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Code of Conduct Inquiry into the actions of Councillor Niki Gladding

Queenstown Lakes District Council

July 2020

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The complaints and complaints process

The complaints

1. Complaints were made by two elected members, Mayor Jim Boulton and Councillor Penny Clark, alleging Councillor Niki Gladding released confidential information to a local news media outlet, the Crux. On 07 February, the Crux published an article under the heading “Wide body jets for Wanaka referenced in QLDC documents”. The article reproduced the main item leaked to the Crux, which was a paragraph from the draft business case associated with *Project Pure* and its associated wastewater treatment plant sited adjacent to the Wanaka airport.¹
2. The article touches on a sensitive issue within the Wanaka community over the intentions of the airport’s operator, Queenstown Airport Corporation (QAC), a subsidiary of Queenstown Lakes District Council (QLDC), and the potential redevelopment of the airport.
3. As a result of a series of emails between all councillors, but specifically the Mayor and Councillor Gladding, on 10 February 2020 the Mayor made a formal complaint to the Chief Executive that “In my view, Councillor Gladding has breached the code in multiple forms through her admitted release of council confidential information to a media outlet.” Councillor Clark’s complaint was effectively the same and said “... I am afraid her ... conduct leaves a lot to be desired. I wish to make a formal complaint.”

The process

4. The process for dealing with complaints is set out in QLDC’s Code of Conduct (CoC)². The CoC is primarily a tool to put into practice the principles of s39 of the Local Government Act 2002 (LGA). The code is to ensure “...the expected conduct of elected members is clear and understood...”.
5. When a complaint is made it is considered firstly by the Mayor (or Deputy, if the Mayor is involved as either a complainant or the subject of the complaint) and Chief Executive to consider whether the substance of the complaint is material. If deemed material, the matter is referred to an independent investigator who also considers its materiality and, if material, they then report on the seriousness of a confirmed breach of the CoC.³

¹ The article reproduced a paragraph from the draft business case stating “[QAC] has advised an intention to upgrade the airport to enable the use of wide-bodied jets in the future”. Appendix 3 has the key page leaked to the Crux which was reproduced in the media article. For the full article refer <https://crux.org.nz/community/wide-body-jets-for-wanaka-referenced-in-qldc-documents/>

² <https://www.qldc.govt.nz/media/rwyhpauq/qldc-code-of-conduct-12-december-2019-updated.pdf>

³ For full details refer section 12 of the CoC

6. The report of the investigator is considered by an Elected Member Conduct Committee, which will consider the report and any subsequent penalty.
7. As the Mayor was a complainant, the Deputy Mayor, Calum MacLeod and Chief Executive, completed the initial assessment and considered the allegations were proved and “material”.
8. As the appointed investigator I completed a preliminary assessment on 04 May 2020 and concluded that “the intentional release of confidential information is assessed as material and warrants a full report”.⁴

⁴ Refer Appendix 1 for the initial assessment.

Assessment of the merits of the complaints

Context

9. The current council was elected in October 2019. It included a new councillor, Councillor Niki Gladding.
10. On 12 December 2019, the Council unanimously agreed to adopt the current CoC. Appendix 2 outlines the purpose of the CoC and the values agreed to by the councillors. It also sets out some of the key behaviours expected of councillors which reinforce the purpose and values.

11. At section 7.1, one of those specific behaviours is:

In the course of their duties, members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member. Failure to comply will be deemed a material breach of the Code of Conduct.

All confidential matters will be considered in terms of potential future release of material under delegation to the Chief Executive.

12. By December 2019, the Council had a busy agenda which included:
 - Planning for 2020/21 through adoption of an Annual Plan.
 - A substantial capital programme including works associated with *Project Pure* sited near Wanaka Airport.
 - Settling on a Statement of Intent with its airport company, QAC.
13. The last two matters are in their own right of high public profile, interest and media comment.
14. All these issues immediately required the new council to 'roll up their sleeves' and, as would be expected, assimilate substantial information, adhere to local government process and attend a significant number of meetings.
15. To supplement councillor work, QLDC has set up a councillor information request system. This is an effective mechanism for councillors to use in developing their understanding, asking questions and enabling the coordination and dissemination to councillors. The system enables them to email staff with information requests and queries and receive a response.

