

TASMAN DISTRICT COUNCIL (TE KAUNIHERA O TE TAI O AORERE) POLICY FOR INVESTIGATION AND RULING ON ALLEGED BREACHES OF THE CODE OF CONDUCT

ADOPTED ON 27 APRIL 2023



Contents

The Tasman District Council Policy for Investigating and Ruling on Alleged Breaches of the Code of Conduct	3
Te kaupapahere o te Kaunihera o te tai o Aorere hei tiro tiro me te whakatau i ngā whakapae kua takahia te Tikanga Whanonga	3
Application	3
Definitions	3
Principles	3
Who can make a complaint?.....	3
Role of the initial assessor	4
Role of the independent investigator	5
Costs and support	6
Appendices.....	6
Appendix 1: Process for determining and investigating complaints Te tukanga whakatau me te tiro tiro i ngā amuamu	7
Step 1: Chief Executive receives complaint	7
Step 2: Initial assessor makes an assessment and decides on process	7
Step 3: Independent investigator to investigate, make a determination and prepare a report....	7
Step 4: Process for considering the investigator's report.....	8
Appendix 2: Selecting the initial assessor and independent investigator	9
Te kōwhiri i te tangata motuhake me te kaitiro tiro Motuhake	9
Selecting an initial assessor.....	9
Selecting an independent investigator	9
Appendix 3: Actions that may be applied when a breach has been confirmed	10
Ngā mahi ka whāia pea ina whakatauhia tētahi takahanga	10
Responses to statutory breaches.....	11

The Tasman District Council Policy for Investigating and Ruling on Alleged Breaches of the Code of Conduct

Te kaupapahere o te Kaunihera o te tai o Aorere hei tiro tiro me te whakatau i ngā whakapae kua takahia te Tikanga Whanonga

Application

This Policy applies in relation to any Code of Conduct adopted by Council or by the Motueka and Golden Bay Community Boards.

Definitions

For the purpose of this Policy “member” means an elected or appointed member of:

- the governing body of the local authority,
- any committee or sub-committee of the local authority
- any local board of the local authority, or
- any community board of the local authority.

Principles

The following principles will guide the investigation into, and assessment of, complaints made against a member for breaching the Code of Conduct:

- The complaints process will be independent, impartial, and respect members’ privacy.
- Members will be given due notice than an investigation is underway and will be provided with an opportunity to be heard.
- Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process.
- Complaints will be resolved at the lowest level of resolution as possible, with priority given to finding a mediated settlement.
- Complainants, and members subject to a complaint, will have access to advice and support for the time it takes to find a resolution¹.

Who can make a complaint?

¹ For example, by enabling both parties to access a council’s Employee Assistance Programme (EAP) or elected members’ equivalent.

The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the Chief Executive, who can make a complaint on behalf of their staff. On receipt of a complaint, the Chief Executive (or Mayor if the complaint is from the Chief Executive) must forward the complaint to an initial assessor for an assessment.

Role of the initial assessor

On receipt of a complaint, an initial assessor will undertake an assessment to determine the relative merit and seriousness of the complaint, and the nature of the subsequent process that will be followed. The complaint may be dismissed if the initial assessor finds it to be trivial, vexatious, frivolous, or politically motivated.

If a complaint is not dismissed, the initial assessor may initiate one of the following:

1 Refer to the Mayor

In the case of a breach that is not serious or amenable to mediation, the initial assessor may refer the person responsible for the alleged breach to the Mayor for their advice and guidance (in the case of complaints about a community board member, the complaint will also be referred to the Community Board Chair who will provide the Mayor with assistance as required in resolving the complaint). These will not be reported to Council. A meeting or meetings with the Mayor will be regarded as sufficient to resolve the complaint. Where a member is referred to the Mayor, the initial assessor may also recommend, for the Mayor's consideration:

- That the member attends a relevant training course.
- That the member works with a mentor for a period.
- That the member tenders an apology.

2 Mediation

If the complaint concerns a dispute between two members, or between a member and another party, the initial assessor may recommend mediation. If mediation is agreed by both parties, then its completion will represent the end of the complaints process. The outcomes of any mediation will be confidential and, other than reporting that a complaint has been resolved through mediation, there will be no additional report to Council unless the complaint is referred to an independent investigator, usually due to a failure of the mediation.

