



# DAP Member Complaint Handling Policy

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<b>Type:</b>	Council Policy
<b>Category:</b>	Development and Infrastructure
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"> <li>A local organisation providing progressive leadership, accountable governance and quality services to the community</li> </ul>
<b>Responsible Officer(s):</b>	Public Officer – Mark Withers
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<b>Applicable Legislation:</b>	Development Act 1993 and Development Regulations 2008
<b>Related Policies:</b>	Confidentiality of Council Reports Policy; Gifts, Benefits and Hospitality Policy, Fraud Prevention Policy; Electronic Communication Policy; Fraud and Corruption Statement; Whistleblowers Policy; City of Charles Sturt Statement of Ethical Principles and Practices; City of Charles Sturt Governance Framework
<b>Related Procedures:</b>	DAP Operating procedures

## 1. Purpose

The City of Charles Sturt has established the Charles Sturt Development Assessment Panel (DAP) under section 56A of the Development Act 1993 (the Act) and appointed its membership and public officer in accordance with the legislative requirements. Membership of the DAP and details of the public officer have been published in the SA Government Gazette as required.

The Minister has adopted a code of conduct under section 21A of the Act to be observed by members of all Council Development Assessment Panels and officers of relevant authorities exercising delegations under the Act – refer [Appendix A](#). This code of conduct is to be observed by all DAP members while exercising their functions as members of a panel. The code is designed to foster the respect of applicants, representors and the community and requires panel members to uphold the highest standards of behaviour and ensure they act in accordance with the provisions of the Act at all times. The standards expressed in the code of conduct are complementary to the statutory requirements of the Development Act 1993 and other relevant Acts and Regulations.

## 2. Scope

This policy sets out the processes used to handle any complaints received about the conduct of a DAP member.

### 3. Policy Statement

#### 3.1 Behaviour Contrary to the Requirements of the Development Act 1993 or the Code of Conduct

The Council is committed to supporting members of DAP in complying with their statutory requirements and their code of conduct and to investigate and address any complaints made about their conduct. It has established a Leadership Committee whose membership is the Mayor and the four Council members who have each been appointed by the Council to serve for 1 year as its Deputy Mayor during the current four year Council term. One of the functions of the Leadership Committee is, *“To assist and guide elected members in carrying out their role as Councillors in accordance with Council’s Code of Conduct for Council members”*.

Leadership Committee members have been provided with formal training to assist them in managing code of conduct responsibilities on behalf of Council. As with Council and DAP members generally, Leadership Committee members acting in good faith in fulfilling their responsibilities are personally indemnified under section 39 of the Local Government Act 1999.

#### 3.2 Making a Complaint

Any person, regardless of their relationship with the Council or DAP, who believes behaviour contrary to the requirements of the Development Act 1993 or the code of conduct or any other misconduct by panel members may have occurred, should bring details to the attention of the public officer (contact details for the public officer are included at the end of this policy). Complaints should be raised in a timely fashion, dependant on circumstances at the time, and will be promptly acted upon in accord with the steps outlined below.

- Concerns relating to the assessment and, or determination of a development application should be dealt with through the appeal process, where those rights are available under the Act.
- A complaint concerning behaviour contrary to the code does not need to be made in writing and may be made anonymously, although provision of a complainant’s contact details and provision of written information and supporting evidence are likely to be of considerable value in successfully progressing an investigation.

An investigation will be managed by the Responsible Council Member (RCM) who shall normally be the Mayor, given that the Mayor has been elected by the whole community to serve its interests. Each complaint, other than a complaint assessed as a Level 3 by the public officer in consultation with the RCM, will be referred to Council’s Leadership Committee (excluding any member of the Committee implicated in the complaint) for investigation.

#### 3.3 Initial Investigation – (Refer to Attachment 1 for flowchart process)

The public officer will refer the complaint to the RCM who will consult with all other members of Council’s Leadership Committee as soon as practical after a complaint about a DAP member has been received and before any formal action is taken. Members of the Leadership Committee who are not implicated in the complaint are responsible for the investigation and resolution.

Appropriate legal and other required support is available on request to assist the Leadership Committee during both an initial assessment and investigation of a complaint. The public officer is to play no role in an investigation other than at the written request of the Committee to compile information, answer questions or assist with the engagement of independent external professional assistance. All subsequent actions and responses of the public officer are to be documented in writing. A DAP member against whom a complaint has been made has the right, under natural justice, to be heard by the decision maker regarding the allegation (see information regarding 'Natural Justice' in subsequent section).

All deliberations relating to a complaint against a DAP member will be conducted in confidence but the number of complaints and their nature, status and outcomes will be publicly reported (see below). The RCM will securely retain all records/material relating to a complaint and its investigation, except where it is required to be referred to another external authority in connection with an investigation, and unless and until the matter is to be referred to Council for action.

