

QLDC Council
12 December 2019

Report for Agenda Item | Rīpoata moto e Rāraki take: 9

Department: Corporate Services

Title | Taitara Code of Conduct

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to consider and adopt a revised QLDC Code of Conduct based on the LGNZ Best Practice recommendations.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Adopt** the revised Queenstown Lakes District Council Elected Members Code of Conduct 2019;
3. **Adopt** the revised terms of reference for the Elected Members Conduct Committee;
4. **Agree** to adhere to the standards of behaviour expected from elected members in the exercise of their duties; and
5. **Authorise** the Chief Executive to create a list of three independent investigators (in consultation with the Mayor) including but not limited to a list of independent investigators provided by LGNZ.

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29/11/2019

Reviewed and Authorised by:



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29/11/2019

CONTEXT | HOROPAKI

- 1 The Local Government Act 2002 made the adoption of a Code of Conduct (the Code) mandatory. The Office of the Auditor General issued a Code of Conduct best practice guideline (June 2006) which clearly outlines that the terms and conditions of individual local authorities Codes of Conduct can be entirely discretionary. Local Government New Zealand (LGNZ) also publish a best practice template that is adopted by a number of local authorities and tailored to suit their specific needs. The template is based on a collation of Council feedback and Code of Conduct reviews from multiple authorities over the course of the last triennium.
- 2 The QLDC Code of Conduct was last updated in 2015. The draft Code of Conduct before Council for adoption today is based on the October 2019 LGNZ Code of Conduct Guidelines and best practice template.
- 3 As a result of the changes proposed in the draft code of conduct, there was also a requirement to update the Elected Member Conduct Committee terms of reference to ensure that the documents and processes therein are aligned.
- 4 We note also that the section of the QLDC Standing Orders that relates to the conduct committee meetings will be deleted.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 5 The draft mirrors the LGNZ approach (October 2019) and is based on four objectives being:
 - To enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
 - To promote effective decision-making and community engagement;
 - To enhance the credibility and accountability of the local authority to its communities; and
 - To develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.
- 6 The four objectives highlight the importance of achieving 'good local government', effective and inclusive decision-making, strengthened community credibility, and a culture of trust and mutual respect within the local authority.
- 7 They also contribute to making councils a more rewarding and satisfying place for elected members.
- 8 The code is not a means of preventing elected members from expressing their views. It is not designed to prevent robust debate and it is not designed to prevent members from stating their personal views on a matter (as long as they are not in contravention of any other parts of the code).
- 9 In addition to the minimum requirements set out in the LGA 2002 (see cl.15 Schedule 7, LGA 2002), the draft code includes:

- a. Guidance for managing relationships and ensuring constructive behaviour, including processes for ensuring these are adhered to. This will ideally cover relationships with other members, staff, and (relationships with) the public;
 - b. A statement of the different roles and responsibilities of governance and management. The code complements and reinforces the rules and statutory provisions set out in a council's standing orders;
 - c. Provisions dealing with confidentiality of information received during the course of a members' duties, as well as situations when members are required to disclose information to the local authority and each other;
 - d. Provisions dealing with conflicts of interest;
 - e. Provisions dealing with ethical conduct;
 - f. An explanation of the importance of adhering to the code and details of the procedures for investigating and resolving alleged breaches;
 - g. Provisions designed to encourage courteous and constructive behaviours and to reduce the risk of poor behaviour and alleged breaches;
 - h. Details of penalties or sanctions, what they are, when they might be applied, and the processes for their application (where these processes are within the control of council).
- 10 In general terms the draft code is a more robust document designed to strengthen the governance culture. The revision includes improved optionality (for example the discretionary means to manage a complaint that falls well below the threshold of a material complaint) and better clarity of process. If properly adhered to the draft code will provide the basis for a respectful, trusted and highly functional political environment.
- 11 Additionally the draft Code has four distinct tiers for addressing a complaint (see process map Appendix A).
- a. Mayor (or Deputy Mayor) and Chief Executive
 - b. Independent Investigator (selected at the discretion of the Chief Executive from a list curated and agreed in consultation with the Mayor). The list can include but not be restricted to the LGNZ list of Independent Investigators*.
 - c. Elected Member Conduct Committee (all Councillors and Mayor)
 - d. Full Council
- *LGNZ Code of Conduct Guidelines (October 2019) stipulate that at the beginning of each triennium the Chief Executive prepares a list of investigators in consultation with the Mayor.
- 12 The draft code is intended to enable transparency in relation to material complaints which, subject to any matters of confidentiality, will see a full report in relation to the matter, together with the recommendation of the Elected Member Conduct Committee, be considered in Full Council, in public.