3 Refer to an independent investigator

Where the initial assessor finds that the complaint is serious or no resolution can be reached and/or mediation is refused, the initial assessor will refer the complaint to an independent investigator. The independent investigator will be selected from Council's independent investigators' panel assembled by the Chief Executive, or an independent investigator service that is contracted to Council. Complaints that involve a Mayor or the Chief Executive will be referred directly to the independent investigator.

Complaints that are dismissed, referred to the Mayor, or resolved by mediation, will not be reported to Council.

Role of the independent investigator

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine actions that Council should take in response to the breach.

Determining the significance of an alleged breach

The independent investigator may take whatever actions they need to determine the significance of a complaint, within the budgetary constraints set down, including re-assessing the complaint.

When considering the issue of significance, the independent investigator will need to consider a range of factors before deciding, such as:

- Was the breach intentional or unintentional?
- Did it occur once or is there a pattern of recurring behaviour?
- Does the breach have legal or financial ramifications for Council?
- What is the impact of the breach on other elected members, on officials and on the community in general?

Investigation of an alleged breach

The independent investigator will undertake an investigation appropriate to the scale of the breach, which may include interviews with other affected parties, and prepare a report for the Chief Executive (or the Mayor if the complaint has been made by the Chief Executive) which will set out the rationale for their findings and may include recommendations for resolving the breach and appropriate actions and penalties.

Investigation outcomes

On completing their investigation, an independent investigator may dismiss a complaint or make a binding ruling. Any ruling and actions made by the independent investigator in response to a complaint that has been upheld are binding on Council. This is to ensure the process for investigation is free of any suggestion of bias and reduces the cost of the complaints process, by reducing the time spent on it, by members and officials.

The independent investigator's ruling will be contained in a report to the Chief Executive which will form the basis of a consequent report to Council to inform Council of the decision and the actions that Council may be required to take.

Please note: All actions taken in the implementation of a policy must be consistent with the Bill of Rights Act 1990. No appeal right is included in the Code of Conduct. Members who are unhappy with an independent investigator's decision have access to judicial review and/or the Ombudsman's Office.

Costs and support

Council must ensure that members who make a complaint are not left to meet any costs created by doing so. Members, those who make complaints, and those who are subject to a complaint, should be given appropriate and reasonable support.

The costs of assessment and investigatory services will be met by Council.

Appendices

The following appendices are attached to provide further guidance on the processes to be followed in relation to a complaint of an alleged breach of the Code of Conduct;

- **Appendix 1: Process for determining and investigating complaints**
- **Appendix 2: Selecting the initial accessor and independent investigator**
- **Appendix 3: Actions that may be applied when the breach has been confirmed**

Appendix 1: Process for determining and investigating complaints

Te tukanga whakatau me te tiroiro i ngā amuamu

Step 1: Chief Executive receives complaint

All complaints made under this Code of Conduct must be made in writing and forwarded to the Chief Executive (or to the Mayor if the complaint is made by the Chief Executive) who will refer the complaint to the initial assessor. The Chief Executive (or Mayor) will also:

- inform the complainant that the complaint has been referred to the initial assessor (named) and refer them to the Code of Conduct and the process for dealing with complaints as set out in this Policy; and
- inform the respondent that a complaint has been made against them and the name of the initial assessor overseeing the process and refer them to the Code of Conduct and the process for dealing with complaints as set out in this Policy.

Step 2: Initial assessor makes an assessment and decides on process

1. The initial assessor will undertake an assessment of the merits of the complaint. If they consider it is not valid, the complaint will be dismissed. The complainant will have no recourse or appeal. Grounds for concluding that a complaint has no merit include that it is trivial, vexatious, frivolous, or politically motivated.
2. If deemed to have merit, the initial assessor will either refer the complaint to the Mayor, for mediation or to an independent investigator as set out in this Policy.
3. If the complaint is referred to an independent investigator, the initial assessor will inform the complainant and the respondent that the complaint has been referred to the independent investigator and the name of the independent investigator.

Step 3: Independent investigator to investigate, make a determination and prepare a report

The independent investigator will assess the nature and effect of the breach and undertake an investigation. In undertaking the investigation, the independent investigator may:

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

At any stage in their inquiry the independent investigator may find that a breach has not occurred, or the matter should be referred to a relevant agency. If this is the case the independent investigator will inform

the initial assessor who will inform the complainant and respondent that the complaint is dismissed or has been referred to a relevant named agency.

