

Notice of Meeting:

I hereby give notice that an extraordinary Meeting of the Council will be held on:

Date: Tuesday 17 September 2024
Time: 9:30 am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Lance Vervoort
Chief Executive

Council *Kaunihera* OPEN AGENDA

Membership

Chairperson Mayor Paula Southgate
Heamana

Deputy Chairperson Deputy Mayor Angela O'Leary
Heamana Tuarua

Members	Cr Maxine van Oosten	Cr Geoff Taylor
	Cr Moko Tauariki	Cr Sarah Thomson
	Cr Ewan Wilson	Cr Emma Pike
	Cr Mark Donovan	Cr Maria Huata
	Cr Louise Hutt	Cr Anna Casey-Cox
	Cr Andrew Bydder	Cr Kesh Naidoo-Rauf
	Cr Tim Macindoe	

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly – or as required

Amy Viggers

Mana Whakahaere
Governance Lead

9 September 2024

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Purpose

The Council is responsible for:

1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

Terms of Reference

1. To exercise those powers and responsibilities which cannot legally be delegated by Council¹:
 - a) The power to make a rate.
 - b) The power to make a bylaw.
 - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
 - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
 - e) The power to appoint a Chief Executive.
 - f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan or developed for the purpose of the Council's Governance Statement.
 - g) The power to adopt a remuneration and employment policy.
 - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
 - i) The power to approve or amend the Council's Standing Orders.
 - j) The power to approve or amend the Code of Conduct for Elected Members.
 - k) The power to appoint and discharge members of committees.
 - l) The power to establish a joint committee with another local authority or other public body.
 - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council does not accept the recommendation.
 - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
 - a) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
 - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
 - c) Approval of any changes to city boundaries under the Resource Management Act 1991.
 - d) Adoption of governance level strategies plans and policies which advance Council's vision and strategic goals.

¹ [Clause 32, Schedule 7, Local Government Act 2002](#)

- e) Approval of the Triennial Agreement.
- f) Approval of the local governance statement required under the Local Government Act 2002.
- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.
- i) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- j) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- k) Approval of Activity Management Plans.
- l) Sister City relationships.

Oversight of Strategies, Plans and Reports:

- Long Term Plan
- Annual Plan
- Annual Report
- Shaping Hamilton Kirikiriroa Together
- Our Climate Future
- He Pou Manawa Ora

Oversight of Policies and Bylaws:

- *Corporate Hospitality and Entertainment Policy*
- *Delegations to officers specific to the Resource Management Act 1991*
- *Delegations to Positions Policy*
- *Elected Members Support Policy*
- *Significance and Engagement Policy*
- *Climate Change Policy*
- *Any Community Engagement Policies*

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1 Apologies – *Tono aroha*

2 Confirmation of Agenda – *Whakatau raarangi take*

The Council to confirm the agenda.

3 Declaration of Interest – *Tauaakii whaipanga*

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum – *Aatea koorero*

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6699.

Council Report

Committee: Council **Date:** 17 September 2024
Author: Michelle Hawthorne **Authoriser:** Lance Vervoort
Position: Governance and Assurance Manager **Position:** Chief Executive
Report Name: Code of Conduct - Complaint - Outcome of Investigation

Report Status	<i>Open</i>
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Purpose - *Take*

- To inform the Council of the outcome of the Independent investigation into Code of Conduct Complaints against Councillor Bydder, as well as the process and matters it must consider and decide in accordance with its Code of Conduct.

Staff Recommendation - *Tuutohu-aa-kaimahi*

- That the Council:
 - receives the report;
 - considers the findings of the investigator's report; and
either
 - accepts the findings of the investigator's report; **and** determines whether a penalty, or some other form of action, will be imposed;
 - or
 - does not accept the findings of the investigator's report;
 - or
 - determine that in the interests of natural justice, a decision on whether to accept the findings of the investigator's report and whether a penalty, or some other form of action, will be imposed, should be made by a panel of no less than three independent, appropriately qualified members, to be selected by the Chief Executive and Deputy Mayor.

Executive Summary - *Whakaraapopototanga matua*

- On 21 June 2024 Hamilton City Council (Council) received the first of several Code of Conduct complaints made by various individuals against Cr Bydder. These were in relation to a submission which Cr Bydder made to Waipā District Council in relation to the Cambridge Connections project.

4. As required by [the Code of Conduct \(stage 2 of schedule 3\)](#), an independent preliminary assessment was undertaken by Tompkins Wake. The preliminary assessment was that the submission to Waipa District Council could properly be considered a material breach of the Code of Conduct.
5. The matter has then been referred to Mary Hill as the Independent Investigator. She has provided her final report on this matter to the Chief Executive which is attached. This report outlines the steps required following receipt of the Investigator's report.
6. Staff consider that the recommendation complies with Councils legal requirements.

Background - *Koorero whaimaarama*

7. On 21 June 2024 Hamilton City Council (Council) received the first of several Code of Conduct complaints made by various individuals against Cr Bydder. These were in relation to a submission which Cr Bydder made to Waipā District Council in relation to the Cambridge Connections project.
8. As required by the Code of Conduct (stage 2 of schedule 3), a preliminary assessment of the complaint must be completed by the Legal Team and a recommendation made to the Mayor, Deputy Mayor and the CE's Office.
9. The Legal Team referred this matter for an independent preliminary assessment by Tompkins Wake. The preliminary assessment from Tompkins Wake was that assuming the submission was made by Cr Bydder, then the submission to Waipa District Council could properly be considered a material breach of the Code of Conduct.
10. For clarity, the preliminary assessment is just that, and is intended as a guide to inform decision making. An independent investigator may come to a different conclusion to that indicated in the preliminary assessment on the conclusion of their investigation.
11. Upon receiving the recommendation, the Deputy Mayor and CE considered the recommendation and made a decision to refer the complaint to an independent investigation.

Discussion - *Matapaki*

12. Mary Hill is the Independent Investigator. She has provided her final report on this matter to the Chief Executive. Under the Code of Conduct, the Chief Executive is required to follow the steps as set out in [schedule 3 of the Code](#):
 - i. On receipt of the investigator's report, the Chief Executive will prepare a report for the Council, which will meet as soon as reasonably possible.
 - ii. The Chief Executive's report will include the full report prepared by the investigator, including any recommendations. The Investigators Report and Appendices to the Report are **Attachments 1** and **2** to this report.
 - iii. The Chief Executive will share the investigator's report with the complainant and respondent under strict confidentiality inviting them to reply in writing as to whether they agree to the findings and whether they wish to make a written submission for consideration by the Council. The complainant and respondent must not disclose or discuss the investigator's report with any person other than appropriate internal staff, such as the Legal Team and the Governance and Assurance Manager prior to the Council meeting being held to determine the complaint.
13. As noted above the complainant and respondent under strict confidentiality inviting them to reply in writing as to whether they agree to the findings and whether they wish to make a written submission for consideration by the Council. These were invited to be submitted by 5pm 5 September to staff.

14. The submissions received by the deadline set for all complainants and Councillor Bydder are set out in **Attachment 3** to this report. Some complainants have advised that they had nothing further to add, others did not respond by the deadline. Councillor Bydder has responded to the invitation to make a submission, which is Attachment 3 to this report.
15. The Code of Conduct sets out the requirements for the Council meeting as follows:
 - i. The Chief Executive's report (with the investigator's full report or assessment, and any submissions from the complainant or respondent, attached) will be considered by the full Council, excluding any interested members (including the complainant (if relevant) and respondent).
 - ii. The Council will consider the Chief Executive's report in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under section 48 of the LGOIMA, in which case it will be a Public Excluded meeting.
 - iii. Before making any decision in respect of the investigator's report the Council will give the respondent an opportunity to appear and speak in their own defence. Members with an interest in the proceedings may not otherwise take part in these proceedings.

Options

16. The options available to the Council are set out in Schedule 3 of the Council's [Code of Conduct](#), specifically:
 - i. Council is required to consider the findings of the investigator's report;
 - ii. Council then has the option:
 - a) to accept the findings of the investigator's report (refer to paragraph 33 of the Investigator's Report); and determine whether a penalty, or some other form of action, will be imposed (refer to paragraph 48 of the Investigator's Report for recommendations on penalty); or
 - b) not accept the findings of the investigator's report; or
 - c) determine that in the interests of natural justice, a decision on whether to accept the findings of the investigator's report and whether a penalty, or some other form of action, will be imposed, should be made by a panel of no less than three independent, appropriately qualified members, to be selected by the Chief Executive and Deputy Mayor (Noting that the Mayor would normally take part in making the appointments but is excluded from this process because she is a complainant in this instance).

Legal and Policy Considerations - *Whaiwhakaaro-aa-ture*

17. The Council is required to adopt a code of conduct ([clause 15 of Schedule 7 of the Local Government Act 2002](#) ('LGA')). Once adopted, all Elected Members are required to comply with the Code.
18. The code of conduct must set out:
 - understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—
 - behaviour toward one another, staff, and the public; and
 - disclosure of information, including (but not limited to) the provision of any document, to elected members that—

- is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and
 - relates to the ability of the local authority to give effect to any provision of this Act; and
- a general explanation of—
 - the Local Government Official Information and Meetings Act 1987; and
 - any other enactment or rule of law applicable to members.
19. A local authority may amend or replace its code of conduct but may not revoke it without replacement. After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.

Climate Change Impact Statement

20. Staff have assessed this option against the Climate Change Policy for both emissions and climate change adaptation. Staff have determined no adaptation assessment is required.

Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

21. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental, and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
22. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report. The recommendations set out in this report are consistent with that purpose.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

23. Staff have not considered the key considerations under the Significance and Engagement Policy as the matter of this report and process is outlined the Council's [Code of Conduct](#).

Attachments - *Ngaa taapirihanga*

Attachment 1 - Report: Code of Conduct Investigation Councillor Andrew Bydder

Attachment 2 - Appendices

Attachment 3 - Cr Bydder Submission

Attachment 4 - Complainant Submissions

REPORT FOLLOWING INVESTIGATION

Author: Mary Hill, independent investigator appointed by Hamilton City Council

Date: 28 August 2024

Introduction

1. I have been appointed by Hamilton City Council (**HCC**)¹ to investigate complaints made against Councillor Andrew Bydder under Council's Code of Conduct for Elected Members dated 12 May 2022 (**Code**).
2. The Terms of Reference governing my appointment, dated 3 July 2024 (**ToR**), are appended to this Report at **Appendix 1**.
3. The complaints referred to me are summarised in Appendix A to the ToR. There are 24 complaints summarised. They relate to a public submission made by Councillor Bydder to Waipā District Council (**WDC**) in relation to the Cambridge Connections project (**Project**). The submission contains comments which the complainants consider (in general terms) to amount to offensive behaviour in breach of the Code.
4. This Report documents the investigation process I have undertaken and the outcome of my investigation. It has been prepared on the basis that it will be considered at a public meeting of Hamilton City Council. It will be a matter for the Council to determine whether there are grounds for withholding any parts of my Report from the public agenda and / or to exclude the public from any part of the meeting which considers my Report, in accordance with the Local Government Official Information and Meetings Act 1987 (**LGOIMA**).

