



PortAugusta

CITY COUNCIL

1. OPERATIONAL UNITS POLICY AND PROCEDURES

1.2 DEVELOPMENT ACT 1993

POLICY NUMBER	1.2.02	Public Document?		Council or Administration		PAGES	7
		Yes		Council			
SUBJECT							
CDAP - COMPLAINT HANDLING							
COUNCIL MEETING	MICA0303	ISSUE DATE	23/3/09	REVIEW DATE	MICA0306 - 6/5/10 AR11/1675 - 24/01/2011 AR14/21674 - 28/07/2014 AR14/25448 - 25/08/2014	DELETED DATE	
EXTERNAL LEGISLATION				INTERNAL REFERENCES			
<i>Section 56A Development Act 1993</i>				Terms of Reference - AR14/436 Meeting/Operation Procedures - AR10/965 Delegations Register - AR14/17236 Approved Independent Assessor List - Attachment A (AR13/2937)			
RELATED POLICIES				RESPONSIBLE OFFICER			
1.1.01 - Code of Conduct - Elected Members 1.2.01 - CDAP Code of Conduct 2.3.06 - Application of Delegations to the CDAP				Director - City & Cultural Services			

SECTION A

1.0 POLICY STATEMENT

1.1 This policy provides guidelines in respect to the process that will be followed in regard to the handling of complaints received relating to Council Development Assessment Panel Members.

