

**Mayor and Councillors**  
COUNCIL

**7 MAY 2015**

Meeting Status:Public

Purpose of Report: For Decision

## **CODE OF CONDUCT COMPLAINT**

### **PURPOSE OF REPORT**

- 1 This report seeks the Council's agreement as to what action (if any) to take in relation to the alleged breach of the Council's Code of Conduct for Elected Members 2013-2016 Triennium by Councillor Diane Ammundsen lodged by Ms Salima Padamsey.

### **DELEGATION**

- 2 This is a matter that must be considered by Council.

### **BACKGROUND**

#### **Complaint by Ms Padamsey**

- 3 On 11 November 2014 I received a copy of a complaint from Ms Salima Padamsey alleging a breach of the Kapiti Coast District Council Code of Conduct by Councillor Diane Ammundsen (copy attached as Appendix A). Clause 8.3 of the Code provides that all alleged breaches must be reported to either the Chief Executive or the Mayor and must be made in writing and provide corroborating evidence.
- 4 As required by clause 8.3 of the Code I provided Councillor Ammundsen a copy of the complaint. Clause 8.3 also requires that the panel report back to the Council in an open meeting unless the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a staff member or the community.
- 5 Ms Padamsey's complaint is that at a Council meeting on 16 October 2014 Councillor Ammundsen made a series of statements that breached various provisions in clause 5 of the Code of Conduct. A copy of the relevant provisions from the code are attached as Appendix B.

#### **Code of Conduct**

- 6 Schedule 7 of the Local Government Act requires all local authorities to adopt a Code of Conduct. Clause 15(4) of Schedule 7 requires elected members to comply with the Code. However, breaches of the Code do not constitute breaches of the Local Government Act.
- 7 The actions that a local authority may take depend on the nature of the complaint and whether there are other statutory provisions dealing with the subject matter of the complaint.
- 8 Once a complaint is made and assuming that it is in writing and provides corroborating evidence the Council is required to investigate the alleged breach and have prepared a report for consideration of the Council.

### **Initial assessment of complaint**

- 9 Ms Padamsey provides, as evidence of her complaint, a reference to a Kapiti News Article of 22 October 2014. While I do not regard reporting of statements by Councillors in newspaper articles as corroborating evidence that the statements were made, it is common knowledge that Councillor Ammundsen has made the statements in question at the Council Meeting on 16 October 2014.
- 10 I therefore determined that the Council was required to investigate the complaint.
- 11 I then considered the option of appointing a panel to carry out an investigation of the complaint. However, for a number of reasons including the costs involved to the Council of appointing an external person I have made the decision to investigate Ms Padamsey's complaint myself, with assistance from Council staff. As a result there has been some delay with finalising this report.
- 12 The process that I adopted was to seek certain background information to the complaint. A draft report was then prepared. I then took the opportunity to provide a copy of the draft report to both Ms Padamsey and Councillor Ammundsen before finalising the report and presenting it to Council. Ms Padamsey has provided some comments on the report that are attached as Appendix D. Councillor Ammundsen had no comments on the draft report.

### **Council meeting leading to complaint**

- 13 Ms Padamsey's complaint arises from a series of statements that were made by Councillor Ammundsen at a Council meeting on 16 October 2014.
- 14 At that meeting Ms Padamsey addressed the Council during public speaking on the need for transparency and impartiality.
- 15 Following the meeting Ms Padamsey refers to an article in the Kapiti News which included the following statements:

"But Mrs Ammundsen had said that she had been subject to a series of continuing attacks from Ms Padamsey"

"Council got legal advice to see if I had said anything incorrect – it was found I hadn't"

"I think I have been well clear...there was legal advice at the time and most people have accepted that except Ms Padamsey".

- 16 Ms Padamsey makes a number of complaints regarding these statements. For ease of reference I have numbered each separate complaint.

### **Complaint 1 – Discussing Personalities rather than Issues**

- 17 Ms Padamsey's complaint is that by making these statements Councillor Ammundsen was not discussing the issue at hand but rather she was debating personalities and therefore in breach of clause 5.1 of the Code of Conduct.