The initial assessment of complaints will involve determining which category (**Level One, Two or Three** described below) the allegation best fits. The process to be followed will vary accordingly.

### **3.3.1 Level One Complaint**

Level One is the lowest category of complaint. Level One complaints will generally relate to the behaviour of a DAP member within the context of a DAP meeting. However a complaint about such behaviour could be received after the meeting. If meetings are chaired well and the Presiding Member gains the respect and support of the members, and members are mindful of the adopted DAP Operating Procedures then there should be very few of these complaints.

#### Examples

- Disrespect to the Presiding Member of the meeting
- Disrespect to other DAP members at a meeting
- Interruption of another speaker
- Failure to accept the Presiding Member's ruling
- Failure to observe adopted DAP Operating Procedures
- Inappropriate comments regarding staff, members of the public or fellow DAP members.

#### Origin of Complaint

- Other DAP members
- Staff members
- Member of the public present at the meeting.

#### Investigation

The Presiding Member of the DAP meeting should attempt to effectively deal with inappropriate behaviour in a meeting at the time it arises wherever possible, regardless of whether a DAP member makes a complaint during the meeting or not (**refer Attachment 2 flowchart process**).

The Presiding Member should make notes relating to the issue and its processing in their journal/diary following the meeting in order to assist the Leadership Committee in investigating a possible subsequent complaint (eg a complaint lodged after a meeting).

If inappropriate behaviour in a meeting is dealt with to people's satisfaction at the time it is unlikely to lead to a request for the behaviour to be investigated further.

For a complaint regarding behaviour of a DAP member at a meeting to be formally recognised and investigated subsequent to a meeting it must be alleged to the public officer subsequent to the meeting. The complaint will be referred by the public officer to the Presiding Member of the meeting who will ascertain in the first instance whether they believe the matter was appropriately dealt with during the meeting. The matter will only be further investigated if the Presiding Member of the meeting considers it was not effectively handled and resolved at the meeting. In this case the public officer will refer the complaint and the report from the DAP Presiding Member to the RCM (**refer Attachment 3 flowchart process**).

#### ***Dealt With By***

- Chair of meeting (where complaint made in meeting) or the RCM if complaint is made subsequent to a meeting and after considering the views of the Chair of the meeting.

#### ***Consequences***

- Ask that the remarks be withdrawn
- Ask that the offender offer an apology
- Additional training is provided
- Counselling from the DAP Presiding Member
- A formal letter from the DAP Presiding Member

#### ***Reporting***

Where a complaint is made in a DAP meeting concerning behaviour at the meeting (either in the context of the DAP Operating Procedures, the code of conduct or the provisions of the Development Act 1993) there will be no public reporting. In all other circumstances (including where the same complaint is reported to the public officer subsequent to the meeting) the complaint will be reported as follows:

- Quarterly report to City Development Committee on number and nature of complaints received and status/outcomes of investigations – no names identified.
- Annual Report on complaints received and the outcome of each complaint – similar to SA Ombudsman's annual report.

### **3.3.2 Level Two Complaint**

Level Two complaints are more serious than Level One complaints. They include possible breaches of the Development Act 1993 and associated regulations that allege improper but not illegal behaviour (illegal behaviour being behaviour that can result in a legislatively specified penalty). They also include behaviour contrary to the Minister's code of conduct and Council's policies, codes and statements.

#### ***Example***

- Attempting to inappropriately (but not illegally) influence the decision of an officer of Council
- Improper use of Council resources
- Improper use of the office of DAP member
- Harassment of Council staff or other DAP members

- Ongoing Level One complaints without corrective action
- Improper use of confidential information (where this is not illegal)
- Action contrary to the DAP Operating Procedures outside of a DAP meeting
- Action contrary to a Council policy
- Public behaviour that causes detriment to the image of the Council.

### ***Origin of Complaint***

*Anyone, eg:*

- Applicant
- Representor
- Member of the public
- Staff member
- DAP member
- Council member

### ***Investigation***

- By Leadership Committee (***refer Attachment 4 flowchart process***)

### ***Dealt With By***

- Leadership Committee (under delegated authority) unless the recommended action is the suspension or removal of the member from the DAP. In this case the Council will make the final decision.

### ***Consequences***

Determined (under delegated authority) or recommended by Leadership Committee but may involve:

- Requiring an apology
- Counselling
- Suspension from the DAP for a period of time [requires a Council resolution]
- Removal from the DAP [requires a Council resolution]
- Referral to another authority for investigation and consideration for prosecution (where Leadership Committee determines matter meets Level 3 complaint criteria).

