Any amendment of the complaints process must be approved by resolution of the council.

### 4. Scope of the complaints process

The complaints process has been established for resolving complaints by affected persons about administrative action of the council or an alleged minor breach by a councillor of the council's *Code of Conduct for Councillors*. However, the complaints process does not apply to a complaint-

- that could be made under Chapter 11 of the Act about competitive neutrality issues;
- about official misconduct that should be directed to the Crime and Misconduct Commission;
- made under the Whistleblowers Protection Act 1994; or
- about a meeting breach, a repeat breach or a statutory breach under the Code of Conduct for Councillors.

This policy excludes:

1. Requests for service
2. Enquiries
3. Suggestions
4. Actions and decisions taken under legislation which provide for separate avenues of appeal, such as decisions made under the Integrated Planning Act 1997, prosecutions made under Local Laws that are appealable to a Magistrates Court and decisions under the Building Act, unless the complaint relates to administrative actions associated with the action or decision.

These also include objections to rating categorisation and complaints about unimproved capital valuations or land use assessments issued by the State.

5. The existence of or contents of any Council-adopted document including any resolution, the corporate plan, Council's planning scheme, operational plan, budget, any Council policy, schedule of regulatory charges or other such document. It is not intended that any administrative action based on a Council officer's interpretation of a Council adopted document should be excluded from this policy.
6. The existence of or contents of any local law or subordinate local law.
7. The existence of or contents of any State, Commonwealth or other binding law or guidelines issued by a relevant authority such as the State Government Pensioner Rate Subsidy Scheme that are not in Council's control.
8. Any other matter that is not in Council's control, such as the condition of an asset that is not owned or controlled by Council or the conduct of any person over which Council has no reasonable control. Neighbourhood disputes about dividing fences between private neighbours for example are not within Council's jurisdiction to determine.
9. Contractual disputes involving Council for which a common law remedy may be available.

## **5. Objectives**

The complaints process is established with the following objectives:

- The fair, efficient and consistent treatment of complaints about decisions and other administrative actions of the council and complaints about minor breaches.
- A complaints process that is easy to understand and is readily accessible to all.
- Detection and rectification, where appropriate, of administrative errors.
- Identification of areas for improvement in the council's administrative practices.
- Increase in awareness of the complaints process for the council's staff and the community.
- Enhancement of the community's confidence in the complaints process and of the reputation of the council as being accountable and transparent.
- Building the capacity of staff to effectively manage complaints in an environment of continuous improvement.

## **6. Policy commitment**

The council intends to provide a level of customer service that does not attract complaints, but acknowledges the right of persons to provide feedback, both positive and negative, on its services and/or to lodge a complaint about a decision or other action it takes.

The complaints process has been instituted to ensure that, to the greatest practical extent, any complaint is dealt with fairly, promptly, professionally, in confidence (subject to any legal requirements) and in a manner respectful to the complainant.

The Council commits to providing adequate resources and trained officers to deal with complaints and to record and analyse complaints data.

To this end, the council will endeavour to ensure that:

- Anyone who is dissatisfied about a decision or other action of the council, a council officer or a councillor can easily and simply lodge a complaint.
- Complainants are provided with information on the complaints process and, if necessary, assistance to make their complaint.
- Each complaint is initially assessed in terms of its seriousness, safety implications, complexity and degree of urgency.
- Council officers will receive complaints in a professional manner and welcome valid feedback as an opportunity for improvement of the council's administrative practices.
- Complaints are responded to as quickly as possible and in accordance with the timeframes set out in the complaints process.
- Complainants will not suffer any reprisal from council or its officers for making a complaint.
- Complaints are properly monitored with a view to continuous improvement of the council's business processes.
- If a complainant is not satisfied that a complaint has been satisfactorily resolved, he/she will be informed of any statutory right of review and, if they request, be provided with details of any further review mechanism that is available.