Scope of investigation

5. The purpose of my investigation as set out in the ToR is "*to consider the Complaint(s) and determine whether any breach of the Code has occurred.*"
6. If I find that a breach of the Code has occurred, the ToR invite me to provide my recommendations on the actions Council may wish to consider if it resolves to accept my Report. I may also include any recommendations and make any observations I consider may be useful for HCC and / or Elected Members.

Investigation process

7. I am required to carry out the investigation in accordance with the process set out in the Code. Section 6 deals with breaches of the Code and sets out some key principles which have guided my investigation (**Section 6 Principles**). They emphasise that the process undertaken should be proportionate to the apparent seriousness of the alleged breach, and require the application of natural justice and fairness. This includes ensuring that affected parties are aware that the investigation is underway, are given due notice and an opportunity to be heard, may seek advice and be represented, and have their privacy respected.
8. Prior to commencing my investigation I was required to confirm to HCC, and did confirm, that I am not aware of any matter which might give rise to a conflict of interest in conducting the investigation. I subsequently confirmed, in response to an issue

¹ References in this Report to HCC are to the Chief Executive or in-house legal counsel. The CE's office and the Legal Team have roles under the Code. Where I am referring to Council as a body of elected members that will be specified in my Report.

raised by Councillor Bydder,² that I am not aware of any submission, publication or opinion from Andrew Bydder in any capacity on any issue other than the subject matter of this investigation. Following that advice, HCC confirmed (on 15 July) that I should continue with my investigation. No conflicts of interest have arisen during my investigation.

9. The process I am required to follow is contained in Schedule 3 of the Code. Steps 4 to 4B relate to the stage to be carried out by the independent investigator. It is not within my terms of reference to review the process that has been carried out prior to the complaints being referred to me. Regardless, I am satisfied that any process issues arising before referral of the complaints to me have not materially affected my investigation. That is because I have separately and independently verified the complaints referred to me, and have separately and independently investigated and made findings in relation to the materiality of the breaches of the Code raised in the complaints.
10. The Section 6 Principles recognise that my approach should be proportionate to the apparent seriousness of the alleged breach. In my opinion a proportionate approach should always be subject to ensuring the principles of natural justice are adhered to. I have ensured that the timeframes for consultation at all stages of the investigation process have been fair and reasonable, and extended timeframes in response to concerns raised by Councillor Bydder.
11. I have followed a two-step process, as required by the Code, which involves an assessment of materiality (initial and final), followed by a report on the seriousness of the breach (if a material breach is found).

A. Assessment of materiality

1. Initial assessment

- (a) Upon receipt of the complaints I undertook an initial assessment of materiality to ascertain whether a full investigation was required. At that stage the Code indicates that I may make whatever initial inquiry is necessary to determine the materiality of an alleged breach.
- (b) The Code defines an alleged breach as material where "*in the reasonable opinion of an independent investigator, it would, if proven, bring an Elected Member or the Council into disrepute (for example in the mind of the public, any behaviour that negatively risks or undermines the reputation of the Council or another Elected Member) or, if not addressed, reflect adversely on another Elected Member of the Council.*"³
- (c) Because each complaint of itself gives rise to a separate right to an investigation and resolution of the complaint, I considered it important to independently validate each of the complaints before proceeding further with the investigation.

² Email Hill to Vervoort and Vervoort to Bydder dated 15 July 2024. Copies included at **Appendix 4**.

³ Code, Section 6.1, p12.

2. Validation

- (a) The Code does not require me to “validate” the complaints. Rather, it provides that I must assess their materiality (including to ensure they are not frivolous or without substance). In making that assessment I may make “whatever initial inquiry is necessary”. I acknowledge that the principles of natural justice require me to fairly put to Councillor Bydder the “case to be met”, which requires me to ensure he understands the nature of the complaints made against him. I have done this by providing him with complete copies of all of the complaints (with personal details redacted). He has had those since 18 July. As Councillor Bydder acknowledges in his 15 August Letter,⁴ “*there is no cumulative effect of complaints*”. It follows that a single valid complaint raising a material breach of the Code is sufficient to found an investigation. Mayor Paula Southgate has made a valid complaint which has been provided in full to Councillor Bydder, with the Mayor’s identification details provided. On that basis alone this investigation is justified.
- (b) As part of my materiality assessment, I have nevertheless taken steps to validate the complaints, using the process described below. Of the 24 complaints referred to me, I have validated 22.⁵ One further complaint was referred to me by HCC following my initial engagement. That complaint has been validated by me. Complete copies of the 23 validated complaints are appended to this Report at **Appendix 2**. Councillor Bydder has been provided with full copies of all verified complaints.⁶
- (c) The Code contemplates completion of a “complaint form”. Although not all complaints were completed using HCC’s standard on-line complaint form, I have contacted the complainants who used the general inquiry form, and all have confirmed that they lodged a complaint and agree to the matters they are required to acknowledge in the standard on-line form.⁷ I have treated those complaints as valid. The Code also places an onus on complainants to refer to the relevant sections of the Code their complaints relate to.⁸ I consider the intent of this provision is to ensure that all parties, including the respondent, fully understand the nature of the complaint. While four of the complaints did not refer to specific sections of the Code by number, I have found that it was clear from the words used which sections were being relied upon. For completeness, three of those four complainants have subsequently

⁴ This is the letter from Councillor Bydder to Lance Vervoort referred to at paragraph 11B(1)(c) of my Report.

⁵ One complaint included an invalid email and phone number and was therefore unable to be validated. It has not been considered further (the complaint is dated 26 June 2024, “*Fire this guy bydder – he sucks*”, p4 Appendix A, ToR). Another complaint was an email sent directly to Cr Bydder rather than lodged with HCC and has not been treated as Code complaint (the correspondence dated 25 June 2024, commencing “*Dear Mr Bydder ...*”, p4 Appendix A, ToR).

⁶ With identifying details redacted to protect the identity of the complainants, except for Hamilton Mayor Paula Southgate who has consented to her identifying details being disclosed.

⁷ The form requires agreement to details of the complaint being disclosed to the respondent, acknowledgment that the complaint will remain confidential while the investigation is underway, agreement to participate in the investigation process and acknowledgement that the outcome may be considered in an open meeting (subject to legal requirements). Two complainants did not wish to participate further in the investigation process. That is their right and I do not consider that invalidates their complaints.

⁸ Schedule 3 Code, Step 1(b), p22.

confirmed which sections of the Code they are relying on.⁹ One complainant has not confirmed which section they rely and has also advised that they do not wish to participate further in the investigation process. I have therefore not taken the investigation of that complaint further.¹⁰

- (d) I have also validated the submission made to WDC that is the subject of the complaints. A copy of the unredacted submission is appended to this report at **Appendix 3**.¹¹ WDC has confirmed that the submission was lodged on 11 March 2024 using an on-line web form and was accepted. The suggestion by Councillor Bydder that software automatically redacted the offensive language is not correct. WDC has confirmed that the software used for the Cambridge Connections feedback process,¹² which applied to Councillor Bydder's submission, does not have any functionality to automatically redact offensive material. Rather, WDC staff manually redacted offensive material prior to any submissions being published on WDC's website. A redacted copy of Councillor Bydder's submission was published on WDC's website on 13 June 2024,¹³ but the comments that have given rise to the complaints were redacted. However, WDC elected members were provided with the full unredacted submission following the Committee meeting held on 18 June 2024.¹⁴ A screenshot of the submission containing the comments that have given rise to the complaints, but with personal details redacted and certain words partially obscured, was subsequently circulated to elected members of Hamilton City Council and became public. A copy of that screenshot was provided with some of the complaints and is included at **Appendix 2**.
- (e) I am satisfied that the submission was made by Councillor Bydder. It contains his name and his personal contact details.¹⁵ He has not denied making the submission.¹⁶
- (f) I wrote to Councillor Bydder on 6 July 2024 setting out my initial assessment that the complaints raise alleged breaches of the Code which, if proven, meet the materiality threshold in Section 6 of the Code. I set out reasons for my assessment. I requested a response to the initial assessment by 5 p.m on 22 July (within 10 working days). Copies of the original web-form complaints were sent to Councillor Bydder on 8 July and copies of the non-webform complaints were provided on 18 July once they had been validated. Councillor Bydder responded raising various procedural issues (addressed at paragraph 13 below) and seeking further time.¹⁷ Extensions to the timeframe for Councillor

⁹ Three of those complainants rely on section 3.2 (Respect) and one also relies on 5.2 (Relationship with the public).

¹⁰ The complaint dated 25 June 2024: "*re Andrew bydder letter to waipa council any business would drug test investigate and reprimand any staff member for writing unacceptable correspondence.*"

¹¹ A residential address and personal email address are included in the form but have been redacted in accordance with WDC's privacy policy in relation to on-line submissions.

¹² "Consultation Manager" and "Social Pinpoint".

¹³ It was included in the public agenda for a WDC Committee meeting held on 18 June 2024 as part of consideration of feedback received on the Project. A copy of the redacted submission included in the public agenda is included at **Appendix 3** to this Report.

¹⁴ I understand this occurred on 27 June 2024.

¹⁵ A title search has confirmed that the address provided is a property owned by Andrew Bydder.

¹⁶ In the opinion piece dated 4 July 2024 (refer below footnote 25), Councillor Bydder admits making the submission.

¹⁷ Emails Bydder to Hill dated 15, 24 and 25 July 2024.

Bydder to respond to my initial materiality assessment were granted until 5 p.m. Friday 26 July and subsequently until 9 a.m. Monday 5 August.¹⁸ Copies of that correspondence is included at **Appendix 4**.

- (g) Apart from the procedural issues raised (which I responded to), Councillor Bydder has provided no substantive response to my initial assessment of materiality dated 6 July.

3. *Final assessment of materiality*

- (a) On 6 August I made a determination that the 23 validated complaints raise material breaches of the Code in relation to conduct by Councillor Bydder. I informed the Chief Executive of HCC of my assessment as required by the Code.¹⁹ The Chief Executive confirmed he would advise the complainants and Councillor Bydder of my finding, as required by the Code.

B. Report on Seriousness of Breach

1. *Consultation*

- (a) In preparing my Report on the seriousness of the breach, I am required under the Code to consult with the complainant, respondent and any affected parties. I consider that the two parties named in the submission by Councillor Bydder (WDC Mayor Susan O'Regan, and WDC Chief Executive Garry Dyet) are affected by the conduct. I have consulted with both those parties and neither of them wish to participate in the investigation.
- (b) I have the option of conducting a hearing with relevant parties. I have elected not to hold a hearing. I do not consider that to be warranted given that the complaints relate to a written submission and there are no factual matters in dispute which require the testing of evidence. My report is recommendatory and I have no power to make any decision on the complaints. That decision will be made by the full Council,²⁰ which must provide Councillor Bydder with an opportunity to be heard before it makes any decision on the complaints.
- (c) Councillor Bydder and all complainants have been given an opportunity to provide written feedback on my draft report and Councillor Bydder has also been offered an opportunity to discuss the draft report with me. Councillor Bydder did not provide any feedback directly to me, but provided a written response headed "*Review of Investigator's Draft Report*" dated 15 August 2024 to HCC's Chief Executive Lance Vervoort (**15 August Letter**). Mr Vervoort provided me with a copy, having first obtained the consent of Mr Bydder to send it to me. Complainants were sent a copy of the draft section of my report containing my substantive findings and recommendations. Seven provided written feedback which I have considered before finalising my recommendations. Copies of all written feedback received (including Councillor Bydder's letter) are included at **Appendix 6**.

