

**QLDC Council  
3 June 2015**

**Report for Agenda Item: 2**

**Department: CEO Office**

**Resolving Alleged Breaches of the Council's Code of Conduct or Standing Orders**

**Purpose**

The purpose of this report is to recommend to Council that it makes some minor amendments to the Queenstown Lakes District Council Code of Conduct and that it also adopts a procedure to resolve alleged breaches of the Council's Code of Conduct or Standing Orders.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Amend** (in the manner described in **Attachment One**) the Queenstown Lakes District Council Code of Conduct to provide for:
  - a. Minor spelling, punctuation and grammar errors to be corrected;
  - b. A more complete explanation of Council and Committee powers to deal with late items that are not listed on an agenda;
  - c. Inclusion of a process to resolve alleged breaches of Standing Orders or the Queenstown Lakes District Council Code of Conduct;
3. **Amend** (in the manner described in **Attachment Two**) the Standing Orders to provide for the procedure of the proposed Elected Member Code of Conduct Committee;
4. **Note** that the amendment of Standing Orders and the Code of Conduct must each receive votes in support of the amendments of not less than 75% of the members present.
5. **Re-adopt** the Code of Conduct as a whole, by ordinary Council resolution.
6. **Appoint** an Elected Member Code of Conduct Committee, with the Terms of Reference as described in **Attachment Three**.
7. **Authorise** the Chief Executive to advertise, shortlist and recommend to Council suitable candidate(s) for appointment to the Elected Member Conduct Committee (such recommendation to be presented to the Council at its July 2015 meeting).

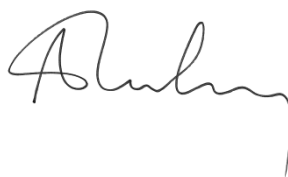
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Reviewed and Authorised by: Adam Feeley



Senior Solicitor

18/05/2015



Chief Executive

18/05/2015

## Background

- 1 The Code of Conduct, Standing Orders and Committee Terms of Reference are parts of the Council's overall governance framework. On the request of Council the Code of Conduct has been reviewed and minor errors are now proposed for correction. The report does not discuss this issue further.
- 2 The advice of the Auditor General is that Councils are expected to have in place governance frameworks that are fair, and that to achieve fairness, a procedure for dealing with breaches of governance frameworks is useful.
- 3 This report proposes for Council's consideration a procedure for resolving alleged breaches of the Queenstown Lakes District Council Code of Conduct and Standing Orders, as well as some minor amendments to better explain how Standing Orders apply to dealing with late items.

## Comment

- 4 Councils have discretion as to whether they adopt a formal procedure for responding to breaches of standing orders and code of conduct. The advice of the Auditor General is that when Councils provide for the consequences of members breaching the code of conduct and/or standing orders, then they need to adopt robust processes that are clear, lawful, fair and efficient.
- 5 A formal procedure for responding to breaches of standing orders and codes of conduct is recommended as a useful addition to Council's governance framework so that objectives for risk management are achieved. The proposed procedure would sit in the background. It would not be required for addressing the conduct of elected members arising during robust debate, as these matters can be dealt with at the time by the chairperson of the meeting.
- 6 The proposed procedure provides for alleged breaches of the code of conduct to be escalated only where necessary. After the breach is identified a four step process is proposed:

Step 1: Informal mediation by the Mayor;

Step 2: If informal mediation does not resolve the issue, a complaint is lodged with the Chairperson of the Elected Member Conduct Committee;

Step 3: The Elected Member Conduct Committee investigates the complaint and reports findings to full Council;

Step 4: Council decides on what action (if any) to take in respect of the findings of the Elected Member Conduct Committee

- 7 If a matter is of a serious nature, the decision to impose penalties involves the full Council with 75% of votes of those members in attendance is required in support of a resolution to apply any recommended penalties.
- 8 Amendments to the Queenstown Lakes District Council Code of Conduct and Standing Orders are proposed to document and give effect to this recommended procedure.
- 9 It is also recommended that Council consider the circumstances of any alleged breach by establishing an Elected Member Conduct Committee with a specified procedure and scope of powers. This committee would sit in the background and only be required to act in the instance of a formal complaint being referred to it by the Chief Executive or the Mayor.
- 10 The penalties proposed (refer to the terms of reference for the proposed committee) already exist and were even capable of being imposed prior to the Local Government Act 2002 coming into effect. However, as there is no procedure described there is uncertainty as to how these sanctions and other issues of conduct might be dealt with. There is no certainty that conduct issues of a similar seriousness be resolved in a similar way. Therefore, the substance of the changes recommended in this report is that the Council document what action it may take in addressing conduct issues, so that confidence in its administration is improved.