## **7. Definitions**

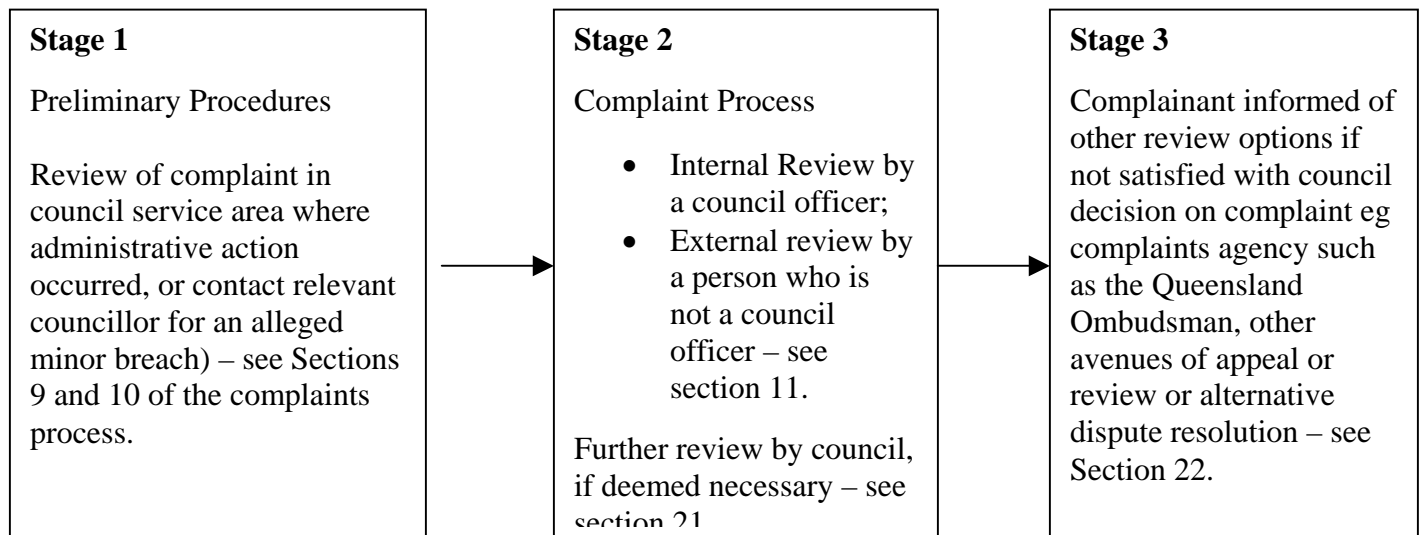
Terms used in the complaints process have the following meanings:

- *administrative action* – an administrative action of the council, being an action about a matter of administration, including each of the following-
  - (a) a decision and an act;
  - (b) a failure to make a decision or do an act, including a failure to provide written reasons for a decision;
  - (c) the formulation of a proposal or intention;
  - (d) the making of a recommendation.
- *affected person* – a person who is apparently directly affected by–
  - (a) an administrative action; or

- (b) an alleged minor breach.
- *CEO* – the chief executive officer of the council.
- *complainant* – the affected person or organisation making a complaint.
- *complaint* – an expression of dissatisfaction by a person regarding-
  - (a) a decision or other action of the council; or
  - (b) an alleged minor breach.
- *council* – Esk Shire Council.
- *council officer* – includes a permanent, temporary, casual or contract member on the council’s staff.
- *Manager* – a council manager who is generally responsible for various functions of the council and who reports directly to the CEO.
- *Executive Management Team (EMT)* – the CEO and all managers (*to vary according to the arrangements the council has in place for its management team*).
- *General Complaints Process* – the statutory complaints process described in Chapter 6, Part 5 of the Act (the complaints process).
- *minor breach* – a minor breach by a councillor of the council’s *Code of Conduct for Councillors*.
- *request for service* – a request for the council to take action to satisfy the needs of a customer or ratepayer. This may be of a physical nature, such as a request to fill a pothole or to collect a stray dog, or a request for information.
- the Act – *Local Government Act 1993*.

## **8. Complaint handling framework**

The following framework describes the model adopted by the council for handling complaints:



## STAGE 1 – PRELIMINARY PROCEDURES

### 9. Preliminary procedures before a complainant can make a complaint

This section applies if a person makes a complaint about an administrative action of the council or a minor breach.

When a person makes a complaint without having contacted the relevant service area of the council (or the councillor in question in the case of a minor breach) to try to resolve the complaint, the person may be required to take this initial step before the complaint will be registered and dealt with under the complaints process.

If the complaint is not resolved by the relevant service area or with the relevant councillor, the complaint will be dealt with in accordance with the complaints process.

Compliance with this section is not a pre-requisite to the submission of a formal written complaint under the complaints process where it is clear on the face of the document that a complaint has been made. In those circumstances the complaint will be dealt with under the complaints process, unless it is earlier resolved to the complainant's satisfaction or is withdrawn by the complainant.