### ***Reporting***

- Quarterly report to City Development Committee on number and nature of complaints received and status of investigations – no names identified.
- Annual Report on complaints received and the outcome of each complaint – similar to SA Ombudsman's annual report.

### 3.3.3 Level Three Complaints

Level Three complaints are of a serious nature and allege illegal behaviour.

#### *Example*

- Bribery
- Conflict of interest
- Theft
- Misuse of public office
- Misuse of confidential information for purposes of or resulting in pecuniary benefit or detriment.

#### ***Origin of Complaint***

*Anyone, eg:*

- Applicant
- Representor
- Member of the public
- Staff member
- DAP member
- Council member
- Ombudsman
- Member of Parliament
- Minister for State/Local Government Relations
- Whistleblower<sup>1</sup>

<sup>1</sup> Provisions of the Whistleblower Protection Act 1993 would apply

#### ***Investigation***

A complainant may refer complaints that they consider to meet Level 3 criteria direct to:

- Minister/Office for State/Local Government Relations;
- SA Police;
- Other relevant investigation authority;
- Public officer; or
- Responsible Officer appointed under Whistleblower Protection Act 1993

Where the complaint is referred to the public officer they will refer it to one of the above independent authorities for investigation as soon as they are satisfied the matter is probably a Level 3 complaint (**refer Attachment 5 flowchart process**)

#### ***Dealt With By***

- Appropriate authority.

#### ***Consequences***

- Decision made externally to Council following investigation.

The public officer will refer the outcome of the referral to the independent authority to the Leadership Committee for review to determine whether further internal actions are appropriate, for example if the independent authority does not prosecute the matter it may be appropriate to treat it as a Level 2 complaint in which case it would then be investigated by the Leadership Committee.

### **Reporting**

- Quarterly to the City Development Committee
- Annual Report on complaints received and the outcome of each complaint – similar to SA Ombudsman’s annual report.

### **3.4 Natural Justice**

A DAP member is entitled to natural justice (procedural fairness) when a complaint concerning their behaviour is being investigated. This means:

- The DAP member will be advised of the nature of the complaint and given the opportunity to respond either orally or in writing before it is investigated (unless the complaint appears to be a Level 3 complaint and is referred to a independent authority for investigation).
- The DAP member may request that the Leadership Committee appoint an independent expert to assist the Leadership Committee in any or all aspects of their investigation and processing of the allegation.
- In responding the DAP member will be given the right to appear before the Leadership Committee in person and have the right to have a representative attend the meeting with them (including legal counsel).
- As the process is not meant to be adversarial, there should be no need for lawyers to be present for either the Leadership Committee or DAP member at the meeting. This can happen though, should the DAP member so require. A DAP member who engages legal or other professional advisors to assist them in responding to a complaint is responsible for all costs associated with this representation.
- The DAP member will be notified of the time, the place and the purpose of the meeting and will be given adequate time to prepare. If the member believes that insufficient time for preparation has been allowed, a reasonable extension of time will be granted.
- The Leadership Committee will make available to the complainant full particulars of the alleged misconduct, including any relevant documents which are to be relied upon, in advance of the investigation and at least 7 days prior to meeting with them. This provision of information will be subject to any laws relating to the release of information.

#### 4. Definitions

Key Term – Acronym	Definition
DAP	Development Assessment Panel
RCM	Responsible Council Member
Public Officer	<p>Mark Withers            Chief Executive            City of Charles Sturt            72 Woodville Road            (PO Box 1)            WOODVILLE SA 5011</p> <p>Phone 8408 1111            Fax 8408 1222            Email: <a href="mailto:mwithers@charlessturt.sa.gov.au">mwithers@charlessturt.sa.gov.au</a></p>
The Code	Code of Conduct pursuant to section 21A of the Development Act.

## MINISTERS CODE OF CONDUCT

### Code of Conduct Section 21A of the *Development Act 1993*

This Code has been adopted pursuant to the provisions of the *Development Act 1993* as a Code of Conduct to be observed by Members of the Development Assessment Commission, Members of Regional Development Assessment Panels, Members of Council Development Assessment Panels and delegates.

In order to foster the respect of applicants, representors and the community, panel members and delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

This Code is binding on all panel members and delegates exercising their powers and functions as members of a panel or as a delegate.

This Code must be read in conjunction with the Act.

### 1. Interpretation

**Act** means the Development Act 1993.

**closed meeting** means a panel meeting, or a part of a panel meeting where the public is excluded in accordance with the Act :

**Code** means a code of conduct established under section 21A of the Act.

**confidential information** includes but is not limited to:

- (a) information derived from a document marked by the presiding member to clearly show that the information in the document is confidential or not to be disclosed;
- (b) information you acquired in a closed meeting ; and
- (c) any other information which would be considered confidential and not generally available to members of the public

**delegate** means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

**disclosure of financial interest** means disclosing a pecuniary interest as set out in Schedule 2 of the Act.

**interest** has the same meaning as in Section 56A (7)&(8) of the Act

**Minister** means the Minister responsible for the administration, from time to time, of the Act.

**panel** means an assessment panel as defined in Schedule 2 of the Act.

**panel information** means information that is disclosed at a panel meeting or in the course of a panel member's duties.