¹⁸ Emails Hill to Bydder dated 18, 25 and 26 July 2024.

¹⁹ Letter Hill to Lance Vervoort dated 6 August 2024. Copy included at **Appendix 4**.

²⁰ Apart from Mayor Southgate (a complainant) and Councillor Bydder (the respondent).

Findings

12. This section of my Report sets out my findings on the procedural matters raised by Councillor Bydder, and the reasons for my substantive finding that the complaints raise material breaches of the Code by Councillor Bydder, including my assessment of the seriousness of the breaches. The final section of my Report sets out options for addressing the breaches, including my recommendations for Council's consideration once it has provided Councillor Bydder with an opportunity to be heard.

Procedural issues

13. Councillor Bydder has raised three procedural issues in correspondence with me prior to my finding of a material breach on 6 July, and some further issues in his 15 August Letter which responds to my draft report. I responded directly to Councillor Bydder in relation to the preliminary matters raised with me, and I have addressed the further issues in this Report. Each issue and my response is summarised below. I do not consider that any of the matters raised by Councillor Bydder have affected the process undertaken in this investigation, which has been carried out in accordance with the Code including the Section 6 Principles. They are addressed here for completeness. Copies of the relevant correspondence is included at **Appendices 4 and 6**.

- (a) Conflict of interest: Councillor Bydder suggested that he should be involved in selecting the independent investigator. It is not appropriate for the respondent to select the investigator. That would compromise the independence of the investigation. Councillor Bydder also suggested that I may be aware of other submissions he has made in other contexts. I have addressed that issue at paragraph 8 above.
- (b) Invalid complaints: Councillor Bydder raised the possibility that all of the complaints could have come from a false email address and advised that he had asked a friend to lodge a false complaint to test the process. My validation process (described above) ensured that only complaints which included valid contact details and confirmation of agreement to the requirements for lodging a complaint under the Code were considered further.²¹
- (c) Nature of engagement: Councillor Bydder requested clarification as to whether my appointment was a personal one or whether HCC had engaged Cooney Lees Morgan (my firm). I clarified that the appointment was personal to me but that the engagement was between HCC and Cooney Lees Morgan. I advised him to raise any further concerns about these matters with HCC.
- (d) General process issues: In the 15 August Letter Councillor Bydder states that I "*formed opinions on a preliminary assessment without contacting [him]*", "*refused to communicate with [him]*" and "*used unreasonable timeframes to prevent [him] from participating.*" None of those statements are accurate. The process that I have followed is set out above. My preliminary assessment of materiality, which I am required to make under the Code, was provided in writing to Councillor Bydder for his comments by letter dated 6 July. The letter (contained in **Appendix 4**) makes it clear that "*This is a preliminary assessment*

²¹ As explained above, one complainant who provided a valid email address and responded confirming that they lodged the complaint and agreed to it being considered further, also advised that they did not wish to participate further in the investigation process. Given they did not confirm which specific provisions of the Code they relied upon, that complaint has not been investigated further.

undertaken for the purposes of allowing you to provide comment before a final decision is made. It is not a determination that any breach has occurred.” I initially provided Councillor Bydder with 10 working days to respond to that assessment and granted subsequent extensions of a further 10 working days. I have also provided Councillor Bydder with an opportunity to provide written feedback on my draft report, or to discuss the draft report with me.²² I have never refused to consider feedback provided by Councillor Bydder on my assessments.²³

- (e) Allegations against investigator: In his 15 August Letter to Lance Vervoort, Councillor Bydder has made various allegations including that I have been “actively dishonest”, “tried very hard to lie” and have “actively falsified” complaints. Those are serious allegations to make and are wholly rejected.

Substantive findings

14. The complaints generally raise concerns about the type of language contained in the submission and the personal nature of the comments relating to the Mayor and Chief Executive of WDC. Some of the complaints relate to the subsequent comments made by Councillor Bydder in the media about the nature of the complaints and the complainants. In summary, the complaints raise the following themes:

- Abusive, offensive and derogatory language
- Threatening language and personal attacks
- Ableist and sexist language
- Caused distress and emotional harm
- Breach of the Human Rights Act (discriminatory behaviour)
- Breach of Workplace Health and Safety Legislation (comments against WDC Mayor create an unsafe workplace environment)
- Bullying and harassment
- Unprofessional behaviour
- Absence of respect and leadership
- Lack of dignity for others and specifically for the rights of disabled people
- Breach of expected behaviour of a councillor which requires higher standards than other members of the public
- Undermining the reputation of the Council, Councillors and the Waikato
- Discouraging good people from standing for election
- Use of public office or freedom of speech as reasons for choice of language
- Being dismissive of the complaints in the media
- Absence of apology or remorse

15. The following sections of the Code (paraphrased) are considered by complainants to have been breached. These are set out in full in **Appendix 5** to my Report.

- (a) **3.2 Respect:** Elected members will treat everyone (including other members) with respect and courtesy;

²² 11 working days were provided for a response (six of those days fell prior to complainants being provided with a copy of my draft report). Copies of correspondence are included at **Appendix 4**.

²³ I did indicate that I did not intend to respond further to emails from Councillor Bydder alleging “corruption” and that I was a “con artist”. I advised that I had been engaged to conduct an investigation and was entitled to be treated with respect and courtesy. I advised that I would consider any feedback on my materiality assessment. Email Hill to Bydder dated 27 July included in **Appendix 4**.

- (b) **3.5 Leadership:** Elected members should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council;
 - (c) **5.2 Relationship with the Public:** Interact with members of the public in a fair, respectful, equitable and honest manner and treat members of the public in a courteous manner.
16. I consider that the reasons for my preliminary assessment²⁴ remain appropriate in relation to my finding that a material breach of the Code has been established. They are:
- (a) The Code applies to Councillor Bydder as an Elected Member of Hamilton City Council (Code, p3);
 - (b) The Code deals with behaviour of Elected Members towards each other, the media and the public (Code, p3);
 - (c) The Code applies at all times, not only in Councillor Bydder's official capacity but also as a representative of Council and the wider community (Code, p3);
 - (d) While Councillor Bydder is entitled to freedom of expression, this must be balanced against his concurrent responsibility to be respectful (Code, p3);
 - (e) Respectful behaviour involves treating all people with respect and courtesy and not engaging in aggressive, offensive, abusive, harassing, bullying or discriminatory behaviour; not making personal attacks; and not making unreasonable, unwelcome, insulting, degrading or offensive comments to the public (Code, p4).
 - (f) The complaints received from members of the public allege that (and I have found that) the comments in the submission fell below the standard of respect and courtesy required by the Code.
17. Councillor Bydder has raised the right of free speech as justification for his comments.²⁵ He refers to the New Zealand Bill of Rights Act 1990 (**NZBORA**). It is useful to briefly address the law on this issue. NZBORA applies to the performance of public functions, including conduct governed by, and procedures under, the Code. This is well settled law.²⁶ While NZBORA affirms that everyone has the right to freedom of expression,²⁷ that right is subject to justified limitations.²⁸ The question is whether the restrictions in the Code preventing offensive behaviour or making offensive comments in public (to

²⁴ Set out in my letter to Councillor Bydder dated 6 July 2024, included at **Appendix 4**.

²⁵ 15 August Letter. See also opinion piece *An Example of Rage Against the Machine* by Andrew Bydder dated 4 July 2024 (thebdf.co.nz).

²⁶ In his 15 August Letter Councillor Bydder suggests that the "*The CoC is NOT law*." That suggestion is contrary to High Court authority. In *Goulden v Wellington City Council* (unreported, High Court, Wellington, CIV-2004-485-1, 21 April 2006, Goddard J) the Court found that "*it is appropriate to regard the Code as a lawfully promulgated set of guidelines or rules, issued under s48 (and Schedule 7) of the LGA*". The Court also held it was "*undoubtedly correct*" that "*as the Council performs a public function it is subject to the ... NZBORA*." (see paras [32] to [71]-[73]).

²⁷ Including the freedom to seek, receive, and impart information and opinions of any kind in any form. Section 14, NZBORA.

²⁸ Section 5, NZBORA, which provides: "*Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*"

paraphrase), are reasonable restrictions on the right to freely express opinions. It is clear that justified limits on freedom speech may include restrictions on disorderly behaviour or behaviour which gives rise to unreasonable anxiety or disturbance to members of the public.²⁹ In a local government context, the High Court has held that restrictions in a Code of Conduct on freedom of expression (in that case public criticism of the Council's Chief Executive) were justified limitations on freedom of expression under NZBORA.³⁰ In this case, the opinion Councillor Bydder wished to express related to a public project. He was entitled to freely and publicly express his views or position on that matter. However, that right is subject to the provisions of the Code which restrict the *manner in which* he expressed that opinion. The Code deals directly with the right to freedom of expression and explains that this is subject to the concurrent responsibility to be respectful.³¹

18. I find that the provisions of the Code which (to paraphrase) require respectful behaviour, including treating all people with respect and courtesy and not engaging in offensive behaviour, not making personal attacks, and not making unreasonable, unwelcome, insulting, degrading or offensive comments to the public,³² are justifiable restrictions on the right to freedom of expression by elected members. I further find that Councillor Bydder has breached those provisions of the Code.
19. I acknowledge that different people will have different interpretations and levels of tolerance in relation to the concept of offensive comments and the type of behaviour that is governed by the Code. However, it is clear that the test is an objective one, i.e. what is offensive to a reasonable member of the public.³³ It is also clear that context is important. The number and type people to whom the offensive behaviour is displayed are relevant considerations.³⁴ Ultimately the decision is a matter of judgment according to the circumstances of the case.³⁵
20. I find that the particular words used in the submission meet the threshold of being "*unreasonable, unwelcome, insulting, degrading or offensive comments to the public*" on any objective standard. They include an expletive that most reasonable members of the public would consider highly confronting, and disparaging comments of a personal nature in relation to senior public official (the WDC Mayor). The words by Councillor Bydder include terms that are widely considered to be derogatory and discriminatory about people with disabilities. While they may have been intended as offensive language more generally, rather than specifically directed at people with disabilities, I nevertheless find that they meet the objectively offensive standard.
21. The submission includes the comment "*sack the entire staff.*" This is a generic comment not aimed at any particular staff member and I do not consider the comment (of itself) meets the standard of objectively offensive conduct.
22. The comments have generated what I find to be a genuine and consistent reaction from 23 members of the public. I consider that number to be significant and the complaints to be consistent with an objective reasonable standard rather than the subjective views of a few. I have not relied on the number of complaints to assess materiality as

²⁹ *Brooker v Police* [2007] NZSC 30.

³⁰ *Goulden v Wellington City Council*, above footnote 26 at [73].

³¹ Code, p3.

³² Code, Section 3.2.

³³ In his 15 August letter, Councillor Bydder misunderstands the legal concept of an objective standard, which is considered by having regard to what a reasonable member of the public would view as offensive. That concept is well settled law and does not involve a subjective element. It is also the standard used by the Code.

³⁴ *Angus v Ports of Auckland* [2011] NZEmPC125.