16. Much of the following information is sourced from emails supplied by Councillor Gladding using the information request service. It is understood that in most situations the emailed responses are copied to all elected members.

Background

17. From 08 January, Councillor Gladding was using the information request extensively over her increasing concerns about the costs of *Project Pure*. Her financial concern was the increasing costs of the project – at that stage it was forecast to increase from a planned cost of \$5.9m to \$12.4m. Part of the increase was a potential relocation of a SBR tank associated with the wastewater plant. The move was an option in the business case and was forecast to cost about \$2.7m.

18. By 15 January she was clear in an email to the Chief Executive on the information request system that her one of her concerns was the imposition of cost on ratepayers – whether Wanaka or the whole district – especially if the relocation of the SBR tank was solely due to the future use demands of QAC. In an email to the Crux on 23 January she said, “whether the expansion is for wide bodied jets or narrow body jets doesn’t matter”.

19. She also told the investigation her broader concerns were about the information which should be in front of the public about this matter and that extended to QAC’s intentions. In her words “my primary concern was failure to disclose firstly that QAC had advised an intention to accommodate wide-bodied jets and secondly that airport expansion was driving up the cost of Project Pure”.

20. The move was being considered as a means of futureproofing the development of the airport. On 29 January (via the information request process) the Chief Executive clarified that the options on relocation and cost were “not responding to any specific proposal about wide bodied jets but we are responding to future proof our airport, and the need for a second SBR tank has prompted that discussion”.

21. On 23 January Councillor Gladding sent to the Crux by Facebook Messenger four photographed pages (the first 3 being from the draft business case she was given by Council staff as the result of her request through the information service):

- The title page of the draft business case (titled an “Indicative Business Case”)
- The version control and authorisation page showing the version (“draft”) and those to whom that version had been circulated
- The paragraph from the body of the Business Case (refer Appendix 3)
- An extract from a Council capital reforecast document noting the increased forecast of *Project Pure* to \$12.4m.

22. Councillor Gladding explained her actions to the investigation for doing so in terms that she had too little time to do further research and wanted to encourage the Crux media outlet to follow up her concerns through a LGOIMA request (which they did but were denied the request on 29 January). She expected them to research the matter before they published any article.

23. As noted above, she also believed the matter should be in front of the community.

24. She explained this – wanting more information and transparency – in her 10 February email to the Mayor, when acknowledging that she had sent the confidential information:

“...I asked [Crux] not to run a story last week because [they]’d not managed to acquire any additional information and because there had been internal discussions and the situation had changed somewhat...”

Continuing in this email, Councillor Gladding said:

“I remain extremely concerned about the reference to wide body jets in that document as well as Council’s decision to withhold the business case in full. I see no reason for it to have been withheld ... although the correct route was for [Crux] to make a complaint to the Ombudsman and [they] chose not to follow that route (despite me asking him to).”

Conclusion on the complaints

25. The Crux article was published in 07 February 2020. That same day Councillor Gladding acknowledged in an email to the Mayor, all councillors, and the Wanaka Community Board members that she had provided the confidential information to the Crux on which the article was based. This is beyond doubt.

26. Releasing information that was clearly still confidential is clearly in contravention of the behaviour she had agreed to adhere to in the CoC. It was a material breach of section 7.1.

27. The investigation upholds the substance of the complaints made of Councillor Gladding’s actions.

The seriousness of Councillor Gladding’s breach of the Code

Impacts arising from the breach

28. There are two main impacts:

Breach of confidentiality

29. The information released had been deemed confidential by the Council. The business case was still in a significant stage of development, as were the other associated documents including the 2020/21 Annual Plan which had to accommodate the new forecast costs and the ongoing development of the QAC Statement of Intent.
30. Such documents can go through different phases of development where a level of confidentiality is required or alternatively are done in public. Councils have strong requirements to be as open as possible. However, in this case the Council had determined the draft was confidential. Council staff indicated the business case was confidential due to commercial sensitivity, and that disclosure would likely prejudice the commercial position of persons who had supplied the information or who were subject to the information, when the Crux sought release of the draft.⁵
31. The CoC is clear that councillors receive confidential information to enable them to undertake their roles as decision-makers for Council and it is given for that purpose. Also, development of a business case often goes through substantial change and iterations before being ready for public debate or disclosure. The document may well remain in draft before Councillors throughout its development.
32. In this case it had been made clear that the business case was both confidential and in a draft stage, subject to change. The Chief Executive did respond to her on the reference to wide bodied jets. On 02 February, through the information request system, he stated “I am not sure where the concept came that this runway and the subsequent change in the proposed location of the SBR tank was associated with the introduction of wide bodied jets as this has not been discussed with QAC nor is it consistent with the advised purpose of the proposed runway. If wording that refers to wide bodied jets has crept into our qldc [sic] business case then that is incorrect and we will amend that accordingly to avoid creating unnecessary and unhelpful confusion”.
33. The premature and public release of the *Project Pure* by Councillor Gladding could have prejudiced the interests of affected parties or heightened the risk of legal claims against Council. There is no indication that Councillor Gladding’s actions have given rise to any actual action against Council, but at a wider level could have damaged Council’s reputation as a reliable partner in any commercial negotiation.