- 13 To align with the complaints process detailed in the draft code, the Elected Member Conduct Committee terms of reference have been updated and the standing orders updated to delete the Schedule relating to the Conduct Committee. Previously, we had three different documents which included slightly different processes.
- 14 In accordance with the complaints process set out in the draft code, the Conduct Committee will convene as required to consider the report of an independent investigator who has been appointed to investigate a material breach of the code of conduct. The Conduct Committee will consider the report from the investigator and ultimately make a recommendation to Council as to the appropriate penalty or other course of action to be imposed in response to the breach. The Conduct Committee will not carry out its own investigation, interviews or hearing of evidence or submissions in respect of the alleged breach.
- 15 The Terms of Reference have also been updated to remove reference to breaches of the standing orders. Any breach of standing orders during a meeting will be addressed by the Mayor (in accordance with standing orders) and any complaints following a meeting can be covered by the code of conduct.
- 16 Option 1: Adopt the revised Code of Conduct and Terms of Reference; agree to the Code of Conduct and; authorise the Chief Executive to curate a list of investigators in consultation with the Mayor.

Advantages:

- i. This will see elected members adhering to a code based on Local Authority Best Practice.
- ii. The draft code is more robust and provides better clarity.
- iii. The draft code has better optionality and clearly outlines consequences
- iv. The list approach will mitigate the issue of availability
- v. Adherence to the draft code will create a political culture of trust and respect.
- vi. The Code of Conduct is consistent with the terms of reference for the Conduct Committee.

Disadvantages:

- vii. Elected members will need to familiarise themselves with the new code.

- 17 Option 2: Do nothing and retain the current code

Advantages:

- viii. Elected members are familiar with the old code

Disadvantages:

- ix. The old code is not based on current best practice and is therefore inadequate.
- x. The current regime for enforcing the code and any complaints relating to alleged breaches of the code is inconsistent across a number of documents and is therefore difficult to implement.

18 This report recommends **Option 1** for addressing the matter.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

19 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because although the Council's reputation relies on trust and respect, the adoption of the code is a governance matter for elected members and is therefore a matter of low impact and is not subject to community consultation.

> MĀORI CONSULTATION | IWI RŪNANGA

20 The Council has not consulted with iwi on the draft code due to the nature of the document being a governance matter for elected members.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

21 This matter relates to Strategic/Political/Reputation. It is associated with RISK00049 Ineffective Leadership Culture within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

22 There are minimal financial implications. To note, if required, the Independent Investigator will be engaged on an agreed hourly rate plus cost disbursements.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

23 The following Council policies, strategies and bylaws were considered:

- QLDC Standing Orders

24 The recommended option is consistent with the principles set out in the named policy/policies.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

25 Adoption of a code is mandatory under the LGA 2002 (see cl.15 Schedule 7, LGA 2002). The Council can review the code, which is generally undertaken at the commencement of a triennium.

- 26 The code should be and is complementary to the Local Government and Meetings Act 1987 and; enable elected members to meet their obligations under the Members Interest Act 1968 and the Local and Official Information and Meetings Act 1987 designed to ensure openness and transparency.
- 27 The code must respect the spirit and intent of the New Zealand Bill of Rights Act 1990, namely the ability of members to express dissent (in accordance with the code).
- 28 The code further references: the Secret Commissions Act 1910; the Crimes Act 1961; the Financial Markets Conduct Act 2013.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

29 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by [explain how it will help];
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

ATTACHMENTS | NGĀ TĀPIRIHANGA

- A Draft Code of Conduct 2019
- B Revised terms of reference for the Elected Members Conduct Committee