2.0 PURPOSE

2.1 To ensure that the correct process is undertaken in regard to the investigation and handling of all complaints.

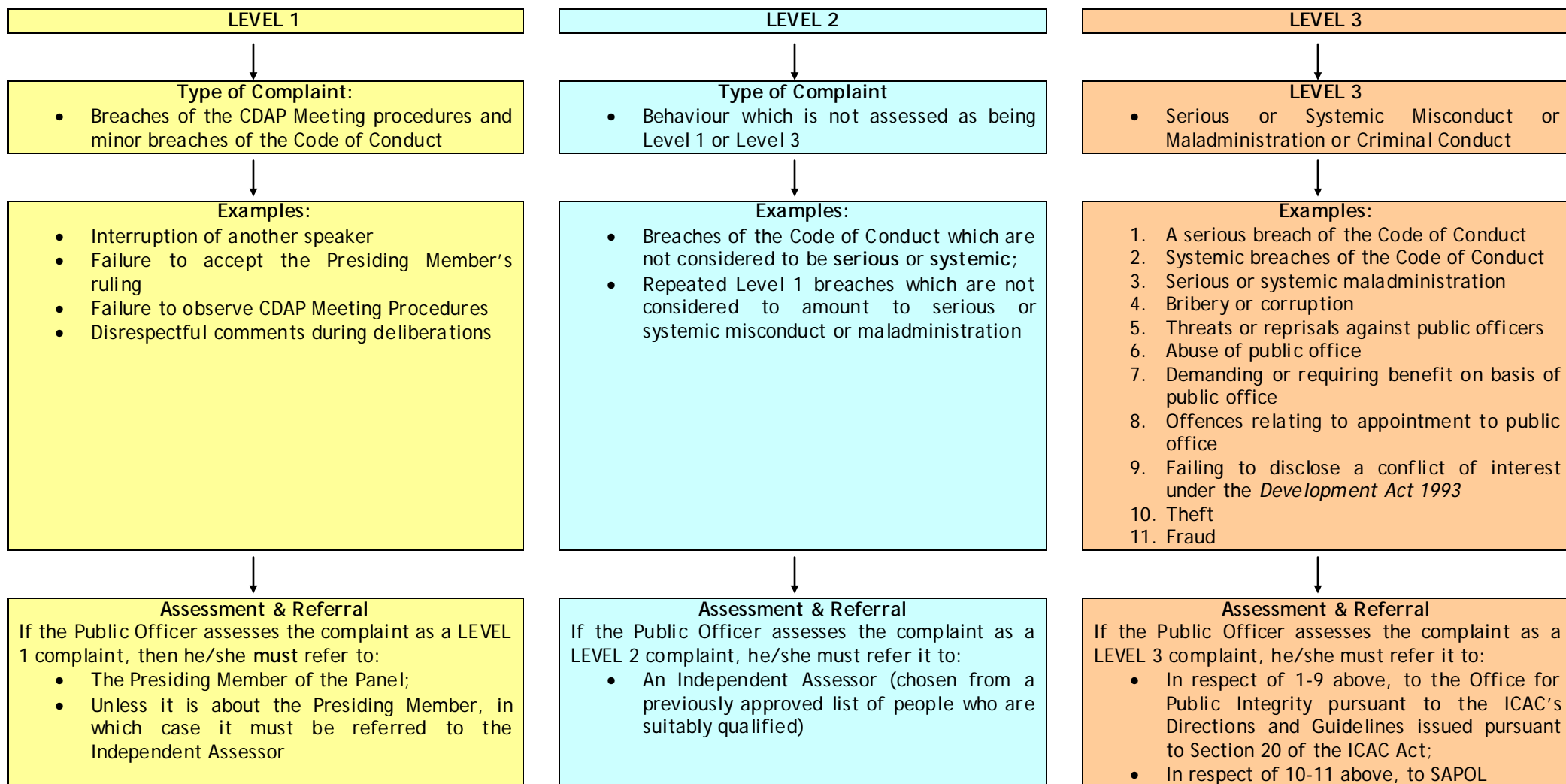
3.0 RESPONSIBILITY & REVIEW

3.1 Director - City & Cultural Services

3.2 To be reviewed within 12 months after a General Election, in line with any legislative changes or by resolution of Council.

SECTION B

4. COMPLAINT LEVEL FLOWCHART



SECTION C

5.0 PROCEDURE

5.1 Introduction

- 5.1.1 Council has established a Development Assessment Panel (CDAP) under Section 56A of the *Development Act 1993* (the Act).
- 5.1.2 CDAP Members must abide by the Code of Conduction for Panel Members established by the Minister for Planning under Section 21A of the Act.
- 5.1.3 This policy governs the way in which complaints made to the Council about a CDAP member under the Code will be determined.
- 5.1.4 Complaints concerning alleged corruption, maladministration and/or misconduct by CDAP Members exercising their functions as a CDAP member may also be made separately to the Office for Public Integrity under the *Independent Commissioner Against Corruption Act 2012*. More information about making a complaint to the OPI can be obtained from www.icac.sa.gov.au
- 5.1.5 This Policy only concerns complaints made in respect of individual CDAP members under the Code. If you have a concern regarding the assessment and/or determination of a development application, these concerns should be raised with Council's development assessment staff and/or pursuant through the appeal process, where this is available under the Act.

5.2 Definitions

- 5.2.1 **CDAP** means a Council Development Assessment Panel established by a Council under Section 56A of the *Development Act 1993*.
- 5.2.2 **Independent Assessor** means a person selected by the Public Officer from a list of people who are suitably qualified and have been previously approved by the Council for the purposes of undertaking the independent investigation of complaints against members of Council, a Council Committee or its CDAP.
- 5.2.3 **Public Officer** means a person appointed by the Council under Section 56A(22) of the *Development Act 1993* as the Public Officer for its CDAP. The functions of a Public Officer include ensuring the proper investigation of complaints about the conduct of a member of the CDAP.
- 5.2.4 **Presiding Member** means the person appointed by the Council under section 56A(3)(b) of the *Development Act 1993* to be the Presiding Member of its CDAP. The Presiding Member must not be an officer or member of the Council.
- 5.2.5 **CDAP Member** means a person appointed by Council under Section 56A(3) of the *Development Act 1993* to be a member of its CDAP.

5.3 Making a Complaint

- 5.3.1 A complaint by any person that relates to a CDAP Member must:
 - a) be made in writing; and
 - b) be addressed to the Public Officer (Mr John Banks, Port Augusta City Council, PO Box 1704, Port Augusta); and
 - c) Identify by name the CDAP Member who is the subject of the complaint; and

- d) Identify the complainant by name, address, telephone number and/or email address; and
 - e) State the circumstances giving rise to the complaint; and
 - f) State the evidence supporting the complaint.
- 5.3.2 The Public Officer will acknowledge receipt of complaints in writing within 3 business days of its receipt.
- 5.3.3 When you make a complaint to the Public Officer, you must keep details of this complaint confidential so that it can be investigated and determined thoroughly and properly.
- 5.3.4 The Public Officer will then write to the CDAP member who is the subject of the complaint to notify the CDAP member that a complaint has been made concerning him/her and provide full particulars of the alleged misconduct and direct the CDAP member to observe confidentiality regarding the complaint.
- 5.3.5 The CDAP member will be given an opportunity to respond to the Public Officer on the complaint.
- 5.3.6 The other CDAP members will not be informed of the complaint.
- 5.3.7 The Public Officer may request further information from the complainant.

5.4 Investigation

5.4.1 Level 1 Complaints:

- a) The Presiding Member may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations the subject of the complaint. The Presiding Member must report this determination in writing to the Public Officer.
- b) The Presiding Member may determine that the complaint has substance and make recommendations as to the consequences that should follow. The Presiding Member must report this determination in writing to the Public Officer within 2 weeks from the date of receipt of the complaint.
- c) The recommended consequences may include a request that the CDAP Member withdraw remarks, a request that the CDAP Member offer an apology, a request that the CDAP Member receive training, and/or a request that the CDAP Member receive counselling from the Presiding Member or another suitable experienced and qualified person.
- d) The Presiding Member may determine that the complaint requires referral to an Independent Assessor for investigation. The Presiding Member must report this determination in writing to the Public Officer.
- e) Where a Level 1 complaint has been referred to an Independent Assessor for investigation the determination should be reported to the Public Officer within 4 weeks from the date of referral of the complaint.
- f) Where a Level 1 complaint has been made against the Presiding Member, then the complaint will be referred to an Independent Assessor for investigation.