⁵ Section 7(2)(b)(ii) of the Local Government Official Information and Meetings Act 1987, as quoted by staff.

34. These factors are relevant when assessing the seriousness of a unilateral release of confidential information by a councillor. The fact that there were no actual consequences, such as a threat of legal action, does not validate the release.

Breakdown in trust and confidence among councillors

35. The CoC sets out a number of common sense approaches to enable councillors to work together, and with management, in the interests of Council as an institution. A common understanding of behaviours is important to developing trust and confidence in each other, between elected members and management, and with the community. These are set out as the purpose in section 1 of the CoC. Behaviours are the 'glue' that develops and holds together that trust and confidence.

36. It is reasonable to conclude that Councillor Gladding's action in passing the confidential information to the Crux – the unilateral nature of the release, without discussion with her colleagues or QLDC management – has had the effect of reducing that trust and confidence. Discussions with senior councillors during the investigation have suggested that a perceived direct effect of her actions has been a lessening of debate in the council chamber in case confidential discussions and even personal positions are leaked externally.⁶

Can Councillor Gladding's actions be seen as justifiable?

37. The investigation considered whether there were reasonable grounds for Councillor Gladding to have given the information to the Crux, despite the requirements of the CoC. Could it have been that Council was being unreasonably secretive, and should have held its discussions in, and made the draft documents open to the, public?

38. There is always a tension as to what should be held in confidence and whether material or debate should be in the public domain. It is a matter of collective Council judgement and, in terms of public disclosure of information, statutory decision making under the LGOIMA using the designated lines of authority and delegation.

39. As noted above, these were matters of significant public interest.

40. In these situations, it is not uncommon for councillors to test judgments made through debate with colleagues and advice from management. In this situation, however, Councillor Gladding pre-empted any chance to test those judgements in that way.

41. These matters are close to Councillor Gladding's personal position and she made this clear in her statement to the Mayor after the Crux article had been published.

⁶ Not all councillors were canvassed but this was a strong suggestion from those interviewed and was at the centre of CoC complaints – a breakdown in trust

42. Her questions about costs of relocation and who should fund them were clearly a valid line of inquiry to be taken by an elected member. And through the information request system these matters were being canvassed by her with her colleagues and management in an internal but open manner and were being actively responded to by management. Her questioning reflects the value in diversity of members which can bring different views to a topic.
43. However, it is not a member's role to unilaterally determine that a matter should be public when at that point it is considered confidential. To do so is, as already noted, likely to cause a breakdown in the trust and confidence that councillors need as a group and the council needs with its community. It appears that Councillor Gladding made no attempt to broach her concerns about the confidentiality attached to the information before she decided unilaterally to give it to the Crux. This lack of action is not mitigated by her expectation that a media outlet would have abided by her request not to disclose the confidential information until they had completed the research that she didn't have time to do herself, including by making a request for the information under the LGOIMA.
44. On that basis, there was no reasonable justification for Councillor Gladding to have breached her duty of confidentiality in relation to the information.

Other considerations

Reliance on external parties

45. Councillor Gladding provided the Crux with the information on 23 January. At this stage she had asked detailed questions of management which were yet to be answered directly. However, they were by the Chief Executive on 02 February. Looking at the extent of ongoing requests and email communications, her actions seem precipitous and naïve.
46. She acknowledged that she wanted more information, but in a comment to the investigation said she did not have enough time to devote to following through on the issues she had raised – most particularly the matter of the business case and reference to wide-bodied jets. Instead she thought providing this information to the Crux would enable such information to become publicly available through the LGOIMA.
47. Such an approach to relying on external parties for, essentially, pursuing the councillor's own work verges on reckless. Her need of more information and lack of time should have been taken up with her colleagues and with management, not by sending draft and confidential information to an external party.