### 10. The way a complainant may make a complaint

All complaints must be in writing and be signed by the complainant.

The complainant's contact details should be identified so the council can contact the complainant as required by the Act<sup>1</sup>.

<sup>1</sup> Anonymous complaints will not be dealt with under the complaints process. They may be dealt with under another administrative process.

All written complaints will be referred to the CEO, or delegate, who will arrange for the complaint details to be recorded in the Complaint Register.

If necessary, assistance may be provided by a council officer to a complainant on how to make a complaint, including how it should be documented. The aim is to clarify the matter of concern to the complainant and the outcome/s sought.

If a complainant requires interpreter services, or has special needs, the complainant will be referred to the appropriate council officer who will provide advice or arrange for the giving of assistance, to the extent practicable.

### **Complaints by agents**

If a complaint is lodged on behalf of a person by a professional advisor *eg* a solicitor or accountant, the council will respond direct to that advisor.

A complaint lodged by a person as agent for an affected person will be responded to direct to the affected person and not to the agent, unless a letter of authority is provided indicating the agent is acting on behalf of the affected person and the council considers that the appointment as agent has been validly made.

## **STAGE 2 – COMPLAINT PROCESS**

### **11. Process for selecting and appointing a complaints officer to investigate complaints**

The council, by resolution, may–

- (a) select and appoint the CEO as a complaints officer for the internal review of any complaint, subject to s.501E(2) of the Act;
- (b) delegate to the CEO the power to select and appoint a person or persons to be a complaints officer to investigate complaints.

The CEO may delegate his/her powers under (b) to another employee of the council under s.1132 of the Act.

The investigation is to be undertaken either by way of internal review or external review. Relevant criteria to be applied in making the decision about the method of review are:

#### ***Internal review***

An internal review of a complaint will be conducted where the administrative action in question was undertaken by a council officer. The review will be conducted by the CEO, or an officer appointed by the CEO or the CEO's delegate, as the complaints officer for the complaint.

The complaints officer must not be less senior than the officer who took the administrative action that is being reviewed.

### ***External review***

An external review of a complaint will be conducted where the administrative action in question was taken by-

- (a) the council, or a committee of the council, at a meeting;
- (b) the mayor or the chairman of a standing committee acting under statutory or delegated authority;
- (c) the CEO; or
- (d) a council officer and the requirement that an internal review be conducted by a council officer who is no less senior than the officer who took the administrative action cannot be met (for whatever reason).

External review will also be conducted for a complaint about a minor breach.

### ***Appointment of reviewer***

The CEO, or delegate, will-

- assess the nature of the complaint and determine whether the complaint is to be investigated by means of internal review or external review;
- based on the review criteria, appoint a suitable person as the complaints officer for the complaint from a panel established by the CEO for that purpose; and
- stipulate the date by which the complaints officer must complete the report on the investigation if the complaint is not resolved earlier to the complainant's satisfaction or is withdrawn by the complainant.

The person appointed as a complaints officer for a complaint must have the appropriate knowledge, qualifications, skill and experience, including the relevant investigative, analytical and report-writing skills, to conduct an investigation into the complaint, make findings, formulate recommendations (where appropriate) and prepare a report on the outcome of the investigation for consideration by the council or its delegate.

The complaints officer appointed to investigate a complaint by way of internal or external review must not have been involved with the administrative action or alleged minor breach in question.

## **12. Sending complaints to, and their investigation by, the complaints officer**

The CEO, or officer authorised by the CEO (“authorised officer”), after the oral or written complaint has been recorded, will arrange for the complaint and other materials, including relevant documents from the council’s records, to be forwarded to the complaints officer for assessment of the complaint as soon as practicable after the officer’s appointment.

The timeframe for dealing with a complaint will depend on an assessment of the following factors by the CEO or authorised officer-

- the urgency of the situation in terms of loss or damage likely to be suffered if the complaint is not quickly resolved;
- the likelihood that the complaint can be quickly resolved;
- the complexity of the complaint issue/s;
- whether the complaint requires internal review or external review in accordance with the criteria for the selection of a complaints officer for the complaint as set out in the complaints process.

In general terms, the council will endeavour to meet to the following timeframes for dealing with a complaint-

- for urgent matters—within (14) days;
- for non-urgent complaints that are not considered to be complex or where the complaint is to be investigated under the internal review mechanism—within (30) days;
- for complex complaints or where the complaint is to be investigated under the external review mechanism—within (45) days.