**panel member** means a person who is a member of a panel under the Act.

**presiding member** means a panel member appointed as presiding member under the Act.

**public officer** means a person appointed as a public officer under the Act .

## 2. Panel Member Behaviour

### Panel information

- 2.1 As a panel member, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat panel information appropriately by:
- (a) Not using information gained by virtue of your membership of the panel for any purpose than to exercise your role as a panel member;
  - (b) Respecting the panel's procedures in relation to public comments and communications with the media;
  - (c) Not releasing confidential information;
  - (d) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
  - (e) Recognising that information may be subject to the requirements of the Privacy Act 2000 and abiding by the principles of that legislation.

*However, nothing in this Code prevents you from disclosing information:*

- 2.2 At a closed meeting;
- (a) To the extent specified by the panel and subject to such other conditions as the panel determines;
  - (b) That is already in the public domain; or
  - (c) If the disclosure is required by law.

### **Conflict of Interest**

- 2.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of financial interests and disclosure of any other interest which may affect your ability to fulfil your duties on a panel.
- 2.4 If you consider that you have, or might reasonably be perceived to have an interest in the matter before the panel, you must clearly state the nature of that interest in writing to the presiding member before the matter is considered.
- 2.5 If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above.
- 2.6 If you have an interest in a matter, you must not partake in any of the assessment processes involving the matter. You must leave the room at any time in which the matter is discussed by the panel including during the hearing of any representations or during any vote on the matter. You must not vote on the matter and you must not move or second any motion or participate in any discussion through the consensus process.
- 2.7 If an interest has been declared by any member of the panel, the presiding member must record the nature of the interest in the minutes of meeting.

### **Relations with State/local government employees and applicants/representors**

- 2.8 In your role as panel member, you must not (other than in accordance with the provisions of the Act):
  - (a) Direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee;
  - (b) In the case of members of the Development Assessment Commission, direct a person who is a State government employee to do or not do anything in the person's capacity as a State government employee;
  - (c) Attempt to influence the conduct of a person who is a local government employee in the person's capacity as a local government employee;
  - (d) Approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel; and
  - (e) Except where required as part of the assessment of a particular decision such as a formal panel viewing of a development site, you should not enter a development site, even if invited by the land owner or a neighbouring property owner or any other person.

### **Development Assessment Conduct**

- 2.9 You acknowledge that the assessment of development by the panel requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Panel members must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.
- 2.10 You must not:
- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
  - (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
  - (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
  - (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
  - (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.
- 2.11 In regard to attendance of a public meeting as set out in point 2.10 (c) above, you must inform the panel that you have attended such a meeting and confirmed that you have not made representations to the meeting, discussed the matters raised at the meeting with any person or given an indication as to the merits of a particular development application or proposed development application outside of a panel meeting.

*Note that nothing in this Code prevents you from properly seeking clarification or comment from staff members prior to or during the discussion of any matter in a panel meeting.*

### **Public Comment**

- 2.12 Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

### 3. Breaches of the Code, Complaints and Sanctions (Panel Members)

3.1 You have an obligation to act honestly and diligently as a panel member. You should report any instances of suspected breach of the Act, this Code or any other misconduct by other panel members immediately to the public officer in writing and refrain from discussing those matters at future panel meetings.

3.2 Upon receipt of this information the public officer may:

- (a) Seek legal advice; and/or
- (b) Require an investigation into the allegations by an appropriate person; and/or
- (c) Refer the matter to the police; and/or
- (d) Take any other action which the public officer deems appropriate and which accords with the Act.

*Note that nothing in this Code prevents you, or any other person from making a complaint under the Ombudsman Act 1972.*

3.3 Where an investigation is undertaken in accordance with this Code, the person to whom the allegation of misconduct relates must be given by the public officer:

- (a) Full particulars of the alleged misconduct in advance of the investigation (at least 7 days prior to the date of the meeting at which the complaint will be investigated);
- (b) An opportunity to respond to the allegations; and
- (c) The right to have a representative attend any hearing with them (including legal counsel).

3.4 Where an allegation of misconduct is made out, the Minister (in regard to the Development Assessment Commission), the relevant Councils (in regard to a Regional Development Assessment Panel) and the relevant Council (in regard to a Council Development Assessment Panel or a Regional Development Assessment Panel) may:

- (a) Remove the person from the panel;
- (b) Suspend the person from the panel for a period of time; or
- (c) Take any other reasonable action deemed appropriate.