Following the investigation, the investigator will prepare a report for the Chief Executive (or Mayor) which will form part of a consequent report to Council. The report will provide results of the investigator's assessment of the seriousness of the breach and the investigator's determination which will include any actions commensurate with that breach.

On receipt of the independent investigator's report, the Chief Executive (or Mayor) will prepare a report for Council, which will meet to consider the findings and implement any actions. The report will include the full report prepared by the investigator.

Step 4: Process for considering the investigator's report

As Council's policy for determining and investigating complaints provides for an independent investigator's recommendations to be binding on the local authority, then:

- the Chief Executive's (or Mayor's) report, containing the independent investigator's recommendations and their full report, will be presented to Council for its information only.
- The report may also outline the plan for the report's public release, for Council's information and comment.
- The report will be received in a public meeting unless grounds, such as section 48 of the Local Government Official Information and Meetings Act 1987 exist for the exclusion of the public.
- The recommended actions in the Report will depend on the seriousness of the breach and may include actions set out in Appendix 3

Appendix 2: Selecting the initial assessor and independent investigator

Te kōwhiri i te tangata motuhake me te kaitirotiro Motuhake

Selecting an initial assessor

The Chief Executive is responsible for this. In selected the initial assessor, the Chief Executive will consult with Council.

The initial assessor should be a person, or a position, that is independent of a local authority's political governance, while also being easily accessible, as their role is crucial if complaints are to be expedited quickly and without controversy. For example:

- An external Chair or appointee on Council's Audit and Risk Committee.
- A member of staff, such as an internal ombudsman or ethics adviser, as long as they have operational independence from the Chief Executive (similar to the independence afforded an Electoral Officer).
- A retired Council Chief Executive.
- A retired Council politician.
- A member of the public with relevant experience and competency.

Selecting an independent investigator

The Chief Executive is responsible for compiling a panel or list of independent investigators.

At the beginning of each triennium the Chief Executive, in consultation with Council will compile a list of independent investigators. In selecting them, a Chief Executive may consider:

- Council's legal services providers,
- a national service specialising in public sector integrity,
- a national service providing assessment and investigation services, or
- an individual with relevant skills and competencies.

Please note: Given the litigious nature of some code of conduct disputes independent investigators should have relevant liability insurance, provide on their own behalf or by the local authority. The Chief Executive also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

Appendix 3: Actions that may be applied when a breach has been confirmed

Ngā mahi ka whāia pea ina whakatauhia tētahi takahanga

Where a complaint that the Code of Conduct was breached has been upheld, any actions taken against the member found to be in breach should be consistent with the following principles.

- Actions should be commensurate with the seriousness of the breach.
- Actions should be applied in a manner that is culturally appropriate and safe for the members involved.
- Actions should, to the degree practical, contribute to an inclusive culture in the kaunihera by focusing on constructive mediation, learning, and member improvement.

In determining a response to a breach of the Code of Conduct, one or more of the following could be selected:

1. That no action is required.
2. That the member meets with the Mayor for advice.
3. That the member attends a relevant training course.
4. That the member agrees to cease the behaviour.
5. That the member work with a mentor for a period.
6. That the member tenders an apology.
7. That the member participates in voluntary mediation (if the complaint involves a conflict between two members).
8. That Council sends a letter of censure to the member.
9. That Council passes a vote of no confidence in the member.
10. That the member loses certain Council-funded privileges (such as attendance at conferences).
11. That the member loses specific responsibilities, such as committee chair, deputy committee chair or portfolio holder.
12. That the member be subject to restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed).
13. That the member be subject to limitations on their dealings with Council staff, other than the Chief Executive or identified senior manager.
14. That the member be suspended from committees or other bodies to which the member has been appointed.
15. That the member be invited to consider resigning from the council.

Please note: Actions 1-6 will typically not be reported to Council. Actions 7-15, which have a high degree of public interest, namely democratic representation, should be considered in an open meeting, unless there are grounds, such as those set out in LGOIMA, for not doing so.

Responses to statutory breaches

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

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the Local Authorities (Members' Interests) Act 1968.
- Breaches which result in Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under section 44 LGA 2002 which may result in the member having to make good the loss or damage).
- 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).