³⁵ *Brooker v Police*, above footnote 29.

suggested by Councillor Bydder.³⁶ My assessment of materiality was based on the standard contained in the Code, i.e. whether, in my reasonable opinion, the breach would bring an elected member or Council into disrepute (see paragraph 11(1)(b) above).

23. I find that the comments contained in the submission by Councillor Bydder amount to offensive behaviour, involve personal attacks on Mayor O'Regan and Mr Dyet, and involve unreasonable, unwelcome, insulting, degrading and / or offensive comments made to the public, which includes members of the disability community, in breach of Section 3.2 of the Code.
24. I also find that the conduct is contrary to the provisions of the Code relating to the relationship of elected members with the public. Section 5.2 requires elected members to interact with members of the public in a fair, respectful and courteous manner, to act in a way that upholds the reputation of the local authority, and to ensure their behaviour does not undermine the reputation of the Council or other Elected Members in the mind of the public. The Code makes it clear that those provisions apply whether or not the elected member is interacting with the public in an official or personal capacity, "*where a connection of any kind can be made to the behaviour of an Elected Member in their official capacity.*"³⁷ Councillors have a public profile and their conduct in any public setting has the potential to undermine their reputation as elected members and in turn the reputation of the Council which they are a member of. In this case Councillor Bydder specifically asked, in his submission, for his name and comments to be provided to every elected member of WDC. This is consistent with an expectation by Councillor Bydder that WDC elected members would be aware that he was an elected member of Hamilton City Council. I find that a connection can readily be drawn between Councillor Bydder's behaviour and his official capacity.
25. I do not accept the suggestion by Councillor Bydder that he has not interacted with the public. He made a public submission and in doing so committed to WDC's privacy statement contained in its on-line submission form which provides that "*all submissions (including names and contact details) may be provided in full to elected members. Submissions (including names but not contact details) may be made available to the public.*" As an elected member he would have been aware that his submission would be made public, particularly when he asked that it be provided to elected members. It was in fact made public.
26. In my opinion the breach of Section 5.2 also meets the materiality threshold in that the comments have undermined the reputation of both Councillor Bydder and the Council in the mind of the public. A number of the complaints specifically raise reputational issues, including the complaint by Mayor Southgate who explains that "*Numerous colleagues have shared their concern and extreme disappointment feeling that this undermines our professional reputation.*"
27. Complaints by members of the public raise similar concerns. In feedback on my draft report, one complainant put it this way:

... this kind of conduct ... can have a chilling effect on any woman or, I believe, person with a disability, or anyone else, who wants to have faith in, or is considering standing for, local government throughout the country. Such communication give council workplaces the appearance of being unhealthy, unsafe, toxic spaces for people to work in - particularly for women or people with a disability - and these are groups already under-represented in councils. Robust dialogue about issues is of course to be expected, personalised attacks are not. Abusive behaviour affects bystanders, not only those directly abused. I agree with your comments about bringing council into disrepute.

³⁶ Refer 15 August Letter "MH again uses the number of complaints to assess materiality".

³⁷ Code, Section 2.

28. It is important to distinguish between the right of an elected member to publicly express a personal opinion, and public conduct by an elected member which brings the Council or that member into disrepute. Councillor Bydder was entitled to express a personal opinion in relation to the WDC Project by making a public submission in his personal capacity. It is not the case here that the opinion was at risk of being attributed to the Council. The issue is that the way in which the personal opinion was expressed amounts to behaviour that has undermined the reputation of Councillor Bydder and the Council in the eyes of the public.
29. The Code provides an example of this distinction between expressing a personal view, and expressing it in a manner which brings the elected member or Council into disrepute.³⁸
30. I am aware that clause 15(2) of Schedule 7 to the Local Government Act 2002 (LGA), which relates to Codes of Conduct required to be adopted by local authorities, provides that: *"The code of conduct must set out ... understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members ..."*. While Codes of Conduct must include provisions addressing the conduct of members acting in their capacity as members (as this Code does), I do not interpret that provision as restricting the scope of Codes of Conduct to such matters. If that was Parliament's intention it would have made it clear that Codes shall only address those matters. In my opinion, a Code of Conduct may also include understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in a personal capacity where such conduct has a bearing on the reputation of the Council or its members.
31. As explained above, the Code in this case is very clear about when conduct in a personal capacity might give rise to a breach of the provisions of the Code and includes a specific example. As an elected member, Councillor Bydder is required by law to comply with the Code of Conduct in its current form.³⁹ It is settled law that challenges to the scope or validity of rules must be made at the time those rules are developed. It is not permissible to mount a "collateral challenge" to the validity of rules that one has undertaken to comply with as a defence to a proceeding for a breach of those rules.
32. I have also considered whether the leadership provisions of Section 3.5 of the Code have been breached given some complaints refer to those provisions. Those provisions require elected members to act individually and collectively in a way that maintains public confidence in the good governance of the Council. Elected Members agree to be bound by the Code and demonstrate adherence to those principles through their leadership of the city. In my opinion that section of the Code focusses on the role of elected members in their official capacity and requires them to demonstrate good governance and leadership of Hamilton City Council. In this case the submission was a personal one made by Councillor Bydder to WDC. While I have found that the submission breaches other sections of the Code, I do not find that it amounts to a material breach of Councillor Bydder's obligations to demonstrate good governance and leadership of HCC.
33. In conclusion, I find that the complaints raise material breaches of Sections 3.2 and 5.2 of the Code (respect, and relationship with the public). I find those breaches to be serious to the extent that they demonstrate a lack of judgement and appreciation of the public persona of elected members, which extends to dealings with the public in a personal capacity, and the importance of elected members conducting themselves in a respectful and courteous manner in all of their public interactions so as not to bring

³⁸ Code, Schedule Five, example one.

³⁹ LGA, Clause 15(4), Schedule 7.

themselves or the Council into disrepute. I have not found a breach of Section 3.5 (leadership).

Recommendations

34. The decision whether to accept the findings in my Report and / or to impose a penalty or some other form of action rests with the full Council under the Code. However, the ToR request that I provide recommendations on the actions Council may wish to consider if it resolves to accept my findings.
35. The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in Section 6.3 of the Code. Any censure or penalty must be proportional to the behaviour that is found to be in breach of the Code
36. The Code sets out a number of options for addressing a breach of the Code. In the case of material breaches, the Council may require one or more of the following:
 - (a) A letter of censure to the member;
 - (b) A request (made either privately or publicly) for an apology;
 - (c) A vote of no confidence in the member;
 - (d) Removal of certain Council-funded privileges or Council appointments;
 - (e) Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
 - (f) Limitation on any dealings with Council staff so that they are confined to the CE only;
 - (g) Suspension or removal from Committees (including joint committees), task forces or other Council bodies; and/or
 - (h) An invitation for the member to consider resigning from the Council.
37. The Council may decide that a penalty will not be imposed where the respondent agrees to one or more of the following:
 - (a) Attend a relevant training course;
 - (b) Work with a mentor for a period;
 - (c) Participate in voluntary mediation (if the complaint involves a conflict between two members);
 - (d) Tender an apology.
38. There is a presumption that the outcome of the complaints process will be made public unless there are grounds, such as those set out in LGOIMA, for not doing so.
39. Many of the complaints raise concerns about way the issue has / has not been responded to by Councillor Bydder including absence of an apology, undermining the complaints in the media, and a lack of willingness to engage with disability advocates to better understand why the behaviour is considered offensive.
40. Several of the complaints call for the resignation of Councillor Bydder.
41. The options outlined at paragraph 36(c) to (h) above are significant penalties and in my opinion are unlikely to be a proportionate response in the circumstances of this case, which arose in the context of a personal submission to another Council rather than a matter associated with the governance of Hamilton City Council.
42. However, I have found that the breaches demonstrate a lack of judgement and appreciation of the conduct required of an elected member when acting in public. I have found that the particular conduct in this case has damaged the reputation of both Councillor Bydder as a elected member and brought the office and the Council into

disrepute in the sense that the public esteem in one of its members has been materially diminished.

43. It is useful to recall the opening words of the Code that Councillor Bydder agreed to abide by:

Hamilton City Councillors and Mayor ("Elected Members") have an important and privileged role representing the people of Hamilton. This Code of Conduct ("the Code") represents a commitment from all Elected Members to maintain high standards of behaviour as public figures, which is important for their credibility as city leaders and for the reputation of Hamilton

44. In his 15 August Letter Councillor Bydder makes it clear that he does not consider that his behaviour is inappropriate or that it breaches the Code. He does not acknowledge that, as a Councillor elected by the public, he will be held to high standards of behaviour. The fact that Councillor Bydder considers he has considerable support for his comments does not diminish the fact that his comments have caused reputational damage. The failure to understand the impact of his behaviour gives rise to a risk that, without an appropriate response, this type of conduct could occur again.
45. The comments relating to people with disabilities have been particularly distressing to members of that community and the personal comments about Mayor O'Regan have been particularly offensive to people who respect the Mayor. It is notable that four WDC councillors made complaints.
46. I wish to acknowledge the comments from the complainants in relation to my draft report. They are included at **Appendix 6**. They seek stronger sanctions than those recommended in my draft report, including financial sanctions. One complainant (a representative of the disability community) seeks a mandatory rather than voluntary apology to the disability community. That complainant advises that a public apology is important to the disability community whether genuine or not. Councillor Bydder has advised in his 15 August Letter that he will not make an apology to WDC, but does not address my recommendation of a voluntary apology to the disability community. Given the strong indication by the representative of the disability community that the community would value a public apology, I have altered my draft recommendation on this point.
47. Another complainant seeks an apology to WDC staff. I have not included this in my recommendations. The comment made by Councillor Bydder was to "sack the entire staff." This was a generic comment not aimed at any particular staff member and I do not consider it meets the standard of objectively offensive conduct which (of itself) would warrant a sanction.
48. I therefore recommend the following course of action:
- (a) Council issues a formal letter of censure to Councillor Bydder, including advice that any further conduct of this nature is likely to result in more serious penalties including the potential for a vote of no confidence or an invitation to consider resignation;
 - (b) Councillor Bydder be required to attend a relevant training course(s) which may cover matters such as conduct expected of elected members including dealing with members of the public and the media, and the requirements of the Code. It may be useful for all elected members to attend this training;

- (c) Councillor Bydder be encouraged to work with a mentor to supplement the training. In my experience it is important for a mentoring relationship to be voluntary. This recommendation is only likely to be useful if Councillor Bydder is willing to participate.
 - (d) Councillor Bydder be invited to tender a written apology to Mayor O'Regan. Although Mayor O'Regan has not sought an apology, I consider that providing one would go some way towards demonstrating that Councillor Bydder accepts that his comments fell short of the standard required by the Code. I do not consider it necessary for the contents of that apology to be made public. I recommend that this option be voluntary and flexible as to timing. If not genuine, then I see little benefit in requiring an apology.
 - (e) Councillor Bydder be required to make a public apology to an appropriate organisation for people with disabilities.⁴⁰ This would assist in repairing the reputational damage caused by the offensive comments.
49. If Councillor Bydder is unwilling to accept any of the recommendations that require a commitment by him, or fails to implement them, then I would recommend that Council invites Councillor Bydder to give serious consideration to whether he is suited to the role of an elected member.
50. In upholding my recommendations, Hamilton City Council would not be setting a concerning precedent that elected members are not entitled to freely express personal opinions in their own time. Rather, it will simply be upholding its own Code of Conduct for Elected Members, which clearly and appropriately requires elected members to maintain high standards of behaviour as public figures, which is important for their credibility as city leaders and for the reputation of Hamilton. My carefully considered and independent view is that the use of highly offensive language in a public submission, and making personal attacks on the Mayor of a neighbouring Council, breaches those standards.
51. If Council agrees that the conduct breaches the Code, then upholding the integrity of the Code will be an important consideration when considering any consequential actions in relation to the conduct.
52. I consider it to be in the public interest for Council's decision in relation to the complaints including any required course of action to be made public.⁴¹

Mary Hill
28 August 2024

⁴⁰ Such as Cerebral Palsy NZ or IHC.

