

ROTORUA LAKES COUNCIL

Mayor
Members
COUNCIL

CODE OF CONDUCT – CR MACPHERSON

Report approved by: Geoff Williams, Chief Executive

**1. TE PŪTAKE
PURPOSE**

The purpose of this report is for Council to receive the outcome of the Audit and Risk Committee's investigation into complaints alleging breaches of the Rotorua Lakes Council Code of Conduct by Cr Macpherson, and to agree on any further action in respect of the matter.

**2. HE TŪTOHUNGA
RECOMMENDATION**

- 1. That the report Code of Conduct – Cr Macpherson be received.**
- 2. That Council accepts and notes in the minutes of this meeting the resolutions made by the Audit and Risk Committee at its meeting held on 27 May 2020 as stated below:**
 - 1. *The procedural issues raised in Cr Macpherson's presentation to the committee are noted and it is confirmed that the committee is satisfied that there were no material matters of concern from a probity perspective, except for the 2 matters that were addressed at the meeting, namely:***
 - Mayor Chadwick explained that to avoid any perceived conflict of interest that she excused herself from the discussion and decision making regarding the complaint, Cr Macpherson remained for the comments from Lachlan Muldowney on the response to his report.*
 - 2. *That the report from Lachlan Muldowney on the breaches of the code is received and adopted.***
 - 3. *That Cr Macpherson be advised that he is found to be in breach of the code, as described in the above report.***
 - 4. *That the above findings and outcomes are reported to the Council, with a recommendation that Cr Macpherson be required to apologise to the complainants by a required date, and that the Council determine any further action to be taken.***
 - 5. *That the above actions are all considered in committee.***
 - 6. *That the committee recommends that the Council consider a review of the Code of Conduct to more specifically address social media activities and the effect of the HDCA, and whether there are any process changes or refinements that would assist in achieving the purpose of the legislation.***

3. **That Council requests that Cr Macpherson apologises to each of the complainants for breaching the Code of Conduct by no later than 31 July 2020 and in the event the apologies are not made by that time, that the Mayor immediately issue an apology to each of the complainants on behalf of the Council.**
4. **That this report and the resolutions arising from this report be made publicly available after 1 August 2020.**

4. **TE TĀHUHU BACKGROUND**

1. On 29 January 2020, Her Worship the Mayor Chadwick lodged with the Rotorua Lakes Council Audit and Risk Committee a document titled 'Notice of complaint under clause 4 of the Rotorua Lakes Council Code of Conduct for Elected Members'
2. The Notice of Complaint identified 5 separate individuals who had each made a complaint to her concerning the actions of Councillor Macpherson (Cr Macpherson). The complaints related to two incidents, one involving a Facebook post made by Cr Macpherson on 15 December 2019 (Complaint 1) and another involving a Facebook post made by Cr Macpherson on 13 January 2020 (Complaint 2).
3. On 4 February 2020, the chair of the Audit and Risk Committee wrote to Cr Macpherson and advised that in view of the concerns raised in the complaint, the Audit and Risk Committee had resolved to commission an independent investigation with a view to examining those concerns to inform:
 - i) if Cr Macpherson had breached the Code of Conduct for Elected Members and if so whether the breach is material;
 - ii) what actions should be taken to remedy the impact of any material breaches and resolve the complaint;
 - iii) what consequences by way of sanction under the Code of Conduct for Elected Members, if any, should be applied;
 - iv) what actions could be taken to reduce the risk of further similar breaches in the future.
4. At its meeting on 27 May 2020 the Audit and Risk Committee formally received from Mr Muldowney a report dated 24 April 2020 entitled "Investigation Report to Rotorua Lakes Council on Code of Conduct Complaint. The report concluded that Cr Macpherson had breached the Code of Conduct in respect of his obligations:
 - a. of confidentiality;
 - b. not to mislead;
 - c. to treat Council staff and elected members with respect;
 - d. not to engage in offensive behaviour.
5. At that same meeting the Audit and Risk Committee also received a presentation (written and verbal) from Cr Macpherson which responded to the Investigation Report.
6. After considering Cr Macpherson's response, the Audit and Risk Committee met again on 15 June and resolved:
 1. *The procedural issues raised in Cr Macpherson's presentation to the committee are noted and it is confirmed that the committee is satisfied that there were no*

material matters of concern from a probity perspective, except for the 2 matters that were addressed at the meeting, namely:

Mayor Chadwick explained that to avoid any perceived conflict of interest that she excused herself from the discussion and decision making regarding the complaint,

Cr Macpherson remained for the comments from Lachlan Muldowney on the response to his report.