The complaints officer will acknowledge receipt of the complaint and any other material, indicating the date of receipt.

If a complaint is resolved to the complainant’s satisfaction before it is sent to a complaints officer for investigation, notice that the complaint has been resolved may be given to the complainant in the same medium by which the complaint was initially made *eg* an oral response may be given to a complaint that was made orally.

However, the council may give a formal written response to a complaint irrespective of the medium by which the complaint was made. The council will make a record of any oral advice given to a complainant that the complaint has been resolved.

As a condition of appointment, an external reviewer will be required, when forwarding his/her investigation report to the CEO, to return all records and documents relating to the investigation.



The timeframe for dealing with a complaint is measured from the date of receipt of a complaint to the date the complainant is informed of the outcome of the complaint.

### **13. Opportunity for complainant to provide further information about the complaint**

The complaints officer will invite the complainant to provide further information after the initial assessment of the complaint material to assist in fully understanding the complainant's concerns, the issue/s to be investigated (if an investigation is to be undertaken) and the outcome or remedy sought by the complainant.

Seeking further information from the complainant at this stage of the complaints process may be undertaken by informal means such as telephone, e-mail or face-to-face discussion. The complaints officer will record a fair summary of any oral information received and will confirm with the complainant in an appropriate manner that the summary accurately reflects the information provided by the complainant.

The complaints officer will attempt to resolve the complaint informally, for example, by providing an explanation for the council's or the councillor's action in the particular case. A complaint may be resolved or withdrawn by the complainant at any time during the complaints process. A complaint is taken to be resolved to the complainant's satisfaction, or is taken to be withdrawn, if the complainant gives a clear indication to that effect to the complaints officer. Written notice that the complaint has been resolved, and the general manner in which it was resolved, will be given to both the council and the complainant.

If in the opinion of the complaints officer, resolution of a complaint about an administrative action merely involves rectification of an obvious error or a remedy of a similar nature, the complaints officer will discuss the issue with the relevant council officer with a view to resolving the complaint.

### **14. Grounds for refusal to investigate complaint**

In assessing a complaint (including any further information provided by the complainant) the complaints officer will consider whether there is a statutory ground on which the complaint may be refused. The complaints officer may refuse to investigate a complaint or, having started to investigate a complaint, refuse to continue the investigation if the officer reasonably considers that-

- (a) the complaint is trivial; or
- (b) the complaint concerns frivolous matter or was made vexatiously; or
- (c) the complainant does not have a sufficient direct interest in the administrative action or alleged minor breach the subject of the complaint; or
- (d) both of the following apply-
  - (i) the complainant has a right of appeal, reference or review, or another remedy, that the person has not exhausted;

(ii) it would be reasonable in the circumstances to require the complainant to exhaust the right or remedy before the officer investigates, or continues to investigate, the complaint;

(e) in the circumstances, investigating the complaint is unnecessary or unjustifiable.

A right or remedy mentioned in paragraph (d) does not include a right to make an application to the Supreme Court under the *Judicial Review Act 1991*.

The complaints officer will give both the council and the complainant written notice of a decision made by the officer to refuse to investigate the complaint, or to continue the investigation, and the reasons for the decision.

## **15. Investigating a complaint**

The investigation of a complaint will be undertaken by the complaints officer in an independent, impartial and objective manner. A complaints officer may, if the officer considers appropriate in the circumstances, undertake mediation between the parties with a view to resolving a complaint, but will not act as an advocate for either the complainant or the council or for any council officer or councillor the subject of the complaint.

The investigation of a complaint will typically involve the following stages-

- preparation of an action plan for conducting the investigation;
- information gathering, including discussions and interviews with the complainant, council personnel and third parties (where relevant) and examining relevant laws and council policies and procedures;
- analysis of all relevant information obtained;
- formulation of findings and any recommendations for the council's consideration;
- preparation of a report on the results of the investigation or the outcome of the complaint if it was resolved during the complaints process or was withdrawn by the complainant.

The complaints officer will adhere to the following principles when conducting an investigation of a complaint:

- Procedural fairness/natural justice;
- Establishment and maintenance of a complete document trail (to facilitate any subsequent review that may be undertaken of the investigation conducted by the complaints officer);

- Council and other policies are designed for administrative guidance only, and should not be rigidly applied irrespective of the merits of a particular case. An administrative policy may be departed from if the merits of a particular case warrant that course of action.
- Lawfulness of a particular action is not necessarily decisive of the issue in dispute. The complaints officer will also assess whether the action was unfair, unreasonable or wrong.
- The civil standard of proof applies for administrative investigations. This means that allegations have to be established on the balance of probabilities – that is, it must be more probable than not that the allegation is made out.
- Confidentiality about the investigation must be maintained to the extent that it can reasonably be achieved, subject to other legal requirements about the disclosure of information.

