

**Mayor and Councillors**  
COUNCIL

27 AUGUST 2015

Meeting Status: **Public**

Purpose of Report: For Decision

## **CODE OF CONDUCT COMPLAINTS**

### **PURPOSE OF REPORT**

- 1 This report requires the Council to make decisions on what action to take in relation to four Code of Conduct complaints that have been received by Council relating to the conduct of various Councillors at the Council meeting on 16 April 2015.

### **DELEGATION**

- 2 The Council is required to make a decision on what action to take in relation to the complaints. This power has not been delegated.

### **BACKGROUND**

- 3 Four complaints have been received relating to events occurring, or alleged to have occurred, during recent Council meetings.
- 4 The complaints received are as follows:
  - 4.1 Dr Kerry Bolton's complaint of 7 May 2015 (although it is dated 7 April 2015) relates to Councillors Holborow, Ammundsen, Welsh, Gaylor, Bell, Michael Scott, Eric Gregory (Chair, Waikanae Community Board) and certain officers.
  - 4.2 Dr Kerry Bolton's complaint of 25 May 2015 relating to the Mayor.
  - 4.3 Councillor Elliott's complaint of 10 June 2015 relating to the Mayor.
  - 4.4 Councillor Elliott's complaint of 10 June 2015 relating to Councillor Gaylor.
- 5 In relation to Dr Bolton's complaint of 7 May 2015, arguably the Council has no jurisdiction in relation to Code of Conduct complaints against Mr Gregory as Mr Gregory is a Community Board member. However, the conduct complained of occurred at a Council meeting. The Waikanae Community Board also arguably has no jurisdiction to consider the complaint as the conduct complained about occurred at a Council meeting. Given that the Council is considering the conduct occurring at the 16 April 2015 Council meeting, Council could decide to handle the complaint in relation to Mr Gregory as part of this process.
- 6 Dr Bolton's complaint of 7 May 2015 also refers to the conduct of certain Council officers. The Council has no jurisdiction in relation to the conduct of officers at Council meetings, or anywhere. The Chief Executive is responsible for the conduct of staff. Dr Bolton's request that certain officers should be reprimanded has therefore been referred to the Chief Executive.

- 7 All of the complaints refer to events occurring or alleged to have occurred at the Council meetings of 26 February 2015, 16 April 2015 and 4 June 2015.
- 8 Copies of the complaints are attached as Appendix A. Those sections of Dr Bolton's complaint of 7 May 2015 that refer to Council officers have been withheld.
- 9 A copy of the Council's Code of Conduct is attached as Appendix B.
- 10 Transcripts from the relevant portions of the three Council meetings are attached as Appendix C. Part of Councillor Elliott's complaint about Councillor Gaylor refers to the audio recording of the meeting. While the transcript has been provided, the audio recording can be played at the meeting if required.

## **ISSUES AND OPTIONS**

- 11 The Code of Conduct requires that the Council investigate any alleged breach and have prepared a report for consideration by Council (see clause 8.3).
- 12 If the Council concludes the Code of Conduct has been breached, in responding the Council may take the following actions:
  - 12.1 Censure
  - 12.2 Removal of the elected member from Council Committees and/or other representative bodies
  - 12.3 Dismissal of the elected member from the position of Deputy Mayor or Chair of a Committee.

## **CONSIDERATIONS**

### **Legal considerations**

- 13 A decision on the actions to be taken requires a Council resolution to that effect. A decision of the Council is final and binding on the member to whom the decision relates and all other members. No member is able to review or challenge the decision, with the exception only of an allegation of a breach of the rules of natural justice.
- 14 On 22 April 2015 Dr Bolton was served a trespass notice that prevents him from entering the Council offices at 175 Rimu Road. He was provided with a copy of this report at the same time as the Council. Staff have offered to distribute any written comments he wishes to provide to Councillors prior to the meeting. Dr Bolton can also have someone speak on his behalf at the meeting.
- 15 In determining what action the Council wishes to take in relation to the complaints the Council will need to consider whether the Elected Members that are the subject of the various complaints have had an opportunity to respond to the allegations that have been made against them.
- 16 A copy of the Buddle Findlay advice on conflict of interest dated 15 July 2015 is attached as Appendix D.

## Financial considerations

- 17 The cost of appointing an independent panel to investigate an earlier Code of Conduct complaint was in the order of \$15,000. There is no specific budget provided for this type of work.

## Tāngata whenua considerations

- 18 There are no issues for consideration relating to iwi or to the Treaty of Waitangi.

## Degree of significance

- 19 This matter has a low level of significance under Council policy.

## Consultation already undertaken

- 20 No consultation has taken place in relation to this matter.

## Engagement planning

- 21 There is no need for an engagement plan for this matter.

## Publicity

- 22 There will be public interest in relation to how the Council deals with these complaints. A media statement will be prepared for release following the Council consideration of the complaints.

## RECOMMENDATIONS

- 23 If Council resolves to accept any of the complaints it will need to determine what sanction, if any, to impose from the options set out in the Code of Conduct summarised in paragraph 12 of this paper.

- 24 It is recommended that Council:

	<b>Complainant</b>	<b>Person Subject of Complaint</b>	<b>Options for Action</b>
(a)	Dr Kerry Bolton (7 May 2015)	Councillor M Scott	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(b)	Dr Kerry Bolton (7 May 2015)	Councillor Bell	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(c)	Dr Kerry Bolton (7 May 2015)	Councillor Gaylor	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(d)	Dr Kerry Bolton (7 May 2015)	Councillor Holborow	Decline to uphold Refer to Panel for investigation Accept and impose sanction

	<b>Complainant</b>	<b>Person Subject of Complaint</b>	<b>Options for Action</b>
(e)	Dr Kerry Bolton (7 May 2015)	Councillor Ammundsen	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(f)	Dr Kerry Bolton (7 May 2015)	Councillor Welsh	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(g)	Dr Kerry Bolton (7 May 2015)	Eric Gregory	Decline to uphold Refer to Panel for investigation Refer to Waikanae Community Board Accept and impose sanction
(h)	Dr Kerry Bolton (25 May 2015)	Mayor	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(i)	Councillor Elliott (10 June 2015)	Mayor	Decline to uphold Refer to Panel for investigation Accept and impose sanction
(j)	Councillor Elliott (10 June 2015)	Councillor Gaylor	Decline to uphold Refer to Panel for investigation Accept and impose sanction

**Report prepared by**

**Approved for submission**

Tim Power

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**Senior Legal Counsel**

**Chief Executive**

## **ATTACHMENTS**

- 1 Appendix A: Code of Conduct Complaints
- 2 Appendix B: Code of Conduct
- 3 Appendix C: Transcripts of relevant portions of Council meetings
- 4 Appendix D: Buddle Findlay advice on conflict of interest dated 15 July 2015