2. *That the report from Lachlan Muldowney on the breaches of the code is received and adopted.*
3. *That Cr Macpherson be advised that he is found to be in breach of the code, as described in the above report.*
4. *That the above findings and outcomes are reported to the Council, with a recommendation that Cr Macpherson be required to apologise to the complainants by a required date, and that the Council determine any further action to be taken.*
5. *That the above actions are all considered in committee.*
6. *That the committee recommends that the Council consider a review of the Code of Conduct to more specifically address social media activities and the effect of the HDCA, and whether there are any process changes or refinements that would assist in achieving the purpose of the legislation.*
7. Cr Macpherson has been advised of the resolutions of the Audit and Risk Committee and has indicated he does not accept the findings of the Independent Report nor the outcome of the investigation.
8. Despite Cr Macpherson's position it is recommended that the findings of the Independent Report and the resolutions of the Audit and Risk Committee be accepted by Council.
9. The investigation has been robust and thorough, and there is no sound basis to revisit the findings.
10. It is recommended that Council accept the findings, and request that Cr Macpherson provide an apology to the complainants for breaching the Code of Conduct by no later than 31 July 2020. Further, it is recommended that if the apology has not been provided by that time, that the Mayor, on behalf of Council, apologises to the complainants for Cr Macpherson's breach of the Code.

5. TE MATAPAKI ME NGĀ KŌWHIRINGA DISCUSSION AND OPTIONS

11. As this is a Code of Conduct matter addressing the actions of an elected member, discussion and consideration of options should be left in the hands of elected members at the meeting.

12. It is recommended that Cr Macpherson be present when this report is received and during any questions. However it is recommended that he excuse himself from any debate, deliberations and decisions given he is the subject of the decision under consideration.
13. Similarly, as one of the complainants, it is recommended that while he may be present during presentation of the report and questions, Deputy Mayor Donaldson should also excuse himself from debate, deliberations and decisions.
14. Finally, it is noted that Mayor Chadwick stepped aside from decision making as a member of the Audit and Risk Committee to avoid any perception of conflict, given she had referred the complaints to the committee, as required under the Code of Conduct. Whether she wishes to participate in the final decision making of Council is a matter for her to determine, noting that all elected members must bring an open mind to decision making.

6. TE TINO AROMATAWAI ASSESSMENT OF SIGNIFICANCE

“The decisions or matters of this report are not considered significant in accordance with the Council’s Significance and Engagement Policy.”

However, the breach of the Code of Conduct is a significant issue as it carries with it risk to elected members trust and reputation within the community especially concerning confidential issues and the lack of maintaining confidentiality when required to do so.

7. NGĀ KŌRERO O TE HAPORI ME TE WHAKATAIRANGA COMMUNITY INPUT/ENGAGEMENT AND PUBLICITY N/A

8. HE WHAIWHAKAARO CONSIDERATIONS

8.1 Mahere Pūtea Financial/budget considerations N/A

8.2 Kaupapa Here me ngā Hiraunga Whakariterite Policy and planning implications The undertaking to investigate complaints raised has been in accordance with Council’s Code of Conduct.

8.3 Tūraru Risks There is a reputational risk to Council and to elected members around this issue. It raises concerns about trust within the Council to maintain confidentiality and to conduct the role and responsibilities of an elected member in keeping with standards and principles set out in the Code of Conduct.

8.4 Te Whaimana Authority Full Council have the authority to pass resolution on an outcome to finalise the Code of Conduct Complaint.