⁴¹ I do not consider there to be grounds under LGOIMA for withholding Council's decision, assuming it doesn't contain confidential information or legal advice. Complainants have consented to complaints being published. My Report records my findings and does not amount to legal advice or contain confidential information. HCC may wish, but is not obliged, to take separate legal advice on my Report. **HCC may wish to consider redacting the offensive parts of the original submission made by Councillor Bydder (which is included, unredacted, at Appendix 3 of my Report) before the Report is made public.**

Appendix 1

Attachment 2

Item 5

3 JULY 2024

CODE OF CONDUCT COMPLAINT | TERMS OF REFERENCE

BACKGROUND

A. On 21 June 2024 Hamilton City Council (Council) received the first of several Code of Conduct complaints made by various individuals against Cr Bydder (Appendix A). These were in relation to a submission which Cr Bydder made to Waipā District Council in relation to the Cambridge Connections project. His unredacted submission was provided to Elected Members at Waipā DC.

B. The relevant parts of Cr Bydder's submission are:

1.1 What do you like about the emerging preferred option C - Enhance transport options.	<p>What the f&ck are you retarded spastic c\$nts doing? Garry Dyet better be sacked before he retires. C is not the preferred option and this is not consultation.</p>
5. Any other feedback?	<p>You have learned nothing from the dogs and the innovating street bullshit. You continue to lie and disrespect the public. Get on your knees and beg forgiveness. You better damn well provide my name and comments to every elected member. O'Regan - get off your fat arse and do your job. Sack the entire staff.</p>

C. Subsequent to the first complaint being received there has been national media coverage on this matter, including the publication of several news articles.

PRELIMINARY ASSESSMENT (STAGE 2)

1. The preliminary assessment is stage 2 of schedule 3 to the Code, where a preliminary assessment of the complaint is completed by the Legal Team and a recommendation made to the Mayor, Deputy Mayor and the CE's Office.
2. Council referred this matter for an independent preliminary assessment by Tompkins Wake under its Code of Conduct. The preliminary assessment from Tompkins Wake is that assuming the submission was made by Cr Bydder, then the submission to Waipa District Council could properly be considered a material breach of the Code of Conduct (the assessment is set out in full below (Appendix B)).
3. For clarity, the preliminary assessment is just that, and is intended as a guide to inform decision making. An independent investigator may come to a different conclusion to that indicated in the preliminary assessment on the conclusion of their investigation.

DECISION UNDER THE CODE (STAGE 3)

4. Upon receiving the recommendation, the Deputy Mayor and CE considered the recommendation and made a decision to refer the complaint to an independent investigation. For the avoidance of doubt, the Mayor has been removed from this process as a complaint has been made by her.

5. Where the Deputy Mayor and CE's Office refers the complaint to an independent investigator assessment, the CE will use discretion to select a suitable investigator. [Mary Hill](#), from Cooney Lees Morgan will be engaged to undertake this work. Ms Hill is a lawyer who is well qualified to carry out an investigation, she currently acts as an independent person to whom a Protected Disclosure can be made regarding HCC and does not act for HCC in any other capacity.

INDEPENDENT INVESTIGATION

6. The purpose of the investigation is to consider the Complaint(s) and determine whether any breach of the Code has occurred. Cr Bydder is the only Elected Member named in the Complaints.
7. The Council's Code sets out the process to be followed in relation to any alleged breach by Elected Members of the Code of Conduct. The investigator shall carry out this investigation in accordance with the Code. In particular, the investigator shall ensure that:
 - (a) due process is respected;
 - (b) the approach for investigating and assessing the alleged breach will be proportionate to the apparent seriousness of the alleged breach;
 - (c) the concepts of natural justice and fairness will apply in the determination of the Complaint; and
 - (d) Cr Bydder is given the opportunity to consider and respond to any allegations made against him and the conclusions made in the report to Council.
8. The Council will provide the investigator, free of cost, as soon as practicable following any request, all information reasonable required to perform the investigation.
9. The Investigator shall confirm they have no of conflicts of interest upon commencing the investigation and as soon as practicable after becoming aware of any such conflicts of interests.
10. Council is subject to the Local Government Official Information and Meetings Act 1987, the Privacy Act 2020 and the Public Records Act 2005 (collectively the "Acts"). The investigator will co-operate fully and promptly in assessing any request for the release of information under any of the Acts, with regard to the time limits for responding to requests under those Acts.

COMPLETION OF REPORTING

11. The investigator is to complete reporting as set out in the Code. Under the Code of Conduct, the Council will if required, consider the investigator's report and reach a decision on the complaint.
12. If the complaint is found to be a breach of the Code, the Investigator shall provide their recommendation on the actions Council may wish to consider if it resolves to accept the report and censure Cr Bydder.
13. The investigator may include in the report any recommendations in relation to the inquiry and make any observations she considers may be useful for the Council and / or Elected Members.
14. The timing of this will be dependent on the completion of due process and completion of the investigation.

APPENDIX A
SUMMARY OF COMPLAINTS

Date	Complaint Summary
21-Jun-24	<p>Good afternoon, I received a screen shot of a submission that Andrew had submitted to Waipa Council, on Friday June 21.</p> <p>I consider this a breach of the code of conduct for elected members namely:</p> <p>3.2 Respect in which members must be "courteous" and "not engaging in offensive (....) or abusive behaviour, not to be "insulting (....) malicious, degrading or offensive to the public or other elected members.</p> <p>5. "Avoid abuse"</p> <p>5.2 members must "act in a way that upholds the reputation of the local authority", act in a way "that does not undermine the reputation of Council or other elected members"</p> <p>While I personally consider the language used in Mr Bydder's submission highly vulgar, offensive, malicious and threatening, I strongly believe this behaviour is not acceptable for publicly elected member.</p> <p>I note I am aware of previous aggressive and rude behaviour towards both Mayors, staff and elected members of other Councils, who declined at the time to make a formal complaint.</p> <p>As a result, I spoke with Andrew and advise him of my expectations of respect towards the public, his colleagues, staff, and other councillors. He assured me and others at that meeting that he would amend his behaviour.</p> <p>This behaviour has cause people a great of deal distress and emotional harm and as Mayor I find this behaviour disturbing and completely unacceptable.</p> <p>Numerous colleagues have shared their concern and extreme disappointment feeling that this undermines our professional reputation.</p>
24-Jun-24	Totally disgusting and inappropriate language from a professional businessman and one of your City Councillors in relation to a submission made to Waipa District Council Cambridge Connections
24-Jun-24	Cambridge Connections public submission to Waipā District Council - by Elected member at Hamilton City Council Abusive violent communication within submission.
24-Jun-24	Inappropriate language used and really rude submission.
25-Jun-24	The language used by the elected member in the written feedback was abusive, insulting, aggressive and demeaning, and was directed at staff, elected members and the Mayor of Waipā District. This is a clear breach of the principle of Respect.
25-Jun-24	Verbally abusing staff and other elected Councillors from other districts. Using language that is insulting to those with disabilities.
25-Jun-24	I have outlined below the subsections within the sections of your Code of Conduct I believe Cr. Andrew Bydder has broken. His feedback I believe is a gross breach of expected behaviour of an elected councillor.
25-Jun-24	Use of offensive and ableist slurs in a public forum I wish to make a code of complaint about the behaviour of Councillor Andrew Bydder regarding his offensive use of ableist slurs in a public forum as reported here:
25-Jun-24	Submission to Waipā District Council containing disrespectful and derogatory language. Also his constant bullying and harassment of other members of HCC staff
25-Jun-24	Cr Andrew Bydder's written submission to Waipa District Council in which he verbally abused staff and councillors with a range of obscenities, and for which he offers no apology
25-Jun-24	The deliberate use of obscene words, slurs using language denigrating disabled people and sexist language.

25-Jun-24	<i>This complaint relates to the language used by Hamilton City Councillor Andrew Bydder in a submission to Waipā District Council re the placement of a third bridge in Cambridge.</i>
26-Jun-24	<i>Comments to media, telling people who had made code of conduct complaints to "fuck off" and being dismissive about his failure to uphold the dignity and rights of disabled persons, as evidenced here</i>
26-Jun-24	<i>Use of slurs, hate speech, and or behaving discriminatorily towards disabled persons.</i>
25-Jun-24	<i>The communication from Andrew needs to be called out for what it is. Intimidating, bullying, abusive, misogynistic, and downright vile. I say misogynistic given the additional comment to Susan "get off your fat ar#e".</i>
25-Jun-24	<i>I wish to formally complain about the conduct of councillor Andrew Bydder as reported by RNZ this morning. I do so with experience as a unionist who has held many employers to the standards of the Health and Safety at Work Act</i>
26-Jun-24	<i>In the news today - Andrew Bydder has conducted himself unprofessionally. I do not see how he thought he could motivate the Waipa council with expletives</i>
26-Jun-24	<i>Using abusive and threatening language to other Councils and staff.</i>
25-Jun-24	<i>Andrew bydder letter to waipa council any business would drug test investigate and reprimand any staff member for writing unacceptable correspondence</i>
25-Jun-24	<i>I wish to submit a Code of Conduct complaint re Andrew Bydder / Andrew Bydder shouldn't be allowed to continue to hold a representative position when he cannot exhibit responsible, civil, leadership behaviour.</i>
25-Jun-24	<p><i>Dear Mr Bydder</i></p> <p><i>No doubt you are receiving much feedback on your submission, which I have been reading about in the media.</i></p> <p><i>I must say that I am very disappointed that a councillor, whom I voted for, and whom is a professional person with both a public profile and in a customer centric role, could be so unguarded, rude and shameful, not to mention childish and churlish. I would surmise that both your work colleagues and your council colleagues are ashamed of you.</i></p> <p><i>There is never an excuse to be so vitriolic. Never an excuse to use the words you have, and never an excuse to body shame a person. It is not true that all publicity, is good publicity. In my mind your statements are defamatory at best, and criminal at worst.</i></p> <p><i>To make matters worse, you have now claimed PTSD and said that you are a victim. I worked with genuine victims in Victim Support, for nearly 10 years, supporting the grieving, the violated, and the bullied, and you have just done each and every one of them a significant disservice. A person should also never publicly claim they have PTSD unless they have been formally and officially diagnosed.</i></p> <p><i>I am not a fan of Paula Southgate and her leadership style, but in this case I commend her swift actions. You have put yourself up there right alongside the infamy of Nobby Clark, for your comments are just as offensive as his. At least he has heart surgery as a crutch</i></p> <p><i>Please, do the people of both Waipa and Hamilton a service, and resign your role, and maybe get some help for your 'PTSD'.</i></p>
26-Jun-24	<i>I am writing to complain about Hamilton councillor Andrew Bydder's use of highly offensive language against Waipa Mayor Susan O'Regan in a submission to Waipa District Council.</i>
26-Jun-24	<i>fire this guy bydder - he sucks.</i>
28-Jun-24	<i>Councilor Andrew Bydder used of the r-word and the s-words in public media in relation to disabled people that was hurtful, disrespectful and damaging.</i>

**APPENDIX B
PRELIMINARY ASSESSMENT**

*From: Megan Crocket
Sent: Tuesday, June 25, 2024 2:55 PM
To: Michelle Hawthorne
Cc: James MacGillivray
Subject: Preliminary assessment: Elected member code of conduct complaints – HCC-XX-240625-RZL34
Importance: High*

Kia ora Mish,

You have asked for our advice on the Code of Conduct complaints made by various individuals against Cr Bydder in relation to a submission which Cr Bydder made to Waipā District Council in relation to the Cambridge Connections project. His unredacted submission was provided to Elected Members at Waipā DC.