#### 11 *Options*

Option 1 is for Council to establish a process to resolve breaches of the Code of Conduct and Standing Orders. The specific proposal is to amend the Code of Conduct and Standing Orders and also to create a standing committee to investigate complaints and recommend appropriate actions to Council.

##### Advantages:

- 12 The proposed amendments clarify expectations around procedures and processes where breaches of the Code of Conduct and/or Standing Orders occur. Clarity about process and procedure allows the Council to take an effective approach to address complaints. The proposed procedure is sufficient for dealing with issues at both the minor and serious end of the spectrum. This decreases the likelihood of issues escalating into legal action, and therefore Council's legal risk is more effectively managed.

##### Disadvantages:

- 13 No disadvantages for option one have been identified.

- 14 Option 2 is to not provide for a resolution process for breaches of the code of conduct and standing orders (i.e. retain the status quo).

Advantages:

- 15 The Council is able to meet its minimum obligations under the Local Government Act 2002 and is not precluded from re-considering whether it wishes to adopt a formal procedure at some future time.

Disadvantages:

- 16 The Council is not able to minimise its exposure to legal risk, and selecting option 2 would mean that Council was acting inconsistently with the risk mitigation plans (as set out in its risk register) to minimise its exposure to legal risk. Formal enforcement of the code of conduct and standing orders can be more difficult and costly where a procedure for resolving these is not specified.
- 17 This report recommends Option 1, as clarifying the process that applies if standing orders or the code of conduct is breached will increase public confidence in Council's administration of its affairs.

***Significance and Engagement***

- 18 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because this report concerns the Council's administration of its own procedures. Council's policy does not provide for this matter to be treated as a significant decision.

***Risk***

- 19 This matter relates to the strategic risk SR3 – Management Practice, Working within legislation, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because there is a statutory duty for elected members to comply with the Council's Code of Conduct<sup>1</sup> and abide by Standing Orders<sup>2</sup>.
- 20 The failure to comply with these legal duties exposes Council to the risk of a complaint that there has been a breach (whether or not such a breach was intentional) and/or a risk that the Council may fail an audit of its governance practices.
- 21 This is because if a complaint is not handled fairly or to the satisfaction of the person who is alleged to have breached the Code of Conduct/Standing Orders, the Council will be exposed to legal action and/or an investigation by a public body such as the Office of the Auditor General or the Office of the Ombudsman.
- 22 The recommended option treats this risk because it puts measures in place which are intended to ensure a fair and transparent procedure for resolving complaints. This is expected to minimise the probability and impact of any legal action or external review.

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<sup>1</sup> Clause 15, Schedule 7 Local Government Act 2002

<sup>2</sup> Clause 16, Schedule 7 Local Government Act 2002

## Financial Implications

23 There may be financial implications for Council if an appointable candidate for the position of independent member requests remuneration for their appointment. The Chief Executive will explore remuneration expectations with candidates, and any financial implications can be reported to Council prior to its decision to appoint a candidate.

## Council Policies, Strategies and Bylaws

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

- Queenstown Lakes District Council Code of Conduct
- Standing Orders

25 The recommended option is consistent with the principles set out in the named policy/policies, as it is expected to increase public confidence in the administration of Council.

26 As the subject of this report concerns the administration of Council's affairs, it is not an activity included directly in the 10-Year Plan/Annual Plan. However, the recommended option is considered to be consistent with the 10 Year Plan because it is expected to minimise the impact or probability of costs being incurred in legal challenges. This will minimise the probability of diverting funds from the delivery of activities set out in the 10 Year Plan.

## Local Government Act 2002 Purpose Provisions

27 The recommended option:

- Will help meet the Council's current and future needs for good-quality decision making and performance of administrative functions for the reasons set out above; and
- 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.

## Consultation: Community Views and Preferences

28 The persons who are affected by or interested in this matter are elected members and external agencies that monitor the quality of governance procedures and practices.

29 No consultation has been undertaken with any other external agency, however in preparing this advice, regard has been taken of the expectations of Councils held by the Office of the Auditor General which have been communicated in its report on the recommended content of Council Codes of Conduct.<sup>3</sup>

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<sup>3</sup> Review of Local Authorities Codes of Conduct (2006) available at: <http://www.oag.govt.nz/2006/conduct/part2.htm#application>

## **Attachments**

- A Proposed Amendments to the Queenstown Lakes District Council Code of Conduct (excerpts only);
- B Proposed Amendments to Standing Orders(excerpts only);
- C Proposed Terms of Reference for the Elected Member Code of Conduct Committee;
- D Full copy of the Queenstown Lakes District Council Code of Conduct with amendments (track changes version)

A copy of Standing Orders amended as proposed (with changes tracked) is available from the Governance Advisor upon request.