

TENTERFIELD SHIRE COUNCIL

POLICY STATEMENT

HEADING:

Complaints and Unreasonable Conduct Policy

MEETING ADOPTED AND RESOLUTION NO.:

**23 August 2017
168/17**

HISTORY OF DOCUMENT PREVIOUSLY ADOPTED:

26 September 2012	384/12
28 March 2007	137/07
26 February 2014	23/14

1. INTRODUCTION

A complaint handling system is an organised way of responding to, recording, reporting and using complaints to improve service to the community. It includes procedures for people to make complaints and guidelines for staff to resolve complaints, and provides information to managers and staff that can assist them to prevent public dissatisfaction in the future.

An effective complaints handling system is an essential part of providing quality service. It is a measure of "customer" satisfaction. It provides positive feedback about aspects of the service that work well, and is a useful source of information for improvement.

An effective complaints system will benefit the council in four important ways:

- Creating a second chance to provide service and satisfaction to dissatisfied members of the public;
- Identifying areas that need improvement;
- Providing opportunities to strengthen public support for the Council, and
- Assisting in planning and allocation of resources.

A Complaints handling system should also inform the Community of what is considered Unreasonable Conduct. A small percentage of people will phone, correspond with or complain to Council in a way that could reasonably be described as persistent, harassing or repetitious. This correspondence from a minority of individuals takes up a disproportionate amount of resource and can result in unacceptable stress for staff. This Policy includes a section on what constitutes Unreasonable Conduct.

Complaints and (accolades) are welcome feedback by Council to assist in the planning process and the improvement of Council's systems, procedures and policies.

2. DEFINITION OF A COMPLAINT

A complaint is an expression of dissatisfaction with the Council's level and quality of service or policies or procedures. Dissatisfaction may arise from the service provided by

Council staff, Councillors, volunteers, contractors and systems or from the impact of a particular policy and procedure.

On its own, a request for a council service or the exercise by a council of its regulatory functions is not a complaint about a Council. Accordingly a Council's definition of what constitutes a complaint should not be so broad as to include such requests.

A valid complaint is one where **Council would appear to have failed** to respond appropriately to a request for service or a report and **does not** include:-

- A request for services;
- Reports of damage or faulty infrastructure (e.g. road pothole);
- Reports of hazards (e.g. fallen tree branch);
- Reports concerning neighbours or neighbouring property (e.g. noise or unauthorised building works);
- A request for information or explanation of policies or procedures or decisions of Council; and
- The lodging of an appeal in accordance with procedure or policy.

3. LODGING A COMPLAINT

Complaints may be lodged with Council:-

- in person; or by
- telephone;
- facsimile;
- email;
- letter.

They should detail the name, address and contact phone numbers of the complainant together with a description of the problem and desired outcome.

Complaints about a staff member, contractor, volunteer or Councillor will only be accepted in writing and may need to be referred to Council's Code of Conduct procedures.

Any Councillor in receipt of a complaint must refer the matter directly to the General Manager.

3.1 The Public Officer

Council's Public Officer is charged with the responsibility of dealing with complaints from the public concerning Council's affairs. Council's Director of Corporate Services holds the position of Public Officer and can be contacted at Council's Rouse Street Administration Office on (02) 6736 6000.

Should the Public Officer determine that a complaint will not be investigated, the complainant will be advised of the reason for this decision.

3.2 Anonymous Complaints

The General Manager or the Public Officer will determine whether an anonymous complaint will be investigated dependent upon the seriousness of the complaint and provided there is sufficient information in the complaint to enable an investigation to be conducted, or whether there is a statutory requirement for identification of the complainant.