### **Complaint 2 – Failing to show respect and behave in accordance with dignity of office**

- 18 Following the Council meeting on 16 October 2014, Ms Padamsey wrote to Councillor Ammundsen on 24 October 2014 requesting a public apology for the statements that were attributed to her in the Kapiti News article. Ms Padamsey's

complains that the lack of a response constitutes another breach of clause 5.1 as it does not show respect “to me or to her office”.

- 19 Ms Padamsey states that as a result of Councillor Ammundsen’s actions she has been subject to personal abuse. As evidence of this she refers to a letter by a Mr Manning published in the Kapiti News on 5 November 2014.
- 20 Ms Padamsey goes on to state that she considers that Councillor Ammundsen’s statement constitutes bullying. Ms Padamsey states that she felt bullied by Councillor Ammundsen’s statement that “most people have accepted” that Councillor Ammundsen’s statements regarding the Proposed District Plan did not constitute predetermination. Ms Padamsey feels this statement demeaned her by implying that she was “dumb”.

### **Complaint 3 – Failing to be Honest or Open**

- 21 Ms Padamsey then refers to Councillor Ammundsen organising “an ex-post facto opinion to back up her position”. She claims that this constitutes another breach of the Code of Conduct as her statement that she had legal advice that had cleared her comments was misleading (and therefore in breach of clause 5.1).

### **Complaint 4 – Failing to Act in a Manner Encouraging and Valuing Community Involvement**

- 22 Finally Ms Padamsey complains that Councillor Ammundsen’s behaviour breaches clause 5.4 of the Code of Conduct.

### **Context to Statements in Council Meetings**

- 23 In order to provide some context to the statements made by Councillor Ammundsen I asked staff to review Council meetings over the current triennium. It appears that on 2 occasions Ms Padamsey took the opportunity during public speaking to raise concerns regarding Councillor Ammundsen. Ms Padamsey spoke at Council meetings on 7 November 2013 and 16 October 2014 (the meeting giving rise to the complaints by Councillor Ammundsen). Copies of transcripts of the relevant periods of those 2 meetings are attached as Appendix C.
- 24 It is relevant to note that the statements in question made by Councillor Ammundsen were made during public question time and constituted a single statement by Councillor Ammundsen and the whole exchange (including interjections from Ms Padamsey) was completed in less than one minute. To the extent the statement was repeated (ie reported in the local media) this was outside the control of Councillor Ammundsen.
- 25 At the 7 November 2013 meeting Ms Padamsey first raised the issue of whether Councillor Ammundsen was biased due to statements that she had made that were reported in the Kapiti Observer that she felt the Proposed District Plan was “defendable”. At the meeting Ms Padamsey described this as a “blatant example of potential public perception of bias”. Ms Padamsey went on to discuss whether it was appropriate that Councillor Ammundsen would have the power to appoint Commissioners as part of the PDP process.
- 26 During public speaking time responses Mr McArthur clarified that a paper that was going to be considered later in the meeting was going to amend the Council governance structure to clarify that Councillor Ammundsen was no longer going to have the power to appoint Commissioners for the PDP hearings but that she

would continue to have the power to appoint Commissioners for resource consent hearings.

- 27 At the 16 October 2014 meeting Ms Padamsey addressed the Council during public speaking on the issue of the need for transparency and impartiality.
- 28 She referred to Councillor Ammundsen's role as Chair of the Regulatory Management Committee and in that capacity her delegation to appoint commissioners for all chapters in the Proposed District Plan. She suggested that it was inappropriate for Councillor Ammundsen to be appointed as a Commissioner for the Proposed District Plan. She went on to note that the Council withdrew her delegation to appoint hearings Commissioners. She concluded that this was on the basis that "it was abundantly clear that Councillor Ammundsen could not be seen as being impartial".
- 29 Following the statement, Councillor Ammundsen indicated that she felt that she had been subject to a series of continuing attacks from Ms Padamsey. Councillor Ammundsen referred to the fact that Council had obtained legal advice that confirmed that a reasonable interpretation of her statement that the plan was "defendable" was that she was talking about the process rather than the merits.
- 30 After the 7 November 2013 Council meeting the Kapiti News included a newspaper article which ran as a headline "Cr Ammundsen not impartial?". This in turn drew comments in a letter to the editor by Lowell Manning who argued that Ms Padamsey was driven by self-interest.
- 31 Ms Padamsey refers to this letter in her complaint.