## **16. Obligation of complaints officer on completion of investigation**

If a complaint is not resolved during the investigation process to the satisfaction of the complainant or is not withdrawn by the complainant, the complaints officer will give the council and the complainant a written report on the results of the investigation and any recommendations.

The report will typically address the following matters to the extent each matter is relevant in the particular case-

- the complaint issue/s;
- a concise summary of the material facts and circumstances of the matter;
- any relevant legislation;
- any relevant council or other policy;
- persons interviewed and/or consulted and relevant information obtained during any interviews and consultations;
- results of any relevant research;
- analysis of complaint issues to the extent necessary;
- findings on material questions of fact and law;
- whether the complaint is sustained and reasons for that finding;

- if the complaint is sustained, any recommendation/s to the council to redress the complainant's grievance, whether by way of benefit to the complainant and other affected persons (if any) and/or systemic improvements to the council's administrative practice with a view to preventing a recurrence of similar complaints.

The report will contain any recommendations that the complaints officer considers to be appropriate in the circumstances. In some cases, it will be appropriate to make a recommendation for procedural improvement even where the complaint has not been sustained. A recommendation may relate to-

- a specific remedy or remedies that is/are available under section 17 to redress the complainant's grievance; and/or
- the proposed amendment of a relevant council policy, procedure or practice to address any systemic issue raised by the complaint with a view to preventing similar complaints in the future.

## **17. Remedies**

The council has adopted a range of remedies for addressing administrative actions that it considers to be unfair or wrong. Remedies include, but are not limited to-

- an explanation for the action in question
- an admission of fault
- an apology
- revocation or amendment of the decision
- rectification, including repairing or replacing the matter in dispute
- revision of relevant policy, procedure or practice
- provision of technical assistance
- reimbursement of costs incurred as a result of the action in question
- financial compensation, including an *ex-gratia* payment
- waiver of debt.

More than one remedy may be applied in the particular case if the circumstances justify that course of action.

One or more of the above remedies may also be applicable where the council decides that a councillor has committed a minor breach, in addition to any penalty imposed by the council by resolution under s.250X of the Act.

## **18. Consideration of report by council**

### ***Report about an administrative action***

A complaints officer's report prepared under section 16 of the complaints process, including any recommendation(s), on a complaint about an administrative action will be considered-

- (a) by the council by resolution if the administrative action in question was taken by-
  - (i) the council, or a committee of the council, at a meeting;
  - (ii) the mayor or the chairman of a standing committee acting under statutory or delegated authority;
  - (iii) the CEO; or
  - (iv) another council officer where the requirement that the complaints officer be no less senior than the officer who took the administrative action, cannot be met;
- (b) by the CEO under delegated authority if the administrative action in question was taken by a senior officer who reports directly to the CEO;
- (c) by another council officer under delegated authority if the administrative action in question was taken by a council officer who is not more senior than the delegate.<sup>2</sup>

A council officer exercising delegated authority to deal with the complaint, by accepting or rejecting the findings of the complaints officer, has authority to provide any lawful remedy for the complainant that is available under section 17 of the complaints process, irrespective of whether the remedy has been recommended by the complaints officer.

Where the complaints officer's report includes a recommendation that a suitable policy be made to address the complaint issue, or an existing policy be appropriately amended, the recommendation will be referred to the council for consideration by resolution.

### ***Report about a minor breach***

If a complaints officer who investigated a complaint about a minor breach gives a report to the local government stating that the complaint has not been resolved through the complaints process, the report will be dealt with by the council by resolution under s.250S of the Act.

When the council considers a report, it must-

- (a) decide by resolution under s.250S(2) to take no further action in relation to the complaint if satisfied the complaint concerns frivolous matter or was made vexatiously; or
- (b) having regard to the complaints officer's report about the matter, decide whether the councillor in question has committed the alleged minor breach.

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<sup>2</sup> Note – a specific delegation will be required if it is desired to proceed under (b) or (c).