3.3 Serious Complaints

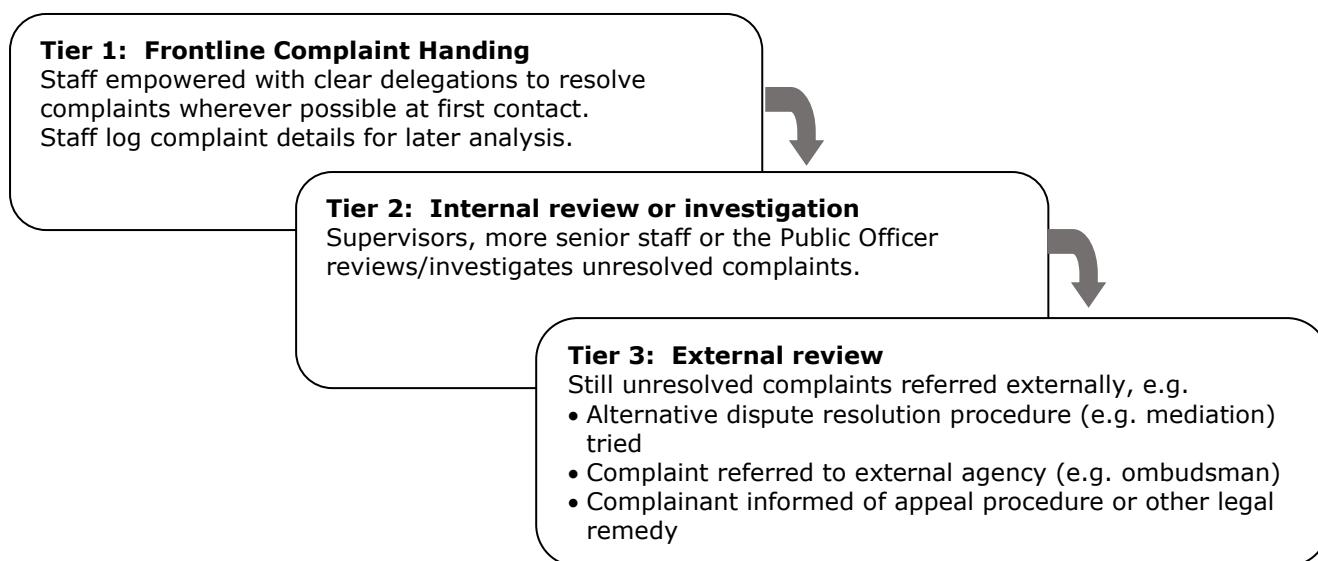
All complaints, including those received verbally or anonymously, alleging corrupt conduct, pecuniary interest breaches, improper use of position, criminal action or maladministration are to be referred immediately to the General Manager. If the allegation relates to the General Manager, the matter must be reported to the Mayor. Complaints of this nature will be dealt with in accordance with Council's Code of Conduct.

3.4 Confidentiality

Council will not disclose the identity of a complainant should the complainant request their details remain confidential.

4. COMPLAINT HANDLING PROCESS

Council has implemented a tiered or staged approach to complaint handling. The model looks like this:



4.1 First-tier

Registration and attempted resolution by frontline staff or referral to an appropriate person or agency to deal with (e.g. code of conduct issues, protected disclosures, allegations of corrupt conduct).

4.2 Second-tier

If a complainant is still dissatisfied, his or her complaint is reviewed or investigated by someone who is more senior, and the results of the review should be reported to the complainant. If the complainant remains dissatisfied, further consideration should be

given to options that may be available to achieve a settlement. This may include conciliation, mediation, or further direct negotiations over remedying the grievance.

4.3 Third-tier

If the complaint cannot be resolved within the Council, the complainant is referred to an outside agency such as the NSW Ombudsman, the Department of Local Government or to some alternative dispute resolution procedure or, as a last resort, any legal remedy.

NSW OMBUDSMAN

Business hours: Monday to Friday 9am – 5pm

Contacts Phone: 02 9286 1000 Toll free (outside Sydney metro): 1800 451 524

Complaints: [ONLINE COMPLAINT FORM](#)

Web: www.ombo.nsw.gov.au Email: nswombo@ombo.nsw.gov.au

DIVISION OF LOCAL GOVERNMENT

Phone: 02 4428 4100 Fax: 02 4428 4199 TTY: 02 4428 4209

Email: dlg@dlg.nsw.gov.au Address: Locked Bag 3015 NOWRA NSW 2541

4.4 Complaints and Correspondence that will not be investigated

The Public Officer or the General Manager may determine that a complaint will not be investigated where that complaint:

- Is considered frivolous or not made in good faith, or concerns a trivial matter;
- Involves a matter where an adequate remedy or right of appeal already exists, whether or not the complainant uses the remedy or right of appeal;
- Relates to a decision of Council;
- Relates to conduct before a court, coroner or tribunal;
- Relates to matters under investigation by the Minister for Local Government, ICAC, the NSW Ombudsman's office, a Minister of the Crown or government department or the NSW Police Service;
- Relates to the appointment or dismissal of any employee or an industrial or disciplinary issue;
- Relates to a decision, recommendation, or omission which is more than one year old;
- Relates to a matter awaiting determination by the Council;
- Relates to the actions or conduct of private individuals;
- Relates to hearsay or where the basis of complaint cannot be validated;
- Relates to a matter where there is insufficient information available; or
- Involves a matter where the complainant declines or refuses to provide further information and/or there are threats made against Council.

