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Local Government Commission  
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## **LGC Consultation - Draft Standardised Code of Conduct**

Greetings.

I am a Councillor on the Rotorua District Council, elected for the first time in 2022.

I have read the documents related to this consultation provided on your website.<sup>1</sup>

Rotorua District Council (RDC) is a noteworthy Council in that 16 Code of Conduct (CoC) complaints were made against a single Councillor – Reynold Macpherson - during the 2019-2022 term.<sup>2</sup> I believe our Council therefore makes for an interesting and helpful case study when considering the contents of a Code of Conduct.

I was personally acquainted with Cr Macpherson who was, and still is, the Chair of the Rotorua District Residents and Ratepayers (RDRR) Association. I was the only one of six RDRR candidates who was elected in 2022.

In late 2021 Mr Macpherson sought my advice when confronted with a batch of 13 Code of Conduct Complaints.

I have personally found Mr Macpherson to be a very difficult person to work with. I am no longer a member of RDRR. I no longer have any contact with him. We have “fallen out”. In this I am not alone. In 2021 five members of RDRR, including two current Councillors, a former Councillor and a Councillor candidate from 2019, also resigned from RDRR.<sup>3</sup>

I believe it is fair to say that Mayor Chadwick was an equally difficult person to work with. As one example, I have provided a link to a Council livestream<sup>4</sup> of Mayor Chadwick chairing a Council meeting, breaching Standing Orders, against the advice of her own Deputy Mayor and the majority of Councillors, in pursuit of a Parliamentary Bill that the Attorney General had concluded was discriminatory and could not be justified under s 5 of

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<sup>1</sup> <https://www.lgc.govt.nz/our-work/good-practice/codes-of-conduct/>

<sup>2</sup> <https://www.rotorualakescouncil.nz/our-council/news/news?item=id%3A2h71aa5kt1cxbywpe171>

<sup>3</sup> <https://www.nzherald.co.nz/rotorua-daily-post/news/rotorua-residents-and-ratepayers-members-resign-over-ructions-with-reynold-macpherson/2QYVZ67FWGBNLFELZ3AJBMAMOI/>

<sup>4</sup> <https://youtu.be/si6bB3z1j6s?t=262>

the Bill of Rights Act”.<sup>5</sup> Cr Peter Bentley resigned effective immediately following this unfortunate display.

### **Macpherson and Chadwick had ‘history’**

Macpherson was undoubtedly Mayor Chadwick’s political nemesis. They have some history:

- in 2013 Macpherson ran unsuccessfully for Council coming 17<sup>th</sup> for 12 vacancies;<sup>6</sup>
- during the 2016 election campaign Macpherson was forced to apologise to Council staff for “posting false and defamatory statements” on his Facebook Page under threat of defamation proceedings by Council lawyers;<sup>7</sup>
- Macpherson’s 2016 Mayoral campaign was unsuccessful, but he came a credible second place;<sup>8</sup>
- following his loss in 2016, Macpherson brought a legal challenge against the outcome of the election claiming several actions of Council during the election period were biased in favour of incumbents,<sup>9</sup> which he subsequently withdrew following unfavourable findings in a preliminary hearing;<sup>10</sup>
- In 2019 Macpherson again came a credible second place for the Mayoral campaign, losing again to Chadwick. This time however, he also ran for Council and was successful, coming 8<sup>th</sup> out of 10 places.

### **The Rotorua District Council 2019 Code of Conduct**

Given the ‘history’ between Chadwick and Macpherson it is perhaps unsurprising that Rotorua Council staff, likely at the behest of Chadwick, drafted an unbalanced, one-sided, let’s say “draconian” Code of Conduct, specifically with Macpherson in mind.

When compared to the 2016, 2019 and even 2022 Local Government New Zealand Code of Conduct Templates, the 2019 RDC Code of Conduct deviates from the standard approach among New Zealand Councils in the following manner:

1. It introduced a notion of ‘Collective Responsibility’;
2. It allows complaints from “any member of the public”; and
3. It allows complaints from Council staff.

I note that these three features of the ‘draconian’ 2019 RDC Code of Conduct also feature in the LGC draft Code of Conduct.