## **My Findings**

### **Complaint 1 – Discussing Personalities rather than Issues**

- 32 Ms Padamsey's complaint was that when Councillor Ammundsen stated that she "had been subject to a series of continuing attacks from Ms Padamsey" this constituted discussing personalities rather than issues.
- 33 I don't accept this complaint.
- 34 To make a statement that a person has been subject to a series of continuing attacks does not necessarily constitute a discussion around personalities. Rather I consider this a description by Councillor Ammundsen of how she felt. Councillor Ammundsen's statement did not discuss Ms Padamsey personally.
- 35 Ms Padamsey states in her complaint that she made "no personal or private allegations against Councillor Ammundsen". However, the transcripts show that Ms Padamsey makes some strong criticisms of Councillor Ammundsen at the 16 October 2014 meeting including:
  - (in relation to the decision-making process) that she is following the DAD model, Decide, Announce and Defend
  - That unless she disqualifies herself as a hearings Commissioner "no one in Kapiti will have any confidence in the impartiality of the hearing process. This will bring it into disrepute."

- 36 In my view these comments are personally directed at Councillor Ammundsen.
- 37 Ms Padamsey suggests Councillor Ammundsen (as opposed to the Council) is following the DAD process (ie Decide, Announce and Defend). I also consider that Ms Padamsey's statement that unless Councillor Ammundsen disqualifies herself as a hearings Commissioner no one will have any confidence in the hearings process constitutes a personal allegation against Councillor Ammundsen. At this time the Council had obtained legal advice that confirmed there was no issue with Councillor Ammundsen putting herself forward as a potential commissioner for the Proposed District Plan.
- 38 In my view Councillor Ammundsen was quite entitled to take the view Ms Padamsey's comments concerning whether or not she would be entitled to be appointed as a hearings commissioner constituted an attack on her personal integrity. This was exacerbated by the fact that these concerns had previously been raised by Ms Padamsey some 11 months earlier and Councillor Ammundsen would have regarded the issue as having been dealt with.
- 39 I do not regard a statement that a person has been subject to a series of attacks as aggressive, offensive or abusive conduct.

**Complaint 2 – Failing to show respect and behave in accordance with dignity of office**

- 40 Ms Padamsey complains that Councillor Ammundsen has breached the Code of Conduct by failing to show respect and behave in accordance with the dignity of their office.
- 41 I don't accept this complaint.
- 42 The basis for this complaint is that Councillor Ammundsen failed to respond to a letter that Ms Padamsey sent her dated 24 October 2014. This letter was sent some 8 days following the 16 October meeting and 2 days after an article appeared in the Kapiti News reporting on the meeting. The letter seeks an apology from Councillor Ammundsen and is essentially an abbreviated version of the code of conduct complaint.
- 43 I note that Councillor Ammundsen is not responsible for what is reported in the Kapiti News. I note also that Ms Padamsey did not complain until after the newspaper article appeared. Ms Padamsey does not complain about the statements made in the meeting but rather the statements "you are reported to have made" as reported in the Kapiti News.
- 44 As noted above I consider that Councillor Ammundsen was entitled to take the view that she was being personally attacked by Ms Padamsey.
- 45 Ms Padamsey then goes on to refer to the personal abuse she has been subject to as a result of the "attacks" by Councillor Ammundsen.
- 46 I note that neither the newspaper article nor the letter in reply were instigated by Councillor Ammundsen. Both the newspaper article and the letter in reply had their genesis in comments made at public speaking. If no comments have been made, arguably there would have been no article written.
- 47 I do not consider that a failure to respond to a letter along these lines seeking a public apology constitutes a failure on Councillor Ammundsen's part to show respect and act in a manner consistent with the dignity of public office.

