

Mayor and Councillors
COUNCIL

16 JULY 2015

Meeting Status: **Public**

Purpose of Report: For Decision

CODE OF CONDUCT COMPLAINT - PROCESS

PURPOSE OF REPORT

- 1 The purpose of this report is to make recommendations to Council on a process for dealing with complaints alleging breaches of the Council's Code of Conduct.

DELEGATION

- 2 The Code of Conduct is adopted by the Council to comply with the provisions of clause 15 of Schedule 7 of the Local Government Act 2002.
- 3 This report does not recommend that the Council amend the Code of Conduct. While there may be aspects of the Code of Conduct provisions that Councillors would like to review it is appropriate that any amendments should be considered at the commencement of the next triennium.
- 4 However, the paper does propose that the Council agree a process for handling Code of Conduct complaints going forward during the remainder of the triennium. This would include the four current Code of Conduct complaints. Adoption of a process would not require any amendments to the provisions of the Code of Conduct.
- 5 It is appropriate that Council approve any proposed process.

BACKGROUND

- 6 During this triennium the Council has received and considered two Code of Conduct complaints. In both cases a different process for dealing with the complaint was followed. In the first case a panel of two Councillors along with an independent chairperson was appointed to prepare a report that was considered by Council. In the second case staff prepared a report that was signed by the Mayor. The report was subsequently considered by Council.
- 7 In both cases a number of concerns have been raised.
- 8 In relation to the first complaint criticisms were raised regarding the cost to ratepayers of dealing with the complaint.
- 9 Following the second Code of Conduct complaint Councillors expressed dissatisfaction with the process for dealing with complaints. In particular some Councillors indicated that they wanted the ability to deal with complaints without the need to have a report prepared by staff or external advisers.
- 10 The Council has already considered two Code of Conduct complaints this triennium. In addition four further Code of Conduct complaints have been lodged.

ISSUES AND OPTIONS

Issues

- 11 When a complaint is received that contains corroborating evidence the Council is required to investigate the complaint and have prepared a report for consideration by the Council. Complaints are received by either the Chief Executive or the Mayor.
- 12 The Code of Conduct does not set out who must prepare the report. The only guidance provided is that any process must be consistent with the principle of natural justice. Typically this would require that the member whose conduct is being examined is notified of the complaint, given an opportunity to meet with any panel considering the complaint, and given an opportunity to respond to any issues at the Council meeting considering the complaint.
- 13 It is important to note that all complaints must be dealt with on a case-by-case basis. However, given the increased focus on the Code of Conduct process as a forum for dealing with disputes over Councillor conduct it is appropriate to provide some guidance to both Councillors, Council officers, and members of the public as to how complaints will be dealt with.

Preparation of Report

- 14 A proposed process for dealing with Code of Conduct complaints is set out as Appendix 2 to this report.
- 15 The first step when a valid complaint is received is to determine what sort of a report is required and who should be responsible for preparation of the report to be considered by Council. Some complaints are straight forward and there is no need for a substantive report (other than a brief summary and any additional evidence that might be relevant – for example a transcript of a Council meeting) to be prepared analysing the complaint.
- 16 If a substantive report is required then one option is to appoint an independent person to chair a panel that is charged with investigating the complaint. Typically the independent person appointed will be a lawyer with a combination of local government experience along with experience carrying out investigations. An independent chairperson would typically be supported by 2 other Councillors making up a panel responsible for reviewing the complaint and preparing the report.
- 17 The appointment of an independent chairperson will be appropriate where the complaint is complex and requires an in-depth investigation of a range of issues. The disadvantage of appointing an independent chairperson is that the Council will incur significant costs. Also the two Councillors appointed to the panel will be required to spend time with the independent chairperson on the report. The independent chairperson will be responsible for determining the process they adopt the drafting the report. This will include determining whether they need to interview the complainant. The only requirement is that they comply with the principles of natural justice.
- 18 If the Mayor after discussion with the Chief Executive considers that a panel with an independent chairperson is required then a paper will be prepared recommending the appointment of an independent chair, the approval of a terms of reference, and the appointment of two Councillors to the panel.

- 19 Another option is that officers could prepare the report for the Mayor to bring to Council.
- 20 However, this option places officers in a difficult situation given that the report involves an examination of the conduct of Elected Members.
- 21 Where the conduct being complained about occurred at a Council meeting then there is less justification for appointing a panel (including an independent chairperson) to prepare a report. Assuming most Councillors were present and witnessed the conduct being complained about then it is more difficult to justify a report being prepared analysing the complaint. Councillors who were present should be able to form their own view as to whether or not the complaint is made out based on the available information.
- 22 This proposed process is outlined in the flow chart attached as Appendix 2.