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<sup>5</sup> <https://www.justice.govt.nz/assets/Documents/Publications/20220421-Section-7-Report-Rotorua-District-Council.pdf>

<sup>6</sup> <https://www.rotorualakescouncil.nz/our-council/local-elections/previous-elections/elections-2013>

<sup>7</sup> <https://www.nzherald.co.nz/rotorua-daily-post/news/macpherson-apologises-for-defaming-council-staff/R OXHAMOVYYNKQVPJGRGZQLN3T4/>

<sup>8</sup> <https://www.nzherald.co.nz/rotorua-daily-post/news/macpherson-apologises-for-defaming-council-staff/R OXHAMOVYYNKQVPJGRGZQLN3T4/>

<sup>9</sup> <https://www.stuff.co.nz/national/politics/86553621/court-to-rule-on-rotorua-mayoral-election-bias-claims>

<sup>10</sup> <https://www.stuff.co.nz/national/politics/86682065/reynold-macpherson-withdraws-mayoral-court-challenge>

## **Collective Responsibility**

I submit that *collective responsibility* has no place in a Code of Conduct. This concept is imported from the New Zealand Cabinet Manual and applies to Cabinet Ministers where “public dissociation from Cabinet decisions by individual coalition Ministers outside the agreed processes is unacceptable”.<sup>11</sup>

The Cabinet is a subset of Parliament comprising only the Ministers of the various coalition parties who have agreed to work together under a coalition agreement to form a coalition government. The concept is that while Ministers may disagree during a confidential Cabinet Meeting they must maintain public agreement.

This is a poor analogy to a Council which, in my view, should be likened to the whole of Parliament. In Parliament there are opposition parties who ask the tough questions of the government and publicly express, and even campaign, on differences with the government.

It should not be a breach of the Code of Conduct for Councillors to express public disagreement with decisions made at Council.

## **Complaints from any member of the public**

Elected Members are already accountable to the public – every three years at election time. When a sufficient portion of the community votes for, and thereby endorses, a Councillor or Mayor, that endorsement should not be subject to the inevitable few who disagree, or worse, hold a vendetta against an Elected Member.

The disgruntled few should not be able to exploit the Code of Conduct mechanism to harass or otherwise make life difficult for political foes. Elected Members should be confident of going about their business, without fearing vexatious complaints from the public.

I can confirm that during this term a complaint was made by a member of the public against me. It was in response to an exchange we had on Social Media to which she took offence. I was called into the Mayor’s office. I burst out laughing when I found out who the complainant was. I advised the Mayor I would be delighted to debate this in the Chamber. The Mayor, wisely, did not progress the complaint.

I can also confirm that in the previous term before I was elected I employed the CoC process (because I could) against the chair of a committee who had indicated her committee would reconsider a particular matter, but had not done so. It procured the result I had hoped for, but with hindsight was not the proper process for doing so.

It is inevitable that certain members of the public will abuse the CoC process for political gain or damage. Elected Members should be granted effective immunity from such abuse during the course of their term. In my view, if the public considers a particular Elected Member’s behaviour to be unacceptable then the proper (and established) way to deal with it is the democratic process of elections.

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<sup>11</sup> <https://www.dPMC.govt.nz/sites/default/files/2023-06/cabinet-manual-2023-v2.pdf#page=97>

## **Complaints from Council staff**

Although the 2019 RDC CoC does not explicitly allow complaints from staff, it could be inferred that, if the public can then so can the staff. This inference was allowed in 2021 when at least one Council Officer laid a complaint against Macpherson.

It is my submission that the notion of allowing complaints from staff upsets the proper role of Elected Members in a free and democratic society. The Elected Members are elected by the public to have oversight of Council staff, through the Chief Executive. In this term, all our Elected Members were appointed to the Chief Executive Review Committee. This committee effectively has the power to 'hire and fire' the Chief Executive.

In short the Chief Executive, and by extension the staff, are rightly answerable to Elected Members. Allowing CoC complaints from staff has the effect of making Elected Members answerable to staff. In my view, this should not be allowed.

## **Te Tiriti o Waitangi**

Clause 8 of the Local Government Commission (LGC) Draft Code of Conduct makes reference to Te Tiriti o Waitangi and seeks to impose expectations upon Elected Members that the Local Government Act 2002 does not – in particular taking into account various principles of the Treaty of Waitangi.

I refer to s4 of the Local Government Act 2002 (LGA) which states:

### **4 - Treaty of Waitangi**

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

Please note: It is the Crown, not Councils, who have a "responsibility to take appropriate account of the principles of the Treaty of Waitangi...". This is because Councils were not signatories to the Treaty and Councils are not part of the Crown. They are separate entities created by statute.

I acknowledge that Councils are required to abide by Parts 2 and 6 of the LGA which the Crown added to fulfil their responsibility under the Treaty. However, nowhere in Parts 2 and 6 does it refer to Tino Rangatiratanga, Partnership, Equity, Active protection and options that ensure that services are provided in a culturally appropriate way.

For this reason I submit that Clause 8 is Ultra Vires - beyond the legal power or authority of the LGC to have inside its CoC.

## **General Comments**

I agree with Winston Churchill who said:

‘Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time....’