## 4. Delegate Behaviour

- 4.1 In order to foster the respect of applicants, representors and the community, delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

### Development application information

- 4.2 As a delegate, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat development application information appropriately by:
- (a) Not using information gained by virtue of your role as delegate for any purpose than to exercise that role;
  - (b) Not releasing confidential information;
  - (c) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
  - (d) Recognising that information may be subject to the requirements of the *Privacy Act 2000* and abiding by the principles of that legislation.

### Conflict of Interest

- 4.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of any interest which may affect your ability to fulfil your duties as a delegate:
- (a) If you consider that you have, or might reasonably be perceived to have an interest in the matter before you as delegate, you must clearly state the nature of that interest in writing and must not proceed to exercise your delegation; and
  - (b) If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above and must not proceed to exercise your delegation.

### Development Assessment Conduct

- 4.4 You acknowledge that the exercising of a delegation by you in relation to the assessment of development requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Delegates must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

4.5 You must not:

- (a) Exercise a delegation to make a decision on an application for development plan consent, or issue an instruction in relation to the exercise of a delegation held by another person, where you have assisted the applicant in the preparation of the application, to the extent that it leads to an expectation that if the applicant followed this advice you would grant delegated consent to the application;
- (b) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application where you hold a delegation other than to outline process and/or requirements of the Act or Regulations or, unless required by the Act; and
- (c) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

## **5. Breaches of the Code (Delegates)**

5.1 Breaches of this code by a delegate are to be reported to either the chief executive of the relevant council or the chief executive of the relevant government department. The responsible chief executive will take the appropriate action as required.

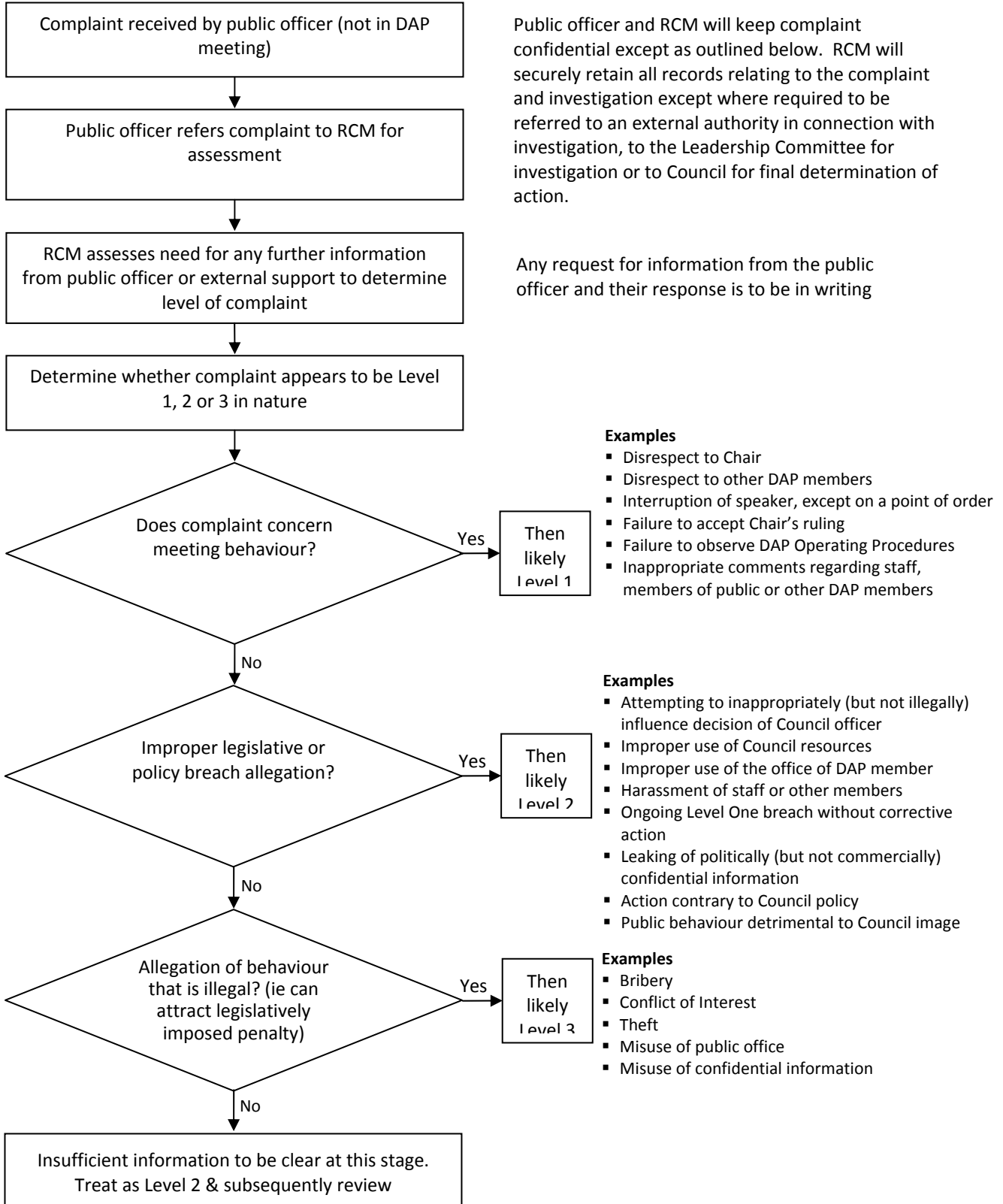
**Hon. Paul Holloway M.L.C**  
**Minister for Urban Development and Planning**