Should it be determined that a complaint will not be investigated, the complainant will be advised of the reason for this decision.

The Public Officer may impose specific limits for unreasonable complainants and will determine the decision in accordance with the guidelines set out by the NSW

Ombudsman in the "Good Conduct and Administration Practice: Guidelines for State and Local Government" for the placing of limits on contact between the organisation and members of the public.

5. UNREASONABLE CONDUCT - PHONE AND CORRESPONDENCE

A small percentage of people will phone, correspond with or complain to Council in a way that could reasonably be described as persistent, harassing or repetitious. This behaviour from a minority of individuals takes up a disproportionate amount of resources, disrupts essential Council operations and can result in unacceptable stress for staff.

This procedure is designed to address unreasonable phone calls and correspondence that may or may not necessarily be a complaint. It will assist Council to manage inappropriately demanding or unreasonable behaviour from correspondents or complainants.

It is important that the use of this procedure does not prevent people from freedom of expression to the extent that it is legally permitted. It is designed to ensure that freedom of expression is protected while ensuring that scarce resources are used fairly, efficiently and effectively, and that staff receive a reasonable degree of protection from the stress that can be caused by vexatious correspondence and complaints.

In accordance with the *NSW Ombudsman Good Conduct and Administrative Practice Guidelines (2nd Edition)*, *Complaints found to be made vexatiously*: on some occasions, the agency may find that the allegations are not supported by any evidence or that there is evidence to suggest that the complaint was made vexatiously — that is, primarily for the purpose of causing annoyance. In these cases the agency is generally justified in dismissing the complaint because it has no substance. The complainant should be advised that no evidence was found to support the allegations. However, the agency should freshly assess any further correspondence from the same person to determine if they have any substance where they contain additional, relevant information.

This Policy is not designed to address violent or threatening behaviour which needs an urgent response and relates to Work Health and Safety.

5.1 Defining unreasonable phone conduct, correspondence or complaints

Unreasonable or persistent phone calls, complaints and correspondence (or as contained within submissions) for the purpose of this Policy are characterised in the following ways:

- a) Behaviour which is **persistent, harassing, prolific, repetitious** and/or;
- b) Displays an insistence on pursuing unmeritorious issues and/or unrealistic outcomes beyond reason and/or;
- c) Displays an inability to accept reasonable and logical explanations including final decisions and/or;
- d) Displays an insistence upon pursuing meritorious complaints or issues in an unreasonable manner, including unreasonable demands regarding Council's operations or outcomes and/or;

- e) A "scatter gun" approach, with copies of letters being sent to several recipients on a regular basis, often including the media, the Councillors and/ or Members of Parliament.
- f) Repeated and/or frequent requests for information, but not those requests that are made under the access to information legislation.

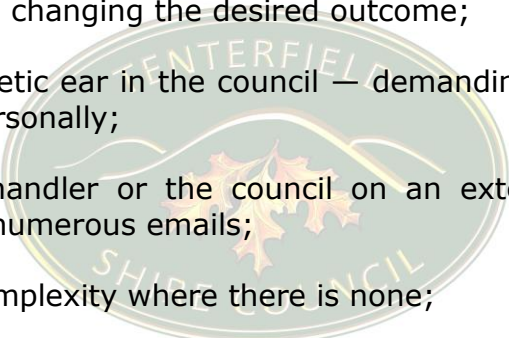
Council staff will also refer to the Practice Note No. 9 "Complaints handling in Council's" section 10 when dealing with Unreasonable Conduct which includes the NSW Ombudsman inventory of specific unreasonable behaviours. These are:

5.2 Unreasonable Persistence

- Persisting with a complaint even though it has been comprehensively considered by the council, and even where all avenues of internal review have been exhausted;
- Reframing a complaint in an attempt to get it taken up again;
- Showing an inability to accept the final decision;
- Persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly;
- Demanding a review because it is available but not arguing a case for a review;