In deciding whether the councillor has committed a minor breach, the council must comply with the principles of natural justice and, at the least, afford the councillor an opportunity to make a submission on whether the breach was committed. If the council decides the councillor committed the minor breach it must then give the councillor an opportunity to make a further submission on whether a penalty should be imposed and the nature of that penalty, being one of the actions that may be taken under s.250S(4), namely-

- (a) take no further action in respect of the breach;
- (b) by resolution, impose a penalty on the councillor under s.250X of the Act;
- (c) if it considers the breach may be a repeat breach of the *Code of Conduct for Councillors*—refer a complaint about the repeat breach to its conduct review panel for review.

If the council is of the view that a complaint about a minor breach was frivolous or made vexatiously, it may give notice to the complainant under s.250ZJ(1) of the Act that if the complainant makes the same (or substantially the same) complaint, he/she commits an offence for which the maximum penalty is 20 penalty units (\$1,500).

### **19. Notice to complainant about outcome of complaint**

Written notice of the outcome of a complaint will be given to the complainant following the council's consideration of, and decision on, the complaints officer's report and recommendations (if any).

The notice to the complainant will generally include the following advice-

- whether the complaint is sustained;
- if the complaint is not sustained, the reasons for the decision;
- if the complaint is sustained-
  - any remedy to be made available to the complainant;
  - if applicable, the circumstances and timeframe in which the remedy will be made available; and/or
  - whether the investigation identified the need to revise council policy, procedure or practice to prevent similar complaints arising, details of the proposed revision and the timeframe for implementation.

### **20. Implementation of remedy, etc**

The council, through the CEO or delegate, will take action in a timely manner to implement any remedy to be made available to a complainant and/or any revision of its policy, practice or procedure.

## **21. Council review if complainant dissatisfied with outcome of complaint**

If a complainant is dissatisfied with the outcome of the consideration of the complaints officer's report and any recommendation, the complainant may request a review of the decision on the complaint. The complainant may submit new information with the request for review and seek reconsideration of the complaint on the basis of the new information or on any other basis.

The council will-

- undertake the review as requested and advise the complainant accordingly; or
- decline the review on the basis that the complainant has not provided any reasonable basis for the review.

Any review undertaken will generally be in accordance with the complaints process. The reviewer will be independent of the original decision maker and the complaints officer.

## **STAGE 3 – REVIEW BY OMBUDSMAN OR OTHER COMPLAINTS ENTITIES**

### **22. Review by other complaints entities**

If the council decides not to undertake a review, it will inform the complainant that a complaint may be lodged with the Queensland Ombudsman or other relevant complaint entity (giving contact details).

## **COMPLAINTS MANAGEMENT SYSTEM**

### **23. Reporting**

Details about complaints concerning administrative actions and alleged breaches of the council's *Code of Conduct for Councillors* will be provided in the council's annual report, as required by s.534(n) of the Act.

### **24. Responsibility of officers**

#### ***Executive Management Team***

The Executive Management Team will-

- (a) encourage excellence in customer service by council officers;
- (b) ensure that all council officers are aware of and implement the complaints process in the manner intended by the council;
- (c) foster an environment where complaints management is the responsibility of all council officers; and

- (d) ensure any necessary staff training is provided *eg* on the complaints process, conducting an investigation of a complaint, conflict management, customer service skills.

### ***Managers***

Each manager will ensure that-

- (a) all council officers under the manager's management and control are aware of their role in customer service and responsibility for complaint management; and
- (b) service standards are met.

### ***Council officers***

All council officers-

- (a) are required to observe the complaints process; and
- (b) wherever appropriate, attempt to resolve a complaint before it is referred for attention under the complaints process.

## **25. Related policies or procedures**

All council policies and procedures must be taken into consideration when considering or investigating a complaint under the complaints process.

## **26. Evaluation and review of the complaints process**

Every three (3) years the council will conduct a review audit of the complaints process.

The review audit will evaluate the performance of the complaints process and will consider the following aspects, where necessary:

- Accessibility – whether the complaint process is readily available to members of the community and is user-friendly.
- Timeliness – whether timelines for responding to complaints have been met and, if not, remedial action proposed.
- Satisfaction – as evidenced by any complaint about the complaints process.
- Compliance – by considering reports on the operation of the complaints process.

The complaints process will be amended in terms of any adopted recommendation arising from the review.



## **27. Communication**

The council will take appropriate steps to publicise the complaints process. For example, the council will place this document on its website and include training on the complaints process in the induction process for new employees and in other appropriate staff training forums.