Correcting the situation

48. Before the Crux published its article on 07 February, Councillor Gladding's immediate questions had been answered (on 02 February) and she knew the information was

considered confidential (the Crux told her that QLDC had declined his request to release the business case).

49. She therefore had a window of opportunity to discuss the situation with the Crux and at least request they refrained from publishing the information. She did, and to her expressed disappointment Crux published. She told the investigation she understood the stance taken by the Crux, given her concern about what information should be public but wasn't. To this end, she was aware of the risks of her actions.

Deep suspicion

50. Councillor Gladding is an independent thinker and asks direct questions. Her level of questions generated through the information request system are more than any other councillor.

51. However, from what she told the investigation, she also appears to hold some within Council – both from her elected member colleagues and management group - in deep suspicion. From her perspective she bases her suspicion on her perception of their actions.⁷

52. The investigation's concern is that while having and pursuing what may be a reasonable line of questions her actual position is driven by a deep lack of trust in the institution. She stated to the Crux when sending the information that she "had a need of more information to understand what is going on. A little concerned they've been manufacturing a business case for me over the last 5 days ... and don't expect a response on time".

53. The investigation saw no evidence to support this position.

Conclusion on seriousness

54. The investigation concludes the actions of Councillor Gladding involved a serious breach of the CoC.

55. The breach was a significant breach of confidentiality; potentially raised the risk of legal action and prejudiced future commercial negotiations; led to a lessening of trust by other councillors which will reduce the effectiveness of ongoing discussions around the table; and generally increased reputational risk for the Council.

56. Her action also reflects a lack of governance understanding and created a heightened risk to the Council.

57. The impacts of her actions are real and have undermined the objectives of the CoC.

⁷ She also noted to the investigation that she may well be held in 'deep suspicion' by some of her colleagues and staff.

Concluding comments and recommendations

58. Councillor Gladding was well aware of her actions and has said she is prepared to take the consequences. On 07 February she said to the Mayor, “So for my part in [the Crux article] I’m sorry...Anyway, I know it’s not a small thing and I’m prepared to suffer the consequences – I was when I sent it.”
59. She expressed the same sentiment to the investigation, noting in her interview that “she was wrong”.
60. While she showed she is a person who expects direct answers and clear timetables for processes, she did acknowledge a mistake. The investigation takes this acknowledgment as genuine. It is entirely consistent with her total cooperation and openness with the inquiry.
61. While it is not for the investigator to decide or recommend on the penalty having concluded on the seriousness of the breach of the CoC, the key question for Council is how can her future contribution as a councillor be accommodated by her and her colleagues?
62. I have two recommendations that may assist her and the Elected Member Conduct Committee as they consider this report. These recommendations are in addition to the Committee’s consideration of a penalty (if any) for the serious breach:
- It is still relatively early in the triennium. It is recommended this event is ‘debriefed’ to assess how these events can be avoided in the future. The debrief should help identify a common understanding on what level of information is reasonable for a councillor to request to fulfill their role, clarifying processes and timetables for the development of policy positions and decision-making, and clarifying when are matters confidential and when they may be made public.
 - That Councillor Gladding is invited to have access to advice and support from a former, experienced councillor (preferably from outside the district. It would help if that person is familiar also with LGNZ’s good practice advice) to discuss and develop her approach consistent with good practice for democratically elected councils and the behaviours expected of all councillors based on QLDC’s CoC.

Appendix 1 – Investigator’s Preliminary Assessment

Queenstown Lakes District Council – Code of Conduct complaint

The complaint

This matter relates to a complaint by the Mayor Boulton and Councillor Clark (Queenstown-Wakatipu ward) about the actions of Councillor Gladding (Queenstown – Wakatipu ward) in releasing confidential Council material to the Crux media outlet. Crux publicly disclosed some of this material in an online publication on 07 February 2020.

The substance of the two complaints was summarised in an email to Councillor Gladding from CEO Theelan (25 February 2020):

‘[that Councillor Gladding supplied] confidential advice and/or material, in respect of a draft business case report relating to the new Project Pure SBR tank location, to the Crux media website’.

