

Decision released from confidential session			
Recommendation from (agenda report)	Date of meeting	Recommendation to (decision-making meeting)	Date of meeting
Council	17/11/2021		
Report Title and number			
Code of Conduct - establishment of panel (R26343)			
Documents released			
Code of Conduct - establishment of panel (R26343)			
Decision			
Resolved			
That the Council			
1. Receives the report Code of Conduct - establishment of panel (R26343); and			
2. Confirms that an independent investigator may be selected from the following panel to assess Code of Conduct complaints if required:			
a. Bruce Robertson			
b. Neil Taylor			
c. Peter Chemis			
d. Susan Hornsby-Geluk			
Or sought through Equip Local Government New Zealand; and			
3. Agrees that Report (R26343), and the decision be made publicly available.			
<u>Carried</u>			

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Item 2: Code of Conduct - establishment of panel

Council



17 November 2021

REPORT R26343

Code of Conduct - establishment of panel

1. Purpose of Report

- 1.1 To confirm the panel of potential independent investigators for consideration of any complaints under Council's Members' Code of Conduct.

2. Summary

- 2.1 Section 12.2 of the Code of Conduct provides processes for the assessment and further investigation of complaints if required. These processes may involve an independent investigator.
- 2.2 Further to an earlier resolution of Council, and in line with the provisions of the Code of Conduct, this report proposes a list of independent investigators from which an appropriate assessor may be selected as required.

3. Recommendation

That the Council

1. ***Receives*** the report Code of Conduct - establishment of panel (R26343); and
2. ***Confirms*** that an independent investigator may be selected from the following panel to assess Code of Conduct complaints if required:
 - a. ***Bruce Robertson***
 - b. ***Neil Taylor***
 - c. ***Peter Chemis***
 - d. ***Susan Hornsby-Geluk***

Or sought through Equip Local Government New Zealand -; and

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3. Agrees that Report (R26343), and the decision be made publicly available.

4. Exclusion of the Public

4.1 This report has been placed in the confidential part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

- Section 7(2)(a) To protect the privacy of natural persons, including that of a deceased person

5. Background

5.1 At its triennial meeting of 31 October 2019, Council resolved the following:

That the Council

- 1. Receives the report Elected Members' Code of Conduct (R12553) and its attachment (A1745031); and*
- 2. Adopts the Nelson City Council Code of Conduct (A1745031), subject to the changes tabled at the 31 October 2019 Council Meeting (A2292439); and*
- 3. Confirms that the final wording to give effect to these changes is to be approved by the Mayor, Deputy Mayor and Chair of Governance and Finance Committee;*
- 4. Directs the Chief Executive to develop a panel of independent investigators for approval by Council; and*
- 5. Notes that a Code of Conduct Committee will be established as part of the process to appoint Elected Members to committees.*

5.2 As per the resolution, work was undertaken following the triennial meeting to finalise the wording that would best give effect to the changes required by Council. This took place over a longer period than

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originally anticipated due to the significant impacts of the COVID-19 virus and national response measures throughout 2020. Final approval for the wording was provided in mid-October 2020.

- 5.3 The Code of Conduct provides for complaints to be considered by
- Council, or
 - An adjudicative body established by Council to assess and rule on complaints made under the Code, or
 - An independent investigator.
- 5.4 This is a procedural matter. Although not required in order for complaints to be handled under the Code of Conduct, it is recommended that a list of independent investigators be confirmed as envisaged by the resolution of 31 October 2019.
- 5.5 Further work is required to be undertaken to establish the potential structure and delegations for an adjudicative body. As there is no impediment to Code of Conduct processes continuing without an adjudicative body being created (as Council is able to consider matters under the Code), this report does not address this matter.
- 5.6 One Code of Conduct complaint has been investigated since the October 2019 resolution, with the investigator appointed in accordance with the Code (i.e., chosen by the Chief Executive in consultation with the Deputy Mayor) although not as envisaged by the resolution. While there are procedural advantages to a panel being established at this time for any future Code of Conduct matters, there are no implications for the previous matter which has now run its course, without any procedural concerns being raised.