**Dated:**     /   /

### Attachment 1 flowchart process

#### Initial Investigation and determining whether complaint is Level 1, 2 or 3.

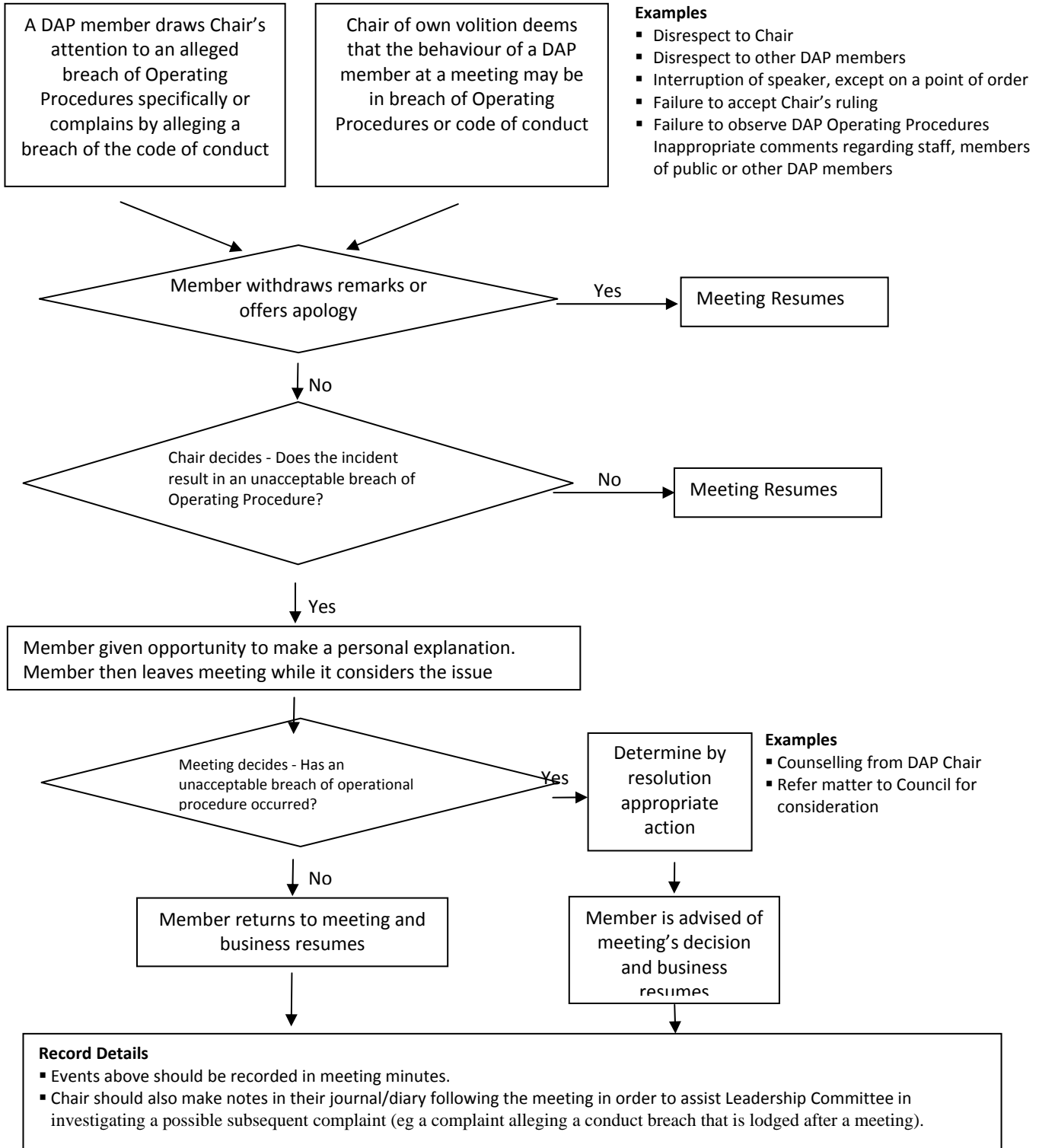
Person believes behaviour contrary to Development Act of Code has occurred and lodges complaint with public officer.



