

11.3. New Code of Conduct

PURPOSE OF THE REPORT | TE TAKE MO TE PURONGO

1. The purpose of this report is to adopt a QLDC Code of Conduct based on the LGNZ Best Practice recommendations. The adoption of a Code of Conduct is mandatory under the Local Government Act 2002.

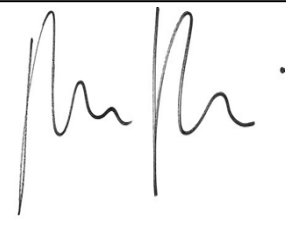

EXECUTIVE SUMMARY | WHAKARAPOPOTOTANGA MATUA

2. As outlined it is mandatory for Council to adopt a Code of Conduct. For the last two trienniums Local Government New Zealand (LGNZ) has published a best practice template that is adopted by a number of local authorities. Individual codes are discretionary and tailored to suit the specifications of the Council needs. The LGNZ October 2022 template is based on a collation of Council feedback (including QLDC) and Code of Conduct reviews from multiple authorities over the course of the last triennium.

RECOMMENDATION | NGA TUTOHUNGA

That the Council

1. **Note** the contents of this report;
2. **Adopt** a new Queenstown Lakes District Council Elected Members Code of Conduct 2022 (75% of elected members support required).
3. **Agree** the Chief Executive create a potential panel of independent investigators including but not limited to the LGNZ recommended panel and appoint an experienced lawyer from the QLDC Legal Panel as initial assessor. The Chief Executive will provide a list of potential panelists (once compiled) to Council for its review and comment.

	Prepared by:	Reviewed and Authorised by:
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Position	GM, Corporate Services	Chief Executive
Signature		
Date	28/10/2022	28/10/2022

ANALYSIS AND ADVICE | TATARITANGA ME NGA TOHUTOHU

3. The draft code has been revised in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of conduct for members of the local authority. It seeks to outline the behaviors that pertain to good governance in accordance with the LGNZ best practice template. It seeks the commitment of members to apply the principles of good governance, namely: public interest, integrity, taria te wa and kaitiakitanga/stewardship,

objectivity, accountability, openness, honesty and leadership. In the event of an alleged breach of the code, the code itself outlines the process and the potential outcomes, with an emphasis on facilitation, mediation and education.

4. The draft code recommends a 'two-step' approach with both an initial assessor and if necessary, an independent investigator. In the event a matter is deemed material and a breach of significance the matter will then be referred to an independent investigator whose recommendation will be considered by Council. Neither the Chief Executive nor the Mayor will assess any alleged breaches, this is a change from the 2019 code and is based on the LGNZ best practice recommendation. The premise of this change is an important one as it means that elected members do not sit in judgement of fellow elected members and colleagues, which was formerly the case. Notably the LGNZ template refers to this as key in terms of the investigation of any alleged breach: "*must be politically independent and be seen to be so*". It goes on to say that the perception of independence and objectivity may be lost if it is elected members who consider the nature of the action. Asking Councillors to consider and make a final decision in regards any recommendation means that elected members must ultimately still hold each other to account.

5. The draft code includes a suite of 15 actions ranging from no action through to inviting a member to resign. These actions are the same suite of actions from the QLDC 2019 code. Notably the first six actions 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. As outlined the recommendation of the draft code provides for the council to make the ultimate determination on any finding and the imposition of any sanction. Note that while no appeal right is included in the code, members who are unhappy with an independent investigators' recommendation and the Council's decision have access to judicial review and/or the Ombudsman's Office.

6. The premise of independence also applies to the appointment by the Chief Executive of the assessor and investigator. The recommendation is for the Chief Executive to appoint a senior lawyer from the QLDC Legal Panel to the role of independent assessor (note, membership of the panel is subject to a separate procurement processes independent from this code and any associated processes). The recommendation also gives the Chief Executive the discretion to directly appoint an independent investigator from an LGNZ selected panel (which is yet to be confirmed), a local government regional panel or a senior lawyer from the QLDC Legal Panel (depending on the nature of the alleged breach). It is recommended by LGNZ that the Chief Executive will consult with elected members on both the potential panel of investigators to select from and any additional external potential investigator prior to entering into an agreement for potential future engagement. To be clear, while the Chief Executive will seek views based on the membership of the panel, the Chief Executive will not do so when appointing and individual to consider individual complaints. This was the case in 2019 and does not constitute a change. It should be acknowledged that elected members can have a firm expectation that anyone appointed to this role would be expected to have extensive local government experience or knowledge, strong integrity, strongly facilitative and be highly considered.

Responses to statutory breaches

7. 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 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 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).

8. The Council can choose to adopt the new code, this will require the support of 75% of elected members, or it can choose to retain the existing code or on failing to garner 75% support the 2019 code will remain in place. Once adopted a code can only be changed based on a 75% majority.

9. **Option 1:** Adopt the draft Code of Conduct.

Advantages:

- i. This will see elected members adhering to a code based on Local Authority Best Practice, with the advantage of being generally consistent with other territorial authorities. Noting that the template required some adaptation, but the principles are entirely consistent.
- ii. The draft code is more robust and provides better clarity.
- iii. The draft code has better optionality and clearly outlines consequences.
- iv. Adherence to the draft code will create a political culture of trust and respect.
- v. The two-step approach based on LGNZ best practice will be independent but the recommendation will not be binding. This means that elected members do not have to sit in judgement of a colleague but do need to ultimately hold them to account by agreeing or not the recommendation.

Disadvantages:

- vi. Elected members will need to familiarise themselves with the code and remain current with the practice.
- vii. The process may be counter to a view that elected members should be empowered to influence the code process.

9. **Option 2:** Do nothing and retain the current code (2019)

Advantages:

- viii. Some elected members are familiar with the (2019) code and it enables elected members to influence the process and it is perfectly legal to retain the 2019 code.

Disadvantages:

- ix. The old code is not based on recommended best practice.
- x. The current regime for enforcing the code and any complaints relating to alleged breaches of the code is not independent of the chief executive, mayor and elected members.

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

CONSULTATION PROCESS | HATEPE MATAPAKI

11. The code is not subject to consultation and is of low significance as determined by the Significance and Engagement Policy.

MAORI CONSULTATION | IWI RUNANGA

12. The Council has not sought iwi input on the draft code but notably the draft includes a new section relating to the significance of the principles of Te Tiriti o Waitangi, which has been subject to consultation with iwi by LGNZ.

RISK AND MITIGATIONS | NGA RARU TUPONO ME NGA WHAKAMAURUTANGA

13. This matter relates to Strategic/Political/Reputation. It is associated with RISK00049 Ineffective Leadership Culture within the QLDC Risk Register.

FINANCIAL IMPLICATIONS | NGA RITENGA A-PUTEA

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

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

15. The following Council policies, strategies and bylaws were considered:

- QLDC Standing Orders
 - Significance and Engagement Policy

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

16. 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.

17. 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. The code also references the Protected Disclosures Act 2022, the Serious Fraud Office Act 1990, the Local Government (Pecuniary Interests Register) Act 2022, the Health and Safety Act at Work Act 2015 and the Harmful Digital Communications Act 2015.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KAWANATAKA A-KAIKA

18. Section 10 of the Local Government Act 2002 states the purpose of local government is:

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The draft code supports enabling democratic local decision-making and action

19. The recommended option:

- 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 significantly alter 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 | NGA TAPIRIHANGA

Number	Title of Attachment
A	QLDC draft Code of Conduct 2022