5.3 Unreasonable Demands

- Insisting on outcomes that are unattainable, (eg demanding outcomes that are beyond a council's power to deliver, demanding unreasonable outcomes, wanting to turn back time, unreasonable prosecution of individuals);
- Insisting on a 'moral' outcome, (eg. justice in the community interest, when really a personal interest is at stake);
- Demanding an apology and/or compensation when no reasonable basis for expecting such outcomes exists;
- Wanting revenge, retribution;
- Wanting what is not possible or appropriate, (eg. copies of sensitive documents, private contact details of staff, other complainants etc);
- Issuing instructions and making demands as to how a complaint should be handled;
- Making unreasonable resource demands, expecting resources in excess of or out of proportion to the seriousness of issue;
- Wanting regular and lengthy phone contact where this is not warranted;
- Showing reactions or demands for action that are out of proportion to the significance of the issue;

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- Moving the goal posts — changing the desired outcome;
 - Shopping for a sympathetic ear in the council — demanding to talk to a supervisor or the general manager personally;
 - Placing the complaint handler or the council on an extensive email copy list and expecting responses to numerous emails;
 - Consistently creating complexity where there is none;
 - Presenting as overly needy or dependent.

5.4 Unreasonable lack of cooperation

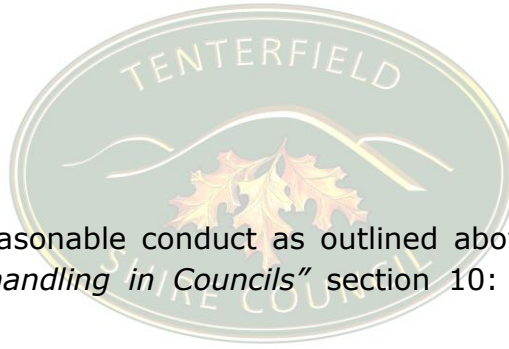
- Presenting a large quantity of information which is not organised, sorted, classified or summarised, where the complainant is clearly capable of doing this;
- Presenting information in dribs and drabs — refusing to present all available information at the outset;
- Focusing on ‘principles’ rather than substantive issues;
- Changing the complaint, raising new issues in the process of the council’s consideration of it;
- Displaying unhelpful behaviour, (eg. withholding information, dishonesty, misquoting others, swamping council with documents).

5.5 Unreasonable Arguments

- Holding irrational beliefs, (eg. seeing cause and effect links where there are clearly none);
- Holding what is clearly a conspiracy theory unsupported by any evidence;
- Insisting that a particular solution, interpretation or argument is the only correct one in the face of valid contrary or alternative arguments;
- Interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one;
- Insisting on the overwhelming importance of an issue that is clearly trivial.

5.6 Unreasonable Behaviours

- Displaying confronting behaviour, eg. rudeness, aggression, threats;
- Sending rude, confronting, threatening letters;
- Making threats of self-harm and/or making threats of harm to others.



6. PROCESS

All staff dealing with unreasonable conduct as outlined above will refer to the Practice Note No. 9 "*Complaints handling in Councils*" section 10: Strategies for dealing with Unreasonable Conduct.

The process for correspondence is as follows:

- a) The General Manager, being the recipient of all business correspondence at Council, will directly assess and allocate correspondence to staff.
- b) The General Manager will directly assess the correspondence as unreasonable, or the Staff member who identifies correspondence or complaints as unreasonable will forward the item to the General Manager.
- c) The General Manager will assess the documentation against the criteria bearing in mind residents' right to complain and correspond with Council on matters of their concern;
- d) If assessed that the correspondence or complaint is unreasonable, the General Manager will forward the correspondence to the Public Officer for a second opinion.
- e) If the Public Officer assesses the correspondence as unreasonable, Council will advise the correspondent in writing that their complaint and/or correspondence has been determined to be unreasonable, giving the reason for that decision based on the definitions in this policy.
- f) Where threats of violence or harm to a person, or other illegal activities are threatened, Council will refer the correspondence to the Police.
- g) The correspondent should be advised that if no substantive new issue is raised, any future correspondence will not receive a response.
- h) Council's Records Officer will keep a register of unreasonable complaints and correspondence.

Related Council Documents

- Records Management Policy 1.187;
- Customer Service policy 1.035;
- Customer Contact Charter;
- Code of Conduct;
- Procedures for Council's Administration of the Code of Conduct;

- Procedure: Strategies for dealing with Unreasonable Behaviours;
- Internal Reporting Policy 4.161;
- Division of Local Government Practice Note 9, 2009.