### Attachment 2 flowchart process

#### Investigation of Level 1 Complaint (arising at a meeting)

A complaint made in a meeting is treated as a DAP Operating Procedure or code of conduct breach

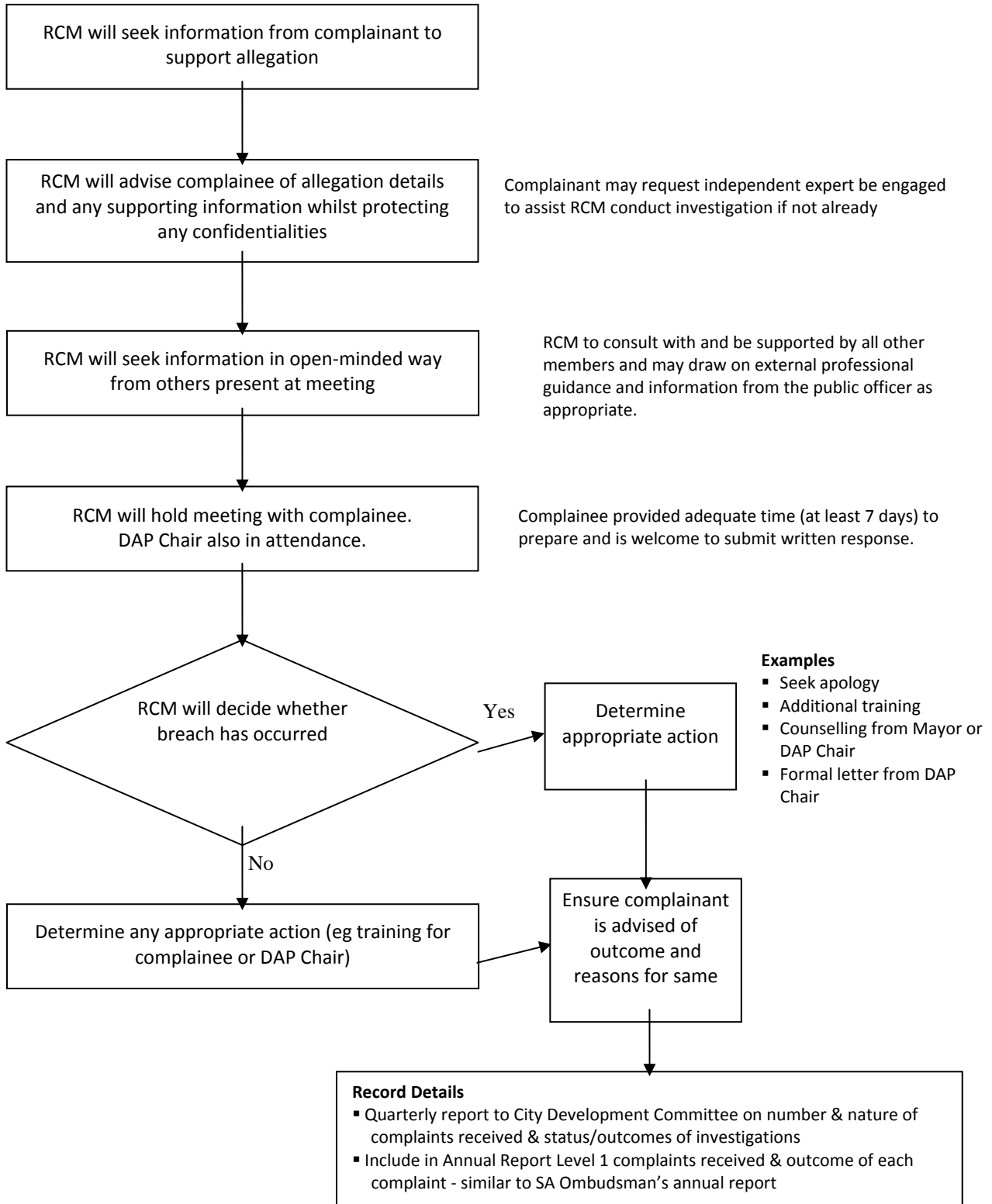


**NOTE:**  
A complaint alleging a breach of conduct in a meeting will not be investigated subsequent to the meeting or recorded in the complaints record. For an investigation to occur subsequent to a meeting and for details to be reported in the complaints record the allegation would need to be remade in accord with the processes outlined in this policy.