The relevant parts of Cr Bydder's submission are:

1.1 What do you like about the emerging preferred option C - Enhance transport options.	What the f&ck are you retarded spastic c\$nts doing? Garry Dyet better be sacked before he retires. C is not the preferred option and this is not consultation.
5. Any other feedback?	You have learned nothing from the dogs and the innovating street bullshit. You continue to lie and disrespect the public. Get on your knees and beg forgiveness. You better damn well provide my name and comments to every elected member. O'Regan - get off your fat arse and do your job. Sack the entire staff.

In particular, you seek our advice on "Step 2", being the preliminary assessment of the complaint. In particular:

*Is it frivolous or without substance and should be dismissed;
Is it outside the scope of the Code and should be redirected to another agency or process;
Has it previously been assessed and actions have been completed in accordance with the Code to address the complaint (we have assumed this isn't the case);
Is it not material and should progress to informal resolution; or
Is it material and a full investigation is required by an independent investigator.*

We have reviewed the complaint about Cr Bydder in light of the Code of Conduct. At preliminary assessment stage, we consider that a material breach could be established.

*The complainants are:
Mayor Southgate
[names of private individuals withheld]*

Most complainants pointed to clauses 3, 3.2, 5 and 5.2 of the Code of Conduct. They described the language he used as offensive and abusive. They consider that Cr Bydder's submission brings Hamilton City Council into disrepute. In addition, ██████ explained that "retarded" is an offensive ableist slur which is used to discriminate against the intellectually/learning disabled community and that "spastic" is an old-fashioned and highly offensive name for a person who has cerebral palsy. ██████ complaint focused on workplace health and safety and pointed to the abuse and violence against women in New Zealand, including women in public office.

We consider that if the submission is established to have been made by Cr Bydder (which we understand he does not deny), then it can be considered to constitute a material breach of the Code of Conduct. In the submission, Cr Bydder has used offensive language to a degree that could reasonably be considered discourteous, aggressive and offensive. He has made disrespectful criticisms of the Waipā Mayor and CE in particular. These could reasonably be considered degrading and offensive personal attacks. Given his request that his remarks be shared with Elected Members at Waipā, his conduct could reasonably be considered to have undermined Hamilton City Council's reputation.

We have considered whether it could be argued that Cr Bydder was acting in his personal capacity only and therefore was not caught by the Code of Conduct. Our preliminary view is that an Elected Member taking part in the submissions process of a public body, in which those submissions will be provided to decision-makers and might be published, cannot be said to be acting only in their personal capacity. This is the case regardless of whether the Elected Member identifies themselves as an Elected Member and/or uses their Council contact details.

In summary, our preliminary assessment is that assuming the submission was made by Cr Bydder then it could properly be considered a material breach of the Code of Conduct

Appendix 2

Item 5

Attachment 2

From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 4:32 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-XXANX



We've received a request for you.

This request was received on 25 June 2024 @ 4:32PM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-XXANX

Conduct

Cr Andrew Bydder's written submission to Waipa District Council in which he verbally abused staff and councillors with a range of obscenities, and for which he offers no apology

Elected member/s concerned

Cr Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 Respect - "elected members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs and rights"

3.5 Leadership - "Elected members ...should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council"

How the conduct constitutes a breach of the Code

Describing members of the Waipa District Council in personally abusive and derogatory terms that have been quoted in a publicly available document and reported on social media (see link below) has no resemblance to respect or leadership. It sounds more like the behaviour of a foul-minded adolescent with inadequate self-control. Published material includes the following:

"What the f**k are you r*****d s*****c c**ts doing?"

Bydder - who lives and pays rates in Cambridge - also wrote that outgoing Waipā chief executive Garry Dyet "better be sacked before he retires".

"You have learned nothing from the dogs and the innovating street bullshit," Bydder wrote.

"You continue to lie and disrespect the public. Get on your knees and beg forgiveness. O'Regan - get off your fat arse and do your job. Sack the entire staff."

The full file refused to upload below but the link is as follows:
https://www.rnz.co.nz/news/national/520468/hamilton-city-councillor-writes-expetive-laden-rant-to-neighbouring-council?fbclid=IwZXh0bgNhZW0CMTEAAR3qmQZZ0RA8Lq14iWESL-rtGcYc10j_GT4j1yr7Gs5iUAOTThXvrWnAZ5JQ_aem_xCAIBS4TRKogrYPWTIhICw

Evidence
First name

Surname

Organisation
Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where

the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 4:32PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 11:35 AM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-BEO3A
Attachments: Form-submissions Cambridge-Connec-v2...-Page-25-Annotations-2506-1.pdf



We've received a request for you.

This request was received on 25 June 2024 @ 11:35AM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-BEO3A

Conduct

I have outlined below the subsections within the sections of your Code of Conduct I believe Cr. Andrew Bydder has broken.

His feedback I believe is a gross breach of expected behaviour of an elected councillor.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

Section 3 Integrity and Honesty

Behaving in accordance with the trust that the public places in them;

Being fair and consistent in dealings with others and following through on commitments;

Not making statements or doing anything that will, or is likely

to, mislead or deceive including any statements or information that is false or factually incorrect;

Not placing themselves in situations where their honesty and integrity may be questioned;

Section 3.2 Respect

Treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
being courteous and approachable

Not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);

Not making personal attacks;
not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members;

Not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

Section 5 Relationships with Other Members

Focus on issues rather than personalities

Avoid conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behaviour.

5.2 Relationship with the Public

Interact with members of the public in a fair, respectful, equitable and honest manner;
Treat members of the public in a courteous manner;

How the conduct constitutes a breach of the Code

Cr. Andrew Bydder has abused individuals personally, used offensive language and offence tone on his feedback form. I find as a Waipa District Councillor, Cr. Bydder has fallen well short of the high standards of behaviour expected of an elected councillor. His comments are demeaning, degrading

and extremely unprofessional.

Act in a way that upholds the reputation of the local authority and values community involvement in local democracy;

Ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

Evidence

Cambridge-Connec-v2...-Page-25-
Annotations-2506-1.pdf - [Download File](#)

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged

breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 11:35AM

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

Annotations for Cambridge Connections Unredacted Feedback - 18 June 2024

18/06/2024

Range Printed: 25

Printed On: 25/06/2024

Summary Page 1 of 1

Annotations

Tab 1: Cambridge Connections - Unredacted Feedback

Page 25



Bookmarked

Item 5

Attachment 2

Tab 1: Cambridge Connections - Unredacted Feedback

Feedback Reference Number	22
Name	Andrew Bydder
1a. Do you have a preferred option?	
1b. Please Specify (further information on choice of preferred option)	
2. What do you like about option A?	
3. What do you like about option B?	
4. What do you like about option C?	
1.1 What do you like about the emerging preferred option C - Enhance transport options.	What the f&ck are you retarded spastic c\$nts doing? Garry Dyet better be sacked before he retires. C is not the preferred option and this is not consultation.
2.2 What don't you like about the emerging preferred option? Option C - Enhance transport options	
5. Any other feedback?	You have learned nothing from the dogs and the innovating street bullshit. You continue to lie and disrespect the public. Get on your knees and beg forgiveness. You better damn well provide my name and comments to every elected member. O'Regan - get off your fat arse and do your job. Sack the entire staff.

From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 10:46 AM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-WNAM7



We've received a request for you.

This request was received on 25 June 2024 @ 10:45AM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-WNAM7

Conduct

Use of offensive and ableist slurs in a public forum

I wish to make a code of complaint about the behaviour of Councillor Andrew Bydder regarding his offensive use of ableist slurs in a public forum as reported here:

<https://www.rnz.co.nz/news/national/520468/hamilton-city-councillor-writes-expetive-laden-rant-to-neighbouring-council>

Elected member/s concerned

Councillor Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 RESPECT

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;

- recognising and encouraging ideas and contributions from others;
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);
- not making personal attacks;
- respecting the impartiality and integrity of staff;
- not interrupting when others are expressing their point of view;
- not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

5.2 RELATIONSHIP WITH THE PUBLIC

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will, when interacting with the public (whether electronically or verbally):

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner;
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy; and
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

How the conduct constitutes a breach of the Code

The word "retarded" is an offensive ableist slur that discriminates against the intellectually/learning disabled community. It has long since been discarded from use and is widely considered pejorative. It is considered by some in the community to be hate speech. A good explainer can be found here: <https://www.spreadtheword.global/resource-archive/r-word-effects>

The word "spastic" was used by Councillor Bydder in an

offensive and derogatory manner. This word is an old-fashioned and offensive name for a person who has cerebral palsy. It is highly offensive to people within the cerebral palsy community and has no place in formal documentation. Disability activist and writer Hannah Diviney who has cerebral palsy has written on this topic. It was also in public mention two years ago - see for example here:

https://www.nzherald.co.nz/northern-advocate/news/jonny-wilkinson-the-slow-demise-of-ableist-slurs-in-pop-culture/NHHJSCSGQK6CV3T6VD73KP7KBA/#google_vignette

While the word "cunt" is a vulgar and inappropriate word to use in a public submission, it is the deliberate use of ableist slurs that have prompted this complaint.

No elected member of any local council should deride disabled people and their families in this way. We are not slurs! We are members of the public and we have a right to dignity and respect.

The use of ableist slurs by Councillor Bydder in a public submissions also constitutes a breach of the Human Rights Act 1993, specifically Article 65, Indirect discrimination. Article 21 of the Act specifically mentions disability as a prohibited ground for discrimination. Article 65 of the Human Rights Act 1993 covers instances such as Councillor Bydder referring to disabled persons in a derogatory manner and in such a way as to infer intellectually disabled or persons with cerebral palsy are inferior.

There is a guide for public servants regarding appropriate use of disability language and avoiding known slurs. This was written in conjunction with disabled people. I note that the word is so offensive and out-of-use that it isn't listed on the website: <https://msd.govt.nz/about-msd-and-our-work/work-programmes/accessibility/quick-reference-guides/disability-language-words-matter.html>

Evidence
First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 10:45AM

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Monday, 24 June 2024 3:51 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240624-JQE12



We've received a request for you.