Council Meeting to Consider Report

- 23 While there is no right of appeal against a decision of the Council in relation to a Code of Conduct complaint, there is an exception where a member alleges that there has been a breach of the rules of natural justice.
- 24 It is therefore important that the Councillor whose conduct is the subject of the complaint feels that they have an adequate opportunity to respond to matters raised in the complaint.
- 25 When the person making the complaint is a member of the public, that person, or their representative, should be provided with the opportunity to present their complaint. In most cases the standard provisions in Standing Orders should be sufficient.

Voting

- 26 Another issue that has arisen is whether or not all Councillors (including Councillors who are the subject of the complaint) should participate and vote on any resolutions contained in reports into Code of Conduct complaints. The Code of Conduct provides guidance to all Councillors on standards of behaviour that are expected of members. The Code of Conduct is “owned” by all Councillors and to that extent all Councillors will have their own views on what constitutes acceptable and unacceptable behaviour. It is important that all Councillors have the opportunity to express their view on standards of behaviour and they should not feel the need to abstain from voting on a resolution because of a perceived conflict of interest.
- 27 Ultimately each individual Councillor will need to reach a view as to whether they wish to participate and vote on a resolution regarding a Code of Conduct complaint where they are the subject of the complaint, or the complainant.

CONSIDERATIONS

Policy considerations

- 28 There are no policy considerations relevant to this report.

Legal considerations

- 29 This paper outlines a process for dealing with Code of Conduct complaints. The proposed process is consistent with the principles of natural justice.

Financial considerations

- 30 There are no financial considerations arising from this report.

Tāngata whenua considerations

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

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

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

Consultation already undertaken

- 33 No consultation is required in relation to this matter.

Engagement planning

- 34 An engagement plan is not needed to implement this decision.

Publicity

- 35 There is no need to develop a proactive communications plan, strategy or media release in respect of the issue.

RECOMMENDATIONS

- 36 That the Council note Report CE-15-1612.
- 37 That the Council adopt the process for dealing with Code of Conduct complaints as set out in Appendix 2 to Report CE-15-1612.
- 38 That the Council note that It is important that all Councillors have the opportunity to express their view on standards of behaviour and they should not feel the need to abstain from voting on a resolution because of a perceived conflict of interest.

Report prepared by

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Approved for submission

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ATTACHMENTS

Appendix 1 Relevant Provisions from the Council's Code of Conduct.

Appendix 2 Process for dealing with Code of Conduct complaints.

APPENDIX 1:**Relevant Provisions from the Council's Code of Conduct****8.0 COMPLIANCE AND REVIEW****8.1 COMPLIANCE**

Schedule 7 of the Local Government Act 2002 requires each local authority to adopt a Code of Conduct. The Local Government Act 2002 requires Elected Members to comply with the provisions of this Code of Conduct (Schedule 7, Clause 15(4)):

“A member of a local authority must comply with the code of conduct of that local authority.”

However, the Act also states (Schedule 7, Clause 15(7)):

“To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.”

8.2 BREACHES OF LEGISLATION

The exact nature of the action the Council may take depends on the nature of the issue and whether there are statutory provisions dealing with the issue. If there are statutory provisions dealing with the issue then it will be addressed in accordance with the relevant statutory provisions:

- issues relating to members interests render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and if convicted the Member can be removed from office;
- issues which result in the Council suffering financial loss or damage may be reported on by the Auditor General under the Local Government Act 2002, which may result in the member having to make good the loss or damage;
- issues relating to the commission of a criminal offence may leave the Elected Member liable for criminal prosecution.

8.3 COMPLIANCE WITH THIS CODE

All alleged breaches of this Code whether by another Elected Member, or a member of the community must be reported either to the Chief Executive or the Mayor and must be made in writing and provide corroborating evidence. The Council will investigate the alleged breach and have prepared a report for consideration of the Council. In accordance with the principles of natural justice the alleged breach will be notified to the Elected Member, explaining when and where they will have the opportunity to put their version of events. The Council will consider the report in an open meeting of the Council except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a staff member or of the community. In responding the Council may take the following action:

- censure;
- removal of the Elected Member from Council Committees and/or other representative bodies;
- dismissal of the Elected Member from the position of Deputy Mayor or Chair of a Committee.

A decision to apply one or more of these actions requires a Council resolution to that effect (majority vote). A decision by the Council will be final and binding on the member to whom that decision relates and all other members. With the exception only of an allegation of a breach of the rules of natural justice no member shall seek to review or challenge the outcome under Standing Orders, the Local Government Act 2002 or by judicial process.

If it appears that a breach of the Code also constitutes a statutory offence the Council shall refer the circumstances of that breach to the relevant body for further action.

8.4 REVIEW OF THIS CODE OF CONDUCT

Once adopted the Code of Conduct continues in force until amended by the Council. The Code can be amended at any time, but cannot be revoked unless the Council replaces it with another Code. Once adopted amendments to the Code of Conduct require a resolution supported by 75% or more of the members present.

**APPENDIX 2:
Process for Dealing with Code of Conduct Complaints**