### Attachment 3 flowchart process

#### Investigation of Level 1 Complaint (arising following a meeting)

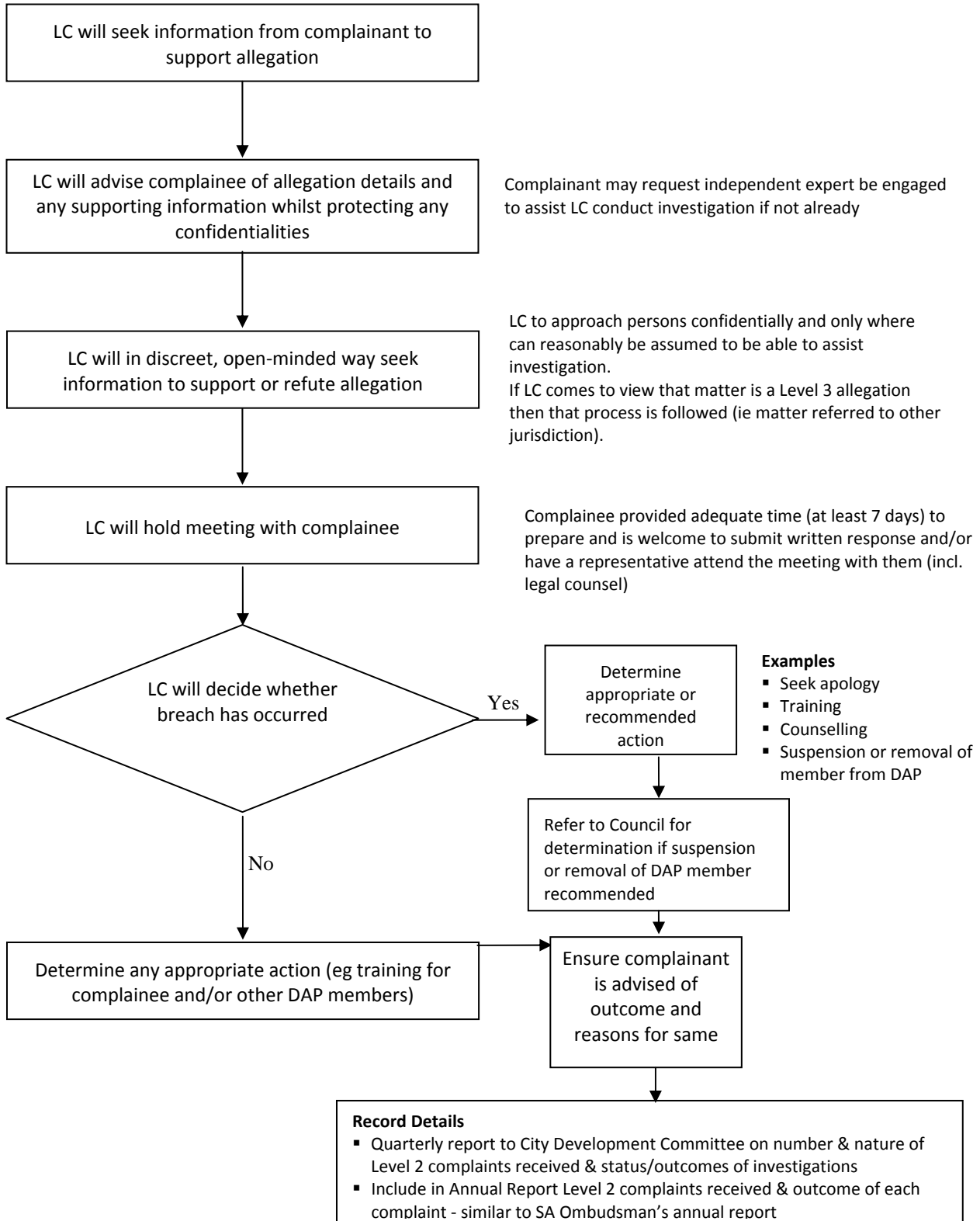
Public officer will refer the complaint to the Chair of the meeting who will ascertain in the first instance whether they believe the matter was appropriately dealt with during the meeting. Where the matter was not able to be effectively handled at the meeting, the public officer will refer the complaint and the report from the DAP Chair to the RCM.



### Attachment 4 flowchart process

#### Investigation of Level 2 Complaint

Public officer will refer complaint to Leadership Committee (LC) for investigation that may draw on external professional guidance and information from the public officer as appropriate throughout steps below.



### Attachment 5 flowchart process

#### Investigation of Level 3 Complaint

Public officer will consult with RCM and draw on external professional guidance if necessary to determine whether allegation is level 3.