Further this email states that this matter involves a breach of the Council’s 2019 Code of Conduct.

Complaint process

The complaint process is outlined in Council’s Code of Conduct/He Whanoka Tikaka, adopted by full Council on 12 December 2019.

The process is outlined in section 12.3 (pg 8).

Under its steps it is relevant to note:

Step 2 and 3 – initial assessment by [Deputy] Mayor and CEO

Deputy Mayor MacLeod (Wanaka ward) undertook the initial assessment with the CEO. The Deputy Mayor undertook the initial assessment because one of the complainants was the Mayor.

The initial assessment determined that the complaint was **material**.

The investigation did not undertake any interviews on the basis that the emails relevant to the complaints background was adequate to reach a conclusion. This material included acknowledgement by Councillor Gladding that she did pass on confidential material to Crux.

Councillor Gladding and the complainants were informed of this decision on 06 April 2020.

Step 5 and 6 – appointment of an independent investigator

Bruce Robertson of RBruce Robertson Ltd was appointed to investigate the complaint in accordance with the Code of Conduct.

He is a member of the Otago combined councils' list of independent investigators for Code of Conduct matters.

Step 7 – initial assessment

His first duty is to undertake an *initial assessment* of the complaint to determine if, in his opinion, it is material.

Initial assessment

The assessment, also called a preliminary assessment under the Code of Conduct, is to reach a conclusion on two matters:

- Is the complaint within the scope of the Code of Conduct?
- Is the complaint material and therefore proceeds to a full assessment?

Scope

The matter is within the scope of Code of Conduct. Section 7.1 of the Code of Conduct specifically references councillors' receipt of confidential information. In adopting the Code of Conduct, councillors "agree not to use or disclose confidential information for any purpose for which the information was supplied to the member".

A complaint that member breached this provision is within the scope of the Code of Conduct and able to be considered under this investigation process.

Materiality

The facts of this matter appear settled, without further investigation. The initial assessment considered an email (undated) sent by Councillor Gladding which showed she acknowledged passing confidential information to Crux prior to its use in a published article on 07 February 2020.

Further, emails between the Mayor and Councillor Gladding on 07 February 2020 at 2.10 pm and 4.30 pm (and copied to all councillors) confirm that Councillor Gladding did send the material to Crux.

In my view, the emails provide confirmation that Councillor Gladding was indeed the source of the confidential information used by Crux in its 07 February 2020 article.

Section 7.1 of the Code of Conduct states "Failure to comply will be deemed a material breach of the Code of Conduct".

Further the action of releasing confidential information is considered to breach the Code of Conduct's stated purposes in section 1.

Initial assessment

The intentional release of confidential information is assessed as **material** and warrants a full report.

Next steps

Under Step 9 of the Code of Conduct, I am required to prepare a report on the matter with regard to the seriousness of the matter.

Bruce Robertson
RBruce Robertson Ltd

04 May 2020.

Appendix 2 – Section 39 of the LGA and extracts of CoC

Extracts from QLDC's CoC

Purpose

[The CoC's] purpose is to:

- > Enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
- > Promote effective decision-making and community engagement;
- > Enhance the credibility and accountability of the local authority to its communities; and
- > Develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in the code.

Values

The Code is designed to give effect to the following values:

- > **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.
- > **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;
- > **Organisational trust:** members will respect the integrity and objectivity of Council officers;
- > **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials;
- > **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
- > **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
- > **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.
- > **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
- > **Leadership:** members will actively promote and support these principles and ensure they are reflected in the in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

(Note – emphasis added)

Appendix 3 – Copy of ‘leaked’ page

(2) Comparison of the upgrade elements against the transitional zones of the runway at Wanaka Airport. The current requirement mandates a clear zone to the runway (75m from edge of strip), with a subsequent 7H:1V transitional zone beyond that point. A additional consideration is that Queenstown Airport Corporation has advised an intention to upgrade the airport to enable the use of wide-body jets in the future, and potentially realign the runway. This facility requires a 150m clearance zone from the runway centreline. If this were to occur, the clear zone would encompass part of the existing plant, and would likely necessitate complete removal of the WWTP. On this basis, and since QAC’s intentions have not been confirmed, such an eventuality has not been considered further.