



## COMPLAINTS AND UNREASONABLE CONDUCT POLICY

### Summary:

The purpose of this policy is to provide clear direction on what considered to be reasonable and unreasonable conduct and behaviour when accessing Council's services.

<b>Policy Number</b>	1.033
<b>File Number</b>	CM/163
<b>Document version</b>	Version 6.0
<b>Adoption Date</b>	26 October 2022
<b>Approved By</b>	Council
<b>Endorsed By</b>	Council
<b>Minute Number</b>	222/22
<b>Consultation Period</b>	N/A
<b>Review Due Date</b>	November 2024
<b>Department</b>	Office of Chief Corporate Officer
<b>Policy Custodian</b>	Chief Corporate Officer (Public Officer)
<b>Superseded Documents</b>	Complaints and Unreasonable Conduct Policy Version 5.0
<b>Related Legislation</b>	Customer Service Charter 2022 Customer Service Policy Exclusion Policy for Disruptive or Abusive Customers Policy Tenterfield Shire Council's Code of Conduct 2020 Tenterfield Shire Council Procedures for the Administration of the Code of Conduct 2020 Internal Reporting Public Interest Disclosures Policy 4.161
<b>Delegations of Authority</b>	Manager Customer Service, Governance & Records

### 1. Policy Principles

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 compliments are welcome feedback to Council to assist in the planning process and the improvement of Council's systems, policies and procedures.

## **2. Policy Objectives**

The objective of this policy is to establish a complaint handling system as 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.

## **3. Policy Statement**

### **LODGING A COMPLAINT**

Complaints may be lodged with Council:

- In person
- Telephone
- 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 Chief Executive Officer.

### **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 Chief Corporate Officer holds the position of Public Officer and can be contacted 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 Chief Executive Officer 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 Chief Executive Officer. If the allegation relates to the Chief Executive Officer, 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 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:

**Tier 1: Frontline Complaint Handling** – Staff empowered with clear delegations to resolve complaints wherever possible at first contact. Staff log complaint details for later analysis.

**Tier 2: Internal review or investigation** – Supervisors, more senior staff or the Public Officer reviews/investigates unresolved complaints.

**Tier 3: External review** – Still unresolved complaints referred externally e.g.

- Alternative dispute resolution procedure (e.g. mediation)
- Complaint referred to external agency (e.g. ombudsman)
- Complainant informed of appeal procedure or other legal remedy

### **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: 029286 1000 Toll free (outside Sydney metro): 1800 451 524**

Complaints: [ONLINE COMPLAINT FORM](#)

Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au) Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

#### **OFFICE OF LOCAL GOVERNMENT**

Phone: 02 4428 4100 Email: [olg@olg.nsw.gov.au](mailto:olg@olg.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 Chief Executive Officer 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 NSW Police;
- Relates to the appointment or dismissal of any employee or an industrial or disciplinary issue;
- 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 (3<sup>rd</sup> Edition 2017)*, Module 12, 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 for state and local government (3<sup>rd</sup> 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 *Good conduct and administrative practice. Guidelines for state and local government. 3<sup>rd</sup> edition 2017* Module 12 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;
- Moving the goal posts – changing the desired outcome;
- Shopping for a sympathetic ear in the council – demanding to talk to a supervisor or the Chief Executive Officer 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 Chief Executive Officer, being the recipient of all business correspondence at Council, or the Public Officer will directly assess and allocate correspondence to staff.
- b) The Chief Executive Officer or the Public Officer will assess the correspondence as unreasonable, or the Staff member who identifies correspondence or complaints as unreasonable will forward the item to the Chief Executive Officer or the Public Officer.
- c) The Chief Executive Officer or the Public Officer 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 Chief Executive Officer or the Public Officer will forward the correspondence to the Public Officer or the Manager Customer Service, Governance and Records for a second opinion.
- e) If the Public Officer or the Manager Customer Service, Governance and Records 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.

Council's Records Section will keep a register of unreasonable complaints and correspondence.

## 7. Accountability, Roles & Responsibility

### Chief Executive Officer, Executive and Management Teams

The **Chief Executive Officer** is responsible for the implementation and delivery of this policy, with the **Public Officer** providing operational delivery and support through the Corporate and Governance service area.

## Individual Managers

The **Manager Customer Service, Governance and Records** will provide day to day operational response and support to the organisation in applying the policy to relevant examples of inappropriate customer behaviour and conduct.

All other Managers are responsible for bringing inappropriate customer behaviour to the attention of the **Chief Executive Officer**, the **Public Officer** or the **Manager of Customer Service, Governance and Records**.

## 8. Definitions

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.

## 9. Related Documents, Standards & Guidelines

- Records Management Policy 1.187;
- Customer Service Policy 1.035;
- Customer Contact Charter 2022;
- 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.

## 10. Version Control & Change History

Version	Date	Modified by	Details
V1.0	26/09/12	Council	Adoption of Original Policy (Res No. 384/12)
V2.0	28/03/07	Council	Review/Amended (Res No. 137/07)
V3.0	26/02/14	Council	Review/Amended (Res No. 23/14)
V4.0	23/08/17	Council	Review/Amended (Res No. 168/17)
V5.0	24/02/21	Council	Review/Amended (Res No. 29/21)
V6.0	26/10/22	Council	Review/Amended (Res No. 222/22)