This request was received on 24 June 2024 @ 3:50PM.

Here's your reference number and the request details:

UUID

HCC-XX-240624-JQE12

Conduct

Totally disgusting and inappropriate language from a professional businessman and one of your City Councillors in relation to a submission made to Waipa District Council Cambridge Connections

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

Use of threatening words and personal attacks on our Mayor Susan O'Regan and Chief Executive Garry Dyet.
Language not fitting of a sitting Councillor

How the conduct constitutes a breach of the Code

Use of words like f&ck. Sack the CE before he retires.
O'Regan great off your fat arse and do your job.
Sack the entire staff.
Taken from his submission

Evidence

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

24 June 2024 @ 3:50PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

From: noreply@hamilton.govt.nz
Sent: Monday, 24 June 2024 1:48 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240624-XXA2R



We've received a request for you.

This request was received on 24 June 2024 @ 1:47PM.

Here's your reference number and the request details:

UUID

HCC-XX-240624-XXA2R

Conduct

Cambridge Connections public submission to Waipā District Council - by Elected member at Hamilton City Council
Abusive violent communication within submission.

Elected member/s concerned

Councillor Andrew Bydder

Relevant section/s of the Code of Conduct

Councillor Bydder has chosen to use explicit abusive language, breaching the code of conduct of HCC:
3. Integrity and Honesty - behaving in accordance with the trust that the public places in them
3.2 treating people, including other members, with respect and courtesy, regardless of race, age, religion, gender, sexual orientation or disability
Being courteous and approachable
Not engaging in aggressive, offensive abusive, harassing bullying or discriminator behaviour.
Not making personal attacks

How the conduct constitutes a breach of the Code

The language use Councillor Bydder chose to use in a public submission breached all points above.
Please see submissions on Waipā DC website, for Councillor Bydders public submission.

Evidence
First name

Surname

Organisation
Phone

Email

In submitting this complaint:
I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

24 June 2024 @ 1:47PM

From: noreply@hamilton.govt.nz
Sent: Wednesday, 26 June 2024 3:12 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240626-QRLOE



We've received a request for you.

This request was received on 26 June 2024 @ 3:11PM.

Here's your reference number and the request details:

UUID

HCC-XX-240626-QRLOE

Conduct

Using abusive and threatening language to other Councils and staff.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

Code of Conduct 3.2 Respect.

Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
- recognising and encouraging ideas and contributions from others;
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example

any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);

- not making personal attacks;
- respecting the impartiality and integrity of staff;
- not interrupting when others are expressing their point of view;
- not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

How the conduct constitutes a breach of the Code

By verbally abusing other elected councillors in other districts is a breach of the above. By using language that is derogatory against people with a disabilities show just how much this Councillor needs education training around how offensive this is.

He also doesn't seem to have the capability to reflect on his behaviour given updated interviewd nor willingness to engage with disability advocates to learn why it is offensive. This again is a concern with the code of conduct.

Evidence

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

26 June 2024 @ 3:11PM

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Wednesday, 26 June 2024 4:34 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240626-YK8XM



We've received a request for you.

This request was received on 26 June 2024 @ 4:34PM.

Here's your reference number and the request details:

UUID

HCC-XX-240626-YK8XM

Conduct

I am writing to complain about Hamilton councillor Andrew Bydder's use of highly offensive language against Waipa Mayor Susan O'Regan in a submission to Waipa District Council.

Using expletive-laden language in public submissions is threatening and disrespectful to an elected official. Councillor Bydder's derogatory words make the Waikato a laughing stock in national media. Also, local body politicians don't get paid much and being abused by colleagues and members of the public will discourage good people from standing for election.

If an employee of any organization (including local councils) used this kind of language in public they would almost certainly lose their job.

Elected member/s concerned

Councillor Andrew Bydder

Relevant section/s of the Code of Conduct

The relevant sections of the Code of Conduct for elected officials that apply to this situation:

Section 3. Principles of Governance

3. Integrity and honesty: "not placing themselves in situations where their honesty and integrity may be questioned; Being open to constructive feedback."

3.2 Respect

Most of this section applies to Councillor Bydder's behaviour.

Especially the last two points: "Not making any unreasonable, unwelcome ... comments to the public or other Elected Members; .."not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members."

Also 3.5 Leadership

"They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council.

Also Section 5 Relationships and Behaviours

5.2 Relationships with the Public

"Ensure that their behaviour, in the mind of the public, does not undermine the reputation of the council or other elected members."

How the conduct constitutes a breach of the Code

Section 3. Principles of Governance

3. Integrity and honesty: "not placing themselves in situations where their honesty and integrity may be questioned; Being open to constructive feedback."

3.2 Respect

Most of this section applies to Councillor Bydder's behaviour.

Especially the last two points: "Not making any unreasonable, unwelcome ... comments to the public or other Elected Members; .."not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members."

Councillor Bydder's language breaches the Code because it is insulting, intimidating, degrading and offensive to the elected mayor of a neighbouring council. Also I believe using this kind of language brings the councillor's integrity into question.

3.5 Leadership

I believe this behaviour undermines public confidence in the council, and therefore in its governance

5.2 Relationships with the Public

Councillor Bydder's behaviour undermines the reputation of the council, especially since it has been reported in national media.

Evidence
First name

Surname

Organisation
Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

26 June 2024 @ 4:34PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

From: noreply@hamilton.govt.nz
Sent: Monday, 24 June 2024 2:34 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240624-RZLQJ



We've received a request for you.

This request was received on 24 June 2024 @ 2:33PM.

Here's your reference number and the request details:

UUID

HCC-XX-240624-RZLQJ

Conduct

Inappropriate language used and really rude submission.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

All of section three and section 5.2

How the conduct constitutes a breach of the Code

Read the submission, it is using really awful language towards your partner Council. Rude to staff and just not professional behavior from an Elected member.

Evidence

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

24 June 2024 @ 2:33PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 8:47 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-Z8L3L



We've received a request for you.

This request was received on 25 June 2024 @ 8:47PM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-Z8L3L

Conduct

The deliberate use of obscene words, slurs using language denigrating disabled people and sexist language.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 respect; 5.2 relationship with the public

How the conduct constitutes a breach of the Code

Bydder's language was intentional and deliberately aimed at attacking members of another council alongside spraying an attack against a broader cross-section of the NZ public. He has done it before and should not remain on the Hamilton City Council. He is not fit.

Evidence

First name

Surname

Organisation
Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 8:47PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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From: noreply@hamilton.govt.nz
Sent: Wednesday, 26 June 2024 9:47 AM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240626-MREEJ



We've received a request for you.

This request was received on 26 June 2024 @ 9:46AM.

Here's your reference number and the request details:

UUID

HCC-XX-240626-MREEJ

Conduct

Comments to media, telling people who had made code of conduct complaints to "fuck off" and being dismissive about his failure to uphold the dignity and rights of disabled persons, as evidenced here:

<https://www.rnz.co.nz/news/national/520528/hamilton-councillor-andrew-bydder-should-apologise-for-offensive-ableist-slur-advocate>

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 Respect - particularly the following items:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including

when there is a power imbalance);

- not making personal attacks;
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

5.2 Relationship with public - in particular the following items:

- treat members of the public in a courteous manner;
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy;
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

How the conduct constitutes a breach of the Code

In telling those who are making a complaint to "fuck off" and in being disparaging about disabled persons, and in claiming that this is just "freedom of expression" Bydder is breaching the Human Rights Act 1993, which specifically notes persons with disabilities as a protected group, and their right to be free from discrimination. The use of slurs is a form of discrimination.

It is also a violation of the New Zealand Disability Strategy - Outcome 6 Attitudes (Disabled people are treated with dignity and respect).

In failing to uphold the legal requirements and aspirational outcomes for disabled persons as laid out by central government, Bydder is also failing to uphold 3.2 (Treating disabled people with respect; not engaging in discriminatory behaviours; not being insulting, degrading, or offensive to the public).

In refusing to acknowledge his language and submission was inappropriate and offensive, Bydder is failing to uphold 5.2 (treat members of the public in a courteous manner; uphold the reputation of the HCC; value community involvement)

Evidence

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

26 June 2024 @ 9:46AM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 7:33 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-WNAMR



We've received a request for you.

This request was received on 25 June 2024 @ 7:32PM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-WNAMR

Conduct

Submission to Waipā District Council containing disrespectful and derogatory language.
Also his constant bullying and harassment of other members of HCC staff.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

- 3. Integrity
- 3.2 Respect
- 3.3 Good Faith
- 3.4 Proper use of Position
- 5 Relationship with other members
- 5.2 Relationship with the Public

How the conduct constitutes a breach of the Code

It's disrespectful, lacks integrity, it's not courteous or approachable, it's aggressive, it's unreasonable, it's unwelcome, it's unsolicited, it's insulting, it's malicious, it's offensive.

It is not in the best interests of the city or council.
 His behaviour does not maintain public confidence, nor is it open and honest, it constitutes inappropriate behaviour.
 He has proven he does not treat members of the public with a courteous manner, nor act in a way that upholds reputation of the local authority. His behaviour has cemented his reputation and will undermine the reputation of Hamilton City Council going forward should he continue in his current position.

Evidence
First name

Surname

Organisation
Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 7:32PM

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 1:38 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-RZL34



We've received a request for you.

This request was received on 25 June 2024 @ 1:37PM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-RZL34

Conduct

Verbally abusing staff and other elected Councillors from other districts. Using language that is insulting to those with disabilities.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 RESPECT

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
- recognising and encouraging ideas and contributions from others;
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example

any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);

- not making personal attacks;
- respecting the impartiality and integrity of staff;
- not interrupting when others are expressing their point of view;
- not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

5.2 RELATIONSHIP WITH THE PUBLIC

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will, when interacting with the public (whether electronically or verbally):

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner;
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy; and
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

How the conduct constitutes a breach of the Code

3.2 RESPECT

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
- recognising and encouraging ideas and contributions from others;
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example

any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);

- not making personal attacks;
- respecting the impartiality and integrity of staff;
- not interrupting when others are expressing their point of view;
- not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

5.2 RELATIONSHIP WITH THE PUBLIC
Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will, when interacting with the public (whether electronically or verbally):

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner;
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy; and
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

In the years I have been a local government follower, I've never seen behaviour like this. Councillors represent the public of Hamilton|Kirikiriroa and to have a councillor who doesn't even reside in our city behave in a manner that reflects badly on us, is quite frankly embarrassing.

Evidence
First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 1:37PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Tuesday, 25 June 2024 10:07 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240625-PWNNNO



We've received a request for you.

This request was received on 25 June 2024 @ 10:06PM.

Here's your reference number and the request details:

UUID

HCC-XX-240625-PWNNNO

Conduct

This complaint relates to the language used by Hamilton City Councillor Andrew Bydder in a submission to Waipā District Council re the placement of a third bridge in Cambridge.