5.4.2 Level 2 Complaints (and Level 1 complaints referred to an Independent Assessor for investigation):

- a) The Independent Assessor may determine that the complaint is frivolous and determine that no further action will be taken with respect to the allegations the subject of the complaint. The Independent Assessor must report this determination in writing to the Public Officer.
- b) If the Independent Assessor identifies issues of substance that warrant investigation:
 - (i) the investigation shall be through a thorough and balanced assessment of the evidence and all circumstances relevant to making a fair and reasonable judgement about the matter; and
 - (ii) the CDAP Member the subject of the complaint shall be provided with a reasonable opportunity to respond to the complaint, explain his/her actions and to make a written submission on the allegations. The member also has the right to have a representative attend any meeting about the complaint with them (including legal counsel).
 - (iii) the Independent Assessor may, for the purposes of an investigation, request the complainant and/or the CDAP member the subject of the complaint and/or a third party to answer questions which may assist the investigation.
 - (iv) The Independent Assessor may determine that the complaint has substance and make recommendations as to the consequences that should follow. The Independent Assessor must report this determination in writing to the Public Officer.
 - (v) The recommended consequences may include suspension or removal of the CDAP member from the Panel (requires a Council resolution), provision of training to the CDAP member, and/or provision of counselling to the CDAP member from the Presiding Member or another suitably experienced and qualified person to the CDAP member.
 - (vi) The Independent Assessor may determine that the complaint requires referral to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body. The Independent Assessor must report this determination in writing to the Public Officer who will refer the complaint to the relevant investigation authority.
 - (vii) Level 2 complaints investigated and determined by the Independent Assessor must be reported to the Public Officer within 4 weeks from the date of the referral. If the Independent Assessor forms the view that additional time will be required to conclude the investigation and finalise the report the Independent Assessor should bring this to the attention of the Public Officer at the earliest opportunity, and at the very least, before the expiration of the 4 week timeframe.

5.4.3 Level 3 Complaints (and Level 2 complaints referred to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body)

The relevant body will determine the processes by which these complaints will be handled in accordance with relevant legislation and their own internal processes.

5.5 Determinations

5.5.1 Level 1 Complaints:

The Public Officer must report the determination in writing to the complainant and the CDAP Member who is the subject of the complaint. The Presiding Member may request that the recommended consequences be implemented.

5.5.2 Level 2 Complaints

The Public Officer must report the determination in writing to the complainant, the CDAP Member who is the subject of the complaint and the Presiding Member.

The Public Officer must report the determination to the Council if the determination requires a Council resolution. All deliberations by the Council must be conducted in confidence, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*, and maintained a confidential until finally determined, at which time the Council must decide the ongoing status of the confidentiality order. The Council may enforce any recommended consequences within its powers.

Note: The Section 21 Minister's Code of Conduct provides that where an allegation of misconduct is made out, the Council may:

- a) remove the person from the CDAP;
- b) suspend the person from the CDAP for a period of time; or
- c) take any other reasonable action deemed appropriate.

Otherwise, the Presiding Member may request that the recommended consequences be implemented.

5.5.3 Level 3 Complaints and complaints referred to the Office for Public Integrity, SAPOL, the Minister, the Ombudsman and/or another body:

The relevant body will, in accordance with relevant legislation, determine how a complaint is processed and determined and who is notified in this regard.

5.6 Public Officer

Mr John Banks
Public Officer
Council Development Assessment Panel
Port Augusta City Council
PO Box 1704
PORT AUGUSTA SA 5700

Telephone: (08) 86419100

6.0 STAFF RESPONSIBILITIES

6.1 Reporting requirements by Public Officer are outlined above - refer Clause 5.5.

SECTION D

7.0 FORMS AND ATTACHMENTS

7.1 Approved Independent Assessor List - *Attachment A (AR13/2937)*



COUNCIL DEVELOPMENT ASSESSMENT PANEL - COMPLAINT HANDLING

INDEPENDENT ASSESSOR LIST

- 1) Wallmans Lawyers
173 Wakefield Street
ADELAIDE SA 5001
Phone: 82353000

- 2) Norman Waterhouse Lawyers
Level 15
45 Pirie Street
ADELAIDE SA 5001
Phone: 82101200