The problem with having a ‘draconian’ Code of Conduct, such as the LGC has proposed, is that it may stifle the sort of robust debate as is healthy and proper in a free and democratic society. It is wide open to abuse and to being weaponised for political gain or harm. It may elevate Council staff and even the public above Elected Members, which would defeat the purpose of the Local Government Act which is “to enable democratic local decision-making and action by, and on behalf of, communities”. A Code of Conduct which is inconsistent with the Purpose of the Local Government Act is unlawful.

### Cost of investigation and resolving CoC’s

According to ChatGPT, the costs associated with Cr Macphersons CoC Complaints were as follows:

#### Key Cost Figures

Description	Amount	Details
Cost of one investigation (5 complaints)	~ NZD \$59,573	This covers legal fees (~ \$41,341), plus Audit & Risk Committee meeting fees etc. <a href="#">NZ Herald</a>
Cost of investigating another 5 of the complaints	~ NZD \$46,000	From ratepayers to date for that set of complaints. <a href="#">RNZ+1</a>
Cost of earlier complaints (2020)	~ NZD \$60,000	Similar investigations into earlier complaints. <a href="#">RNZ</a>
Cost to compile a public report on what Macpherson has cost ratepayers	~ NZD \$1,600	For the report’s compilation. <a href="#">NZ Herald</a>

In my opinion, these sorts of costs (total \$167,173) were unacceptable to ratepayers in the 2019-2022 term and would be even more unacceptable to ratepayers today given the current cost of living crisis. This would also go against the Prime Minister’s directions to Council to get ‘back to basics’ and stop wasting money on ‘the laundry-list of distractions and experiments that are plaguing council balance sheets across the country’.<sup>12</sup>

Further, the amount of time that Council staff and Elected Members would have wasted on the above complaints must be astronomical.

### My first term as a Councillor and our Code of Conduct

Given my association with Macpherson, I believe that some Council staff wrongly assumed I would be similarly problematic. I suspect it was for that reason that in 2022 Council staff “beefed up” the 2019 RDC Code of Conduct and asked Elected Members to adopt it.

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<sup>12</sup> <https://www.beehive.govt.nz/speech/speech-ignz-superlocal-conference>

I successfully persuaded a majority of my colleagues not to vote this Code of Conduct for all of the above reasons. No other Code of Conduct has been presented to Elected Members this term for consideration. As a result, our Council failed to adopt any Code of Conduct this term.

In my opinion, we have had a reasonably functional Council without adopting a Code of Conduct – and that is all that should be expected in a free and democratic society.

One one occasion the Mayor responded to a media request about me using defamatory terms. I threatened her with defamation proceedings unless she advised the media outlet that she had withdrawn her statement. I assume she did as the media outlet did not publish that story.

I could have laid a CoC complaint against the Mayor<sup>13</sup> but, in my view, there is nothing that is more able to permanently destroy working relationships between Elected Members than CoC complaints. CoC Complaints are the ‘nuclear option’ and that means Mutually Assured Destruction (MAD).

In my view, laying a CoC complaint would have exacerbated an already difficult situation and in fact make it much, much worse – for everyone including for fellow Elected Members, Council Staff and the long-suffering residents and ratepayers. It would have permanently destroyed any working relationship I had with the Mayor and her with me.

I take the view that ‘cutting each other a little slack’ goes a long way. A little bit of grace, a little bit of forgiveness is more conducive to convivial working relationships between Elected Members than any CoC complaint could possibly be.

## **Conclusion**

It is my firm view that LGC’s draft Code of Conduct is even more draconian and open to abuse than even the 2019 or draft 2022 Rotorua Lakes Council CoC.

In comparison to the LGNZ standard CoC template, it is wide open to abuse, not just from fellow Elected Members, but also the public and Council staff.

The reference to the Treaty of Waitangi opens up a whole new can of worms, which is best avoided and, in any event, unlawful.

I recommend toning down the CoC considerably and trusting the voters to deal with problematic Councillors primarily by accepting that there will always be some degree of chaos within any properly functioning democratic arrangements. It is of some comfort that elections happen every 3 years.

I have no doubt that a ‘draconian’ CoC, such as the LGC draft, will not reduce such chaos. To the contrary, it will have the opposite effect because it would enable the CoC to be weaponised and abused against democratically elected Councillors.

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<sup>13</sup> Under the LGA, the previously adopted CoC remains in effect until a new one is adopted.

The above constitutes my 'broad brush strokes' submission on LGC's draft CoC. I would be happy to assist with providing further refinement of a draft CoC in due course if and when my above concerns are rectified.

I am available to answer questions or otherwise participate via a Zoom meeting or equivalent.

I wish you all the best with your consideration of the above.

Yours sincerely

Robert Lee  
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Rotorua District Council.