6. Discussion

- 6.1 Establishing a list of potential independent investigators provides Council with a number of experts holding a range of skills and experience who could be called on to assess a complaint. The nature of a particular complaint may mean one's background is more applicable than another's. Having multiple options to draw on also means that a complaint process is not unnecessarily impacted by the unavailability of one potential investigator.
- 6.2 Given the nature of the assessment and reporting an investigator will be required to complete, as well as local government experience, legal, other investigatory and/ or auditing skills are most likely to be appropriate.
- 6.3 The following people are believed to hold skills and experience such that they are appropriate to be included in Council's panel of potential independent investigators, and have confirmed that they would be happy to act in this capacity if required:

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6.3.1 Bruce Robertson

- Holds over three decades of experience with the Office of the Auditor-General and Audit New Zealand, with a particular interest in the local government sector.

6.3.2 Neil Taylor

- Extensive experience in the local government sector including as Chief Executive of Napier City Council and Hastings District Council

6.3.3 Peter Chemis

- Specialist in employment law, industrial relations and related areas, and leader of Buddle Findlay's national employment team, whose experience spans both private and public sectors.

6.3.4 Susan Hornsby-Geluk

- Managing Partner of Dundas Street, with over 25 years of experience as a specialist employment lawyer and regularly consulted with on complex and strategic matters at Chief Executive/ Board level.

6.4 It is also recommended that Council liaise with EquiP Local Government New Zealand (LGNZ) for investigators as required. EquiP is the training and consultancy arm of LGNZ, providing learning opportunities and tailored services for local authorities, including access to independent investigators with a wide range of local government and other experience.

6.5 EquiP has moved away from having a list of investigators, having found it more valuable and providing of better outcomes to take a bespoke approach to the situation at hand. EquiP is able to deploy ex-Mayors and/ or associates who have senior leadership experience in the sector, external legal advisors, mediators, and as required subject matter experts. All of its associates have strong mediation experience, deep understanding of the political environment, local government operations, and insight into local government process.

6.6 EquiP also works to understand how an issue came about and is able to provide advice, insight and support to avoid or mitigate similar issues arising in the future.

Options

Option 1: To proceed with the proposed independent investigators, including confirming access to the EquiP list of investigators

Advantages

- Meets the resolution of 31 October 2019.

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	<ul style="list-style-type: none"> Proposed investigators are known experts in their field with significant experience to bring to the Code of Conduct assessment process, including local government and context specific knowledge. Access to the Equip list of independent investigators further widens the range of experts that could be drawn on as required.
Risks and Disadvantages	<ul style="list-style-type: none"> Will limit Council's ability to appoint other investigators.
Option 2: To nominate other potential independent investigators	
Advantages	<ul style="list-style-type: none"> Meets the resolution of 31 October 2019. Other potential investigators may hold further skills and experience that could be beneficial in a Code of Conduct process.
Risks and Disadvantages	<ul style="list-style-type: none"> Other potential investigators may not bring the level of local government and context specific knowledge that is useful in undertaking Code of Conduct related assessments and reporting. Confirming that appropriate skills and experience are held by potential investigators will place increased demand on elected member and officer resources.
Option 3: Not to proceed with confirming a list of independent investigators	
Advantages	<ul style="list-style-type: none"> None
Risks and Disadvantages	<ul style="list-style-type: none"> Does not meet the resolution of 31 October 2019.

7. Next Steps

- 7.1 Council's records will be updated to reflect the decision of Council in relation to a panel of independent investigators for Code of Conduct complaints.

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Attachments

Nil

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Important considerations for decision making	
1. Fit with Purpose of Local Government	<p>The purpose of a Code of Conduct is to enhance the effectiveness of a local authority and its provision of good governance, and to enhance the credibility of the local authority help build and a culture of trust and respect. This report aligns with the purpose of local government in proposing measures to support the efficacy of Council's Code of Conduct.</p>
2. Consistency with Community Outcomes and Council Policy	<p>Code of Conduct related matters directly align with the following Community Outcome:</p> <p><i>Our Council provides leadership and fosters partnerships, a regional perspective and community engagement</i></p>
3. Risk	<p>There is procedural risk in appointing an investigator in the absence of an approved list. It is recommended that a list be prepared as directed by the resolution of October 2019.</p>
4. Financial impact	<p>There is no cost associated with this decision, although there will be costs to engage investigators when required.</p>
5. Degree of significance and level of engagement	<p>This matter is procedural and required under the guidance of the Code of Conduct itself in order to meet its purpose most effectively.</p>
6. Climate Impact	<p>The matters in this report do not directly impact on climate change.</p>
7. Inclusion of Māori in the decision making process	<p>No engagement with Māori has been undertaken in preparing this report.</p>
8. Delegations	<p>Council is responsible for matters under its Code of Conduct.</p>