

9.1 - Notice of Motion – Ethics Committee (SJ4090)

Councillor	Councillor Byas
Disclosure of Officers Interest:	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Notice of Motion

A Notice of Motion was received from Councillor Byas via email on 26 October 2023. Councillor Byas subsequently requested that the motion be put forward at the December 2023 Ordinary Council Meeting.

The Notice of Motion is “That Council:

1. PROVIDES in-principle endorsement of the attached position paper's Ethics Committee construct, recognising its potential to elevate the standards of governance, bolster public trust, and align more closely with community expectations on accountability and transparency.
2. REQUESTS the Chief Executive Officer bring a report to Council by 31 March 2024 detailing the necessary policy amendments, procedural changes, and actionable steps required to enact the establishment of the Ethics Committee, ensuring a smooth transition and clear guidance for future operations.”

Relevant Previous Decisions of Council

Ordinary Council Meeting – 19 April 2021 – OCM092/04/21 - COUNCIL RESOLUTION / Officer Recommendation

That Council:

1. *ADOPTS the Code of Conduct for Councillors, Committee Members and candidates as shown in attachment 1;*
2. *NOTES that under s5.104 of the Local Government Act 1995, the Elected Member Code of Conduct which commenced on 1 November 2018 is no longer in effect as it has been replaced by the model code and REPEALS the former Code;*
3. *ADOPTS the Code of Conduct Complaint Form as amended in attachment 2;*
4. *ADOPTS the Code of Conduct Response Form as shown in attachment 3;*
5. *RESOLVES that any allegations of breaches of the former Elected Member Code of Conduct received between 3 February 2021 and 19 April 2021 will be presented to Council in accordance with the procedure specified in the Code of Conduct shown in attachment 1;*
6. *REQUESTS that the Chief Executive Officer prepare a report reviewing the Code of Conduct within 12 months for Council's consideration.*

Contact Us

Enquiries

Call: (08) 9526 1111
Fax: (08) 9525 5441
Email: info@sjshire.wa.gov.au

In Person

Shire of Serpentine Jarrahdale
6 Paterson Street, Mundijong WA 6123
Open Monday to Friday 8.30am-5pm (closed public holidays)



www.sjshire.wa.gov.au



Officer Comment

At the April 2021 Ordinary Council Meeting, Council adopted the Code of Conduct for Councillors, Committee Members and candidates. The Code which replicates the model code of behaviour set out in the *Local Government (Model Code of Conduct Regulations) 2021* sets out a procedure for how to deal with complaints against the code.

Since adoption of the code, eight allegations of breaches of the code of conduct have been heard through this process.

Officers believe that the current process is appropriate and should not be amended.

First, the approach ensures that elected members are accountable and answerable to their peers for their behaviour. This is consistent with the notion that Council is a collective decision making body that must adjudicate on its own affairs. Section 2.10 of the Act provides that the Role of Councillors is to provide leadership and guidance to the community. Officers believe that having a role regulating the behaviour of their peers is consistent with this role.

Second, in respect to concerns that elected members are not impartial when making determinations of code of conduct matters, Officers note that elected members are bound by the legislative framework when making such determinations. This means that it is a breach of the Rules of Conduct to use their position to cause advantage or disadvantage. If any elected member believed that they were unfairly treated during a code of conduct process or if a member of the public did not believe that their complaint was impartially heard they could make a complaint to the Local Government Standards Panel. This avenue would not exist under the proposed approach as independent methods of committees are not bound by the Standards Panel. In that sense, the committee approach would be less not more accountable for their decisions than Council. Most broadly, Officers believe that the premise of the proposal sets a dangerous precedent in that it assumes on a general sense that Council as a collective is unable to perform its decision making functions impartially and must abrogate responsibility to another party.

Third, under the approach proposed, members of the Ethics Committee would be appointed by elected members. If it is accepted that elected members are unable to make determinations regarding the behaviour of their peers because of conflicts of interest, it would also follow that the selection of 'independent' persons to make these decisions on their behalf could be equally flawed.

Officers note that the Minister's second tranche of local government reforms involves the establishment of a local government inspectorate with broad ranging intervention powers. As the full scope of the inspectorate's powers may result in reforms to the way that elected member conduct investigations occur, Officers recommend that the President write to the Minister requesting an update on the reforms.

Attachments (available under separate cover)

- **9.1 - attachment 1** - Position Paper - Towards Transparent Governance prepared by Cr Byas (IN23/26957)



Voting Requirements: Simple Majority

Councillor Recommendation

That Council:

- 1. PROVIDES** in-principle endorsement of the attached position paper's Ethics Committee construct, recognising its potential to elevate the standards of governance, bolster public trust, and align more closely with community expectations on accountability and transparency.
- 2. REQUESTS** the Chief Executive Officer bring a report to Council by 31 March 2024 detailing the necessary policy amendments, procedural changes, and actionable steps required to enact the establishment of the Ethics Committee, ensuring a smooth transition and clear guidance for future operations.

Alternative Officer Recommendation

That Council:

- 1. NOTES** the Position Paper - Towards Transparent Governance prepared by Cr Byas contained in attachment 1.
- 2. REQUESTS** that the Shire President write to the Minister for Local Government requesting an update on the tranche 2 local government reforms as they relate to elected member conduct and the proposed powers of the local government inspectorate.