

Regional Council

Item not on the Agenda/Late Report:

Proposed Amendments to the Bay of Plenty Regional Council Code of Conduct

Council meeting on Thursday, 9 May 2019 commencing at 9.30 am.

4 Acceptance of Late Items

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Report To: Regional Council

Meeting Date: 09 May 2019

Report From: Mat Taylor, General Manager, Corporate

Proposed amendments to the BOPRC Code of Conduct

Executive Summary

The existing Code of Conduct does not provide guidance or a process when complaints are received nor does it reference types of penalties or actions that could be considered. Therefore it is recommended that the current Code of Conduct be updated to include these.

Recommendations

That the Regional Council:

- 1 Receives the report, Amendments to the BOPRC Code of Conduct, and accepts it as a Late Item on the Agenda;**
- 2 Notes the reason why this item was not on the Agenda is that a Code of Conduct complaint has been received after the agenda had been published and the reason why it cannot be delayed is that a process decision is required prior to the next scheduled meeting of Regional Council on 27 June 2019.**
- 3 As an interim measure, approves the process for the determination and investigation of complaints and subsequent amendments to Part 6 (Compliance) of the BOPRC Code of Conduct, as identified in Appendix 1, to include sections on Breaches of the Code and Penalties and Actions and that they be applied immediately.**
- 4 Requests a review of the current Code of Conduct be undertaken as soon as possible to align to best practice and that this be brought back to Council for further discussion.**
- 5 In the matter of a current complaint, delegates authority to the Chairman, in conjunction with the Chief Executive, to appoint an independent investigator to conduct any further investigations required to report back to Council to resolve the matter.**

1 Background

The current BOPRC Toi Moana Code of Conduct is based on a previous template published by LGNZ. One of the issues with the original template was the lack of detail about the process for investigating complaints and determining their materiality. Another issue involved the need to ensure processes are free of bias, especially where councillors might be seen as interested parties.

In October 2016, LGNZ published a new Code of Conduct template and guidelines designed to incorporate legislative changes, new approaches to good governance and provide better advice for councils having to deal with alleged breaches. The current BOPRC Code of Conduct requires a comprehensive review in light of these changes and will be presented at a further Council meeting for discussion and approval as part of preparations for the new triennium.

In the interim, Council is asked to approve a process for investigating breaches that may occur between now and when the code is reviewed in its entirety.

2 Proposed Amendments

The fact that the current Code of Conduct is silent on a process for investigating and resolving breaches of the code and on what sanctions and penalties could be applied particularly where there are alleged material breaches, is problematic when a complaint is received. With no agreed process, the nature of breach and required investigation becomes arduous and results in unnecessary delays to the process.

The proposed amendments are based on LGNZ's good practice guidelines and research into 16 randomly selected councils' codes of conduct practices.

The proposed process for the investigation into complaints involves the use of an independent investigator to conduct further investigations into alleged breaches of a material nature.

3 Budget Implications

3.1 Current Year Budget

While there will be a cost to engage an independent investigator this is able to be incorporated in the Governance current budget.

3.2 Future Budget Implications

Any future budget implications will be identified in the Code of Conduct review.

4 Community Outcomes

This matter directly contributes to the A Vibrant Region Community Outcome in the Council's Long Term Plan 2018-2028.

Yvonne Tatton
Governance Manager

for General Manager, Corporate

7 May 2019

APPENDIX 1

Draft Amendments to the BOPRC Code of Conduct

Amendment to the BOPRC Code of Conduct

Part 6 Compliance

Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 7, clause 15). Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

Principles

The following principles will guide any processes for investigating and determining whether or not a breach under this Code has occurred:

- (a) that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- (b) that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- (c) that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
 - have a right to know that an investigation process is underway;
 - are given due notice and are provided with an opportunity to be heard;
 - have a right to seek appropriate advice and be represented; and
 - have their privacy respected.

Complaints

All complaints made under this Code must be made in writing and forwarded to the Chairman or Chief Executive. On receipt of a complaint the Chairman and Chief Executive must conduct a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.

Investigation, advice and decision

The process, following receipt of a complaint, will follow the steps outlined in Appendix B.

Materiality

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the Council into disrepute or, if not addressed, reflect adversely on another member of the Council.

Penalties and actions

Where a complaint is determined to be material and referred to the Council the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of this Code the Council may require one or more of the following:

1. a letter of censure to the member;
2. a request (made either privately or publicly) for an apology;
3. a vote of no confidence in the member;
4. removal of certain council-funded privileges (such as attendance at conferences);
5. restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. limitation on any dealings with council staff so that they are confined to the Chief Executive only;
7. suspension from committees or other bodies; or
8. an invitation for the member to consider resigning from the Council
9. removal of council owned devices where misuse has occurred

Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- breaches which result in the council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s 44 (2) of the LGA 2002 which may result in the member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

Appendix A: Process for the determination and investigation of complaints

Step 1: Chairman/Chief Executive receives complaint

On receipt of a complaint the Chairman (or Deputy Chair if the complaint relates to the Chairman) and Chief Executive will assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; and
4. the complaint is material and a full investigation is required.

In making the assessment the Chairman and Chief Executive may make whatever initial inquiry is necessary to determine the appropriate course of action. The Chairman and Chief Executive has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

Step 2: Chairman and Chief Executive make preliminary assessment

In making a preliminary assessment the Chairman or Chief Executive will:

1. where it is determined that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the decision;
2. in cases where it is found that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.
3. In cases where there is doubt as to the nature of the breach the complaint will be refer to an independent investigator selected from a panel approved by Council at the start of the triennium.

Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material the Chairman and the Chief Executive may recommend a course of action appropriate to the breach, such as;

- (a) that the respondent seek guidance from the Chairman or other such person as directed;
- (b) that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The Chairman or Chief Executive will advise both the complainant and the respondent of the decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-binding on the respondent and the council.

Step 4: Actions where a breach is found to be material

If under the preliminary assessment the breach is found to be material or “a case to be answered” the Chairman and Chief Executive will refer the complaint to an investigator. The Chairman or Chief Executive will also:

- (a) inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- (b) inform the respondent that a complaint has been made against them, the name of the investigator and refer them to the process for dealing with complaints as set out in the Code.

If the subject of a complaint is found to be material the investigator will inform the Chairman and Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach.

In preparing that report the investigator may:

- (a) consult with the complainant, respondent and any affected parties;
- (b) undertake a hearing with relevant parties; and/or
- (c) refer to any relevant documents or information.

On receipt of the investigator's report the Chief Executive will prepare a report for the Council which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the full report prepared by the investigator.

Step 5: Process for considering the investigator's report

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full council, excluding the complainant, respondent and any other 'interested' members.

The Council will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report the Council will give the member against whom the complaint has been made an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in Part 6 Penalties and actions of this Code.

Complaints Procedure – Flow Diagram