- 48 Ms Padamsey also complains that she felt bullied and demeaned when Councillor Ammundsen stated that “most people have accepted” that her statements regarding the PDP as being defensible did not constitute predetermination or bias. I fail to see how Ms Padamsey can read into this statement that she is being “demeaned”, “abused” and that the comments constituted “total denigration of my character and intellectual ability”. To the extent Ms Padamsey does take this view, then I do not consider that a reasonable interpretation of the statements.
- 49 Rather, in my view it reflects the fact that Councillor Ammundsen considers that the issue of whether her comments constituted predetermination had been raised earlier (ie at the 7 November 2013 meeting) and legal advice had been obtained (albeit not covering the “defensible” comment) that confirmed there was no issue.
- 50 With respect to Ms Padamsey’s views I do not see how a comment by Councillor Ammundsen that she considers she is being constantly attacked by a particular person constitutes bullying.

### **Complaint 3 – Failing to be Honest or Open**

- 51 Ms Padamsey complains that Councillor Ammundsen failed to act honestly when she advised that legal advice at the time confirmed that her earlier statements regarding the PDP as being “defensible” did not constitute bias or predetermination. She then states Councillor Ammundsen organised advice to back up her position.
- 52 I don’t accept this complaint.
- 53 Staff have advised that when initial external advice was sought Simpson Grierson were not provided with a copy of the press release where Councillor Ammundsen stated that the PDP was defensible. However, Councillor Ammundsen would not have been aware of exactly what information was provided to Simpson Grierson. The instructions that were provided to Simpson Grierson was a matter for staff. At no stage did Councillor Ammundsen seek legal advice from Simpson Grierson or request that the Council obtain legal advice. On their own initiative staff sought legal advice in relation to a number of statements made by different Councillors. This was discussed with me and I provided copies of that advice to individual Councillors.
- 54 In the case of Ms Padamsey a central part of her complaint is umbrage that she has been accused of “attacking” Councillor Ammundsen. I note that in her letter of complaint (see second paragraph page 3) Ms Padamsey says “Due to Councillor Ammundsen’s unfounded attacks on me...”
- 55 I note that Ms Padamsey is using the same language that she is accusing Councillor Ammundsen of using.

### **Complaint 4 – Failing to Act in a Manner Encouraging and Valuing Community Involvement**

- 56 Ms Padamsey makes a general complaint that all Councillor Ammundsen’s statements breach clause 5.4 of the Code of Conduct as by those statements she is not acting in a manner that encourages and values community involvement in local democracy.
- 57 I do not consider that this complaint is made out.

58 Ms Padamsey has been a vocal advocate and at times a strong opponent of the Council both in her personal capacity and as a member of Coastal Ratepayers United. In both roles she has at times been very effective in advocating for her constituency. Given her role as a “community watch dog” I would expect that from time to time she will be criticised for the approach she takes.

59 I do not accept that members of the public have been discouraged from getting involved in local democracy as a result of Councillor Ammundsen’s statements.

60 In my view it is timely for all of us to remember that the obligations on Councillors to accord respect to members of the public goes both ways.

61 I do not consider that any further action is required on the Council’s part.

## **CONSIDERATIONS**

### Policy considerations

62 This report does not have any policy considerations.

### Legal considerations

63 Both Councillor Amundsen and Ms Padamsey have been given an opportunity to comment on this draft report consistent with the rules of natural justice.

### Financial considerations

64 This report does not have any financial considerations.

### Tāngata whenua considerations

65 There are no issues for consideration relating to iwi or Treaty of Waitangi issues.

## **SIGNIFICANCE AND ENGAGEMENT**

### Degree of significance

66 This matter has a low degree of significance under the Council policy.

### Consultation already undertaken

67 It is not appropriate to consult with Community Boards, the community or other agencies on this matter.

### Engagement planning

68 An engagement plan is not needed to implement this decision.

### Publicity

69 It is not necessary or appropriate at this stage to develop a media strategy in respect of this issue.

## RECOMMENDATIONS

70 I recommend that Council:

- a. Note the complaint of Ms Padamsey regarding the alleged breach of the Council's Code of Conduct by Councillor Diane Ammundsen;
- b. agree to take no further action.

**Report written by**

**Approved for submission**

**Tim Power**  
**Senior Legal Counsel**

**Ross Church**  
**Mayor**

## ATTACHMENTS

- Appendix A: Complaint from Ms Padamsey alleging breach of Council Code of Conduct by Councillor Diane Ammundsen.
- Appendix B: Relevant Provisions from the Council Code of Conduct.
- Appendix C: Transcripts from meetings.
- Appendix D: Further comments from Ms Padamsey