Elected member/s concerned

Cr. Andrew Bydder

Relevant section/s of the Code of Conduct

- 3. Integrity and honesty
 - being fair and consistent in dealings with others and following through on commitments;
- 3.1 Accountability
- 3.2 Respect
 - treating people ... with respect and courtesy;
 - being courteous and approachable;
 - not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour
 - not making personal attacks;
 - not insulting, intimidating, being malicious, degrading or

offensive to the public or other elected members.
3.3 Good faith

How the conduct constitutes a breach of the Code

While all Councillors have the right to freedom of expression to put issues out for public debate and discussion, this right has to be expressed with due regard to the code of conduct. The language used by Cr. Bydder in the submission to Waipā DC breached the sections of the code of conduct outlined above.

The language showed a lack of respect in that it constituted aggressive, offensive, abusive, harassing, and bullying behaviour which included a personal attack on Waipā mayor Susan O'Regan. Cr Bydder describes his behaviour as intentional and justifies his behaviour as a way to get attention and possibly change. The ends do not justify the means, further when asked by RNZ Cr Bydder made a threat by saying "if anyone had made a complaint, he would make one about them". See www.rnz.co.nz/news/national/520468/hamilton-city-councillor-writes-expletive-laden-rant-to-neighbouring-council

Evidence

First name

Surname

Organisation

Phone

Email

In submitting this complaint:

I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

25 June 2024 @ 10:06PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Wednesday, 26 June 2024 11:24 AM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240626-JQEXK



We've received a request for you.

This request was received on 26 June 2024 @ 11:23AM.

Here's your reference number and the request details:

UUID

HCC-XX-240626-JQEXK

Conduct

Use of slurs, hate speech, and or behaving discriminatorily towards disabled persons.

Elected member/s concerned

Andrew Bydder.

Relevant section/s of the Code of Conduct

3.2 (Respect) 5.2 (relationship with the public).

How the conduct constitutes a breach of the Code

The use of harmful or hate speech. The use of language that is harmful/hateful to intellectually/learning disabled community.

Evidence

First name

Surname

Organisation

Phone

Email

**In submitting this complaint:
I agree to the necessary details of the complaint being
disclosed to the respondent**

Yes

**I acknowledge and agree that the complaint will remain
confidential while an investigation is being completed**

Yes

**I agree to participate in the process for the investigation and
determination of complaints, which may include responding to
requests for further information, informal resolution,
mediation, formal investigation, etc**

Yes

**I understand that Council or an independent panel may
consider this the investigation and any outcome of this
complaint in an open meeting, except where the alleged
breach concerns matters that justify the exclusion of the
public, such a matter that would**

Yes

Created

26 June 2024 @ 11:23AM

If you have any questions in the meantime, feel free to call us on
[\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

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Hamilton City Council
260 Anglesea Street
Hamilton 3204

From: noreply@hamilton.govt.nz
Sent: Friday, 28 June 2024 6:58 PM
To: Governance
Subject: Elected member code of conduct complaints - HCC-XX-240628-JQEWP



We've received a request for you.

This request was received on 28 June 2024 @ 6:57PM.

Here's your reference number and the request details:

UUID

HCC-XX-240628-JQEWP

Conduct

Councilor Andrew Bydder used of the r-word and the s-words in public media in relation to disabled people that was hurtful, disrespectful and damaging.

Elected member/s concerned

Councilor Andrew Bydder.

Relevant section/s of the Code of Conduct

These are a breach of 3.2 (respect) and 5.2 (relationship with the public) of the code of conduct.

How the conduct constitutes a breach of the Code

These words are ableist slurs and a breach of the Human Rights Act 1993, specifically Article 65, Indirect discrimination. Article 21 of the Act specifically mentions disability as a prohibited ground for discrimination. Article 65 of the Human Rights Act 1993 covers instances such as Councillor Bydder referring to disabled persons in a derogatory manner and in such a way as to infer

intellectually disabled or persons with cerebral palsy are inferior.

Evidence
First name

Surname

Organisation
Phone

Email

In submitting this complaint:
I agree to the necessary details of the complaint being disclosed to the respondent

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

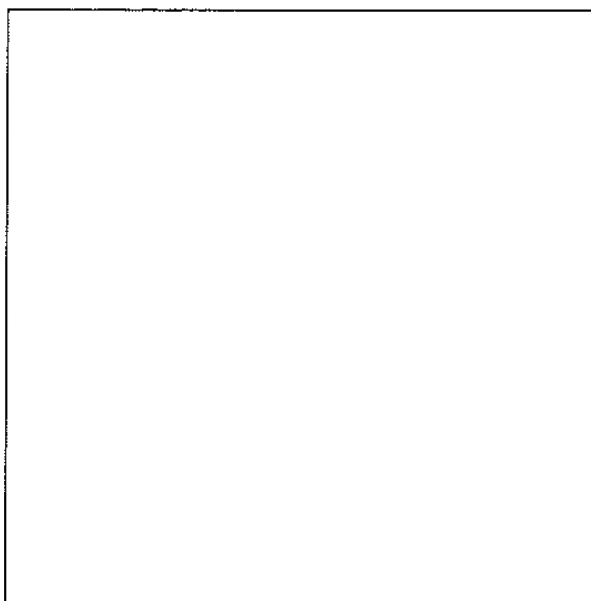
I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

28 June 2024 @ 6:57PM

If you have any questions in the meantime, feel free to call us on [\(07\) 838 6699](tel:078386699) or [email our customer service team](#).

**We've received a request for you.**

This request was received on 05 July 2024 @ 11:42AM.

Here's your reference number and the request details:

UUID

HCC-XX-240705-JQEGE

Conduct

use of derogatory and offensive terms and then doubling down by inferring that it's the only way to be heard.

Elected member/s concerned

Andre Bydder

Relevant section/s of the Code of Conduct

3 / 3.2 / 3.5 / 5.9

How the conduct constitutes a breach of the Code

in his feedback to the waipa district council transport plan, andrew showed is not open to constructive feedback and didn't behave in accordance with the trust the public places on him (3), didn't show any respect whatsoever (3.2), showed extremely poor leadership (3.5), and he shows clear

adherence to the conspiracy theories surrounding council attempts to facilitate transportation modal shift (alternatives to cars, in this case) which erroneously target the 15 minutes livable cities concept. this is more than evident in his social media use (5.9)

Evidence**First name****Surname****Organisation****Phone****Email****In submitting this complaint:****I agree to the necessary details of the complaint being disclosed to the respondent**

Yes

I acknowledge and agree that the complaint will remain confidential while an investigation is being completed

Yes

I agree to participate in the process for the investigation and determination of complaints, which may include responding to requests for further information, informal resolution, mediation, formal investigation, etc

Yes

I understand that Council or an independent panel may consider this the investigation and any outcome of this complaint in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such a matter that would

Yes

Created

05 July 2024 @ 11:42AM

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Hamilton 3204

Click [here](#) to report this email as spam.



We've received an enquiry for you.

This request was received on 25 June 2024 @ 8:57PM.

Here's your reference number and the details:

UUID HCC-GEN-240625-EVZNB

Email

Phone number How can we

help? As a NZ citizen currently in Australia I wish to submit a Code of Conduct complaint re Andrew Bydder and because my NZ

number is not operative for another few weeks your online form will not accept my submission. Nor do you have an upload option available herein. Can someone please respond and I will supply a screenshot of the online form I have completed. Thank you.

Created 25 June 2024 @ 8:57PM

If you have any questions in the meantime, feel free to call us on (07) 838 6699 or [email our customer service team](#).

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260 Anglesea Street
Hamilton 3204

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Sent: Thursday, 27 June 2024 2:59 PM
To: Governance
Subject: Andrew Bydder

Crude as it may be I submit a screenshot of my online form I could not send. I feel strongly about the abhorrent comments made by Andrew Bydder. I have worked with young adults with cerebral palsy in the mainstream school system. Andrew Bydder shouldn't be allowed to continue to hold a representative position when he cannot exhibit responsible, civil, leadership behaviour.

6:53 PM Tue 25 Jun

hamilton.govt.nz

Councillor Andrew Bydder's comments on submission to Waipa DC on a submission re a bridge.

Elected member/s concerned

Andrew Bydder

Relevant section/s of the Code of Conduct

3.2 Respect - violated by his comments
5.2 Relationship with the public - form of abuse the way in which he has referred to others

How the conduct constitutes a breach of the Code

we do not need any individual being paid by ratepayers who has such poor standards and who is prepared to quote the Bill of Rights in his defence. He in fact has behaved in a way which suggests that he thinks he is above censure and entitled, because of his position of office, to behave in this way.

From: noreply@hamilton.govt.nz

Sent: Tuesday, June 25, 2024 12:14 PM

To: info@hcc.govt.nz

Subject: General website enquiry - HCC-GEN-240625-WNAM1



Hamilton City Council
Te kaunihera o Kirikiriroa

We've received an enquiry for you.

This request was received on 25 June 2024 @ 12:14PM.

Here's your reference number and the details:

UUID HCC-GEN-240625-WNAM1 Name | Email
 Phone number How can we help? re
 Andrew bydder letter to waipa council any business would drug
 test investigate and reprimand any staff member for writing
 unacceptable correspondence Created 25 June 2024 @ 12:14PM
 If you have any questions in the meantime, feel free to call us on
 (07) 838 6699 or [email our customer service team](#).

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 260 Anglesea Street
 Hamilton 3204

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From: noreply@hamilton.govt.nz

Sent: Wednesday, June 26, 2024 7:32 AM

To: info@hcc.govt.nz

Subject: Complaint, compliment or idea logged - HCC-CCI-240626-DGZND



Hamilton City Council
Te kaunihera o Kirikiriroa

We've received a request for you.

This request was received on 26 June 2024 @ 7:32AM.

Here's your reference number and the request details:

UUID HCC-CCI-240626-DGZND What type of feedback is this?

A complaint **Your feedback** In the news today - Andrew Bydder has conducted himself unprofessionally. I do not see how he thought he could motivate the Waipa council with expletives. It is unprofessional and he has shown no remorse. He should not continue as a councillor.

He has not met section 3.2 of the code of conduct and has not treated his peers or the public with respect. **Attach your**

supporting documents Name Organisation Email
Phone number Preferred contact
method Email Created 26 June 2024 @ 7:32AM

If you have any questions in the meantime, feel free to call us on (07) 838 6699 or [email our customer service team](#).

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Hamilton 3204

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From:

Sent: Tuesday, June 25, 2024 3:03 PM

To: Paula Southgate <paula.southgate@council.hcc.govt.nz>; Susan.O'Regan@waipadc.govt.nz

Subject: Unacceptable behaviour - complaint regarding Andrew Bydder

Hi Paula and Susan, please share this email with all of your respective councillors.

I'm a Napier local and resident, male and also the proud father of an intellectually disabled son (now deceased) and I'm a part-time volunteer advocate for disabled people.

The communication from Andrew needs to be called out for what it is. Intimidating, bullying, abusive, misogynistic, and downright vile. I say misogynistic given the additional comment to Susan "get off your fat ar#e".

I assume that "r*****d" denotes retarded and it's pretty obvious what C**ts means. Retarded in itself is a word deeply offensive to those involved with the intellectual community. It is an outdated word well past its use by date, not unlike Andrew's communication that even with the chance to reflect he still describes as having been "the professional way to do it."

Given Andrew has emphatically 'doubled down' questions whether the guy is fit to be a councillor. The only thing left for Andrew to 'round out' his conduct would be to go on Sean Plunkett's online show The Platform, as I suspect Sean would be flattering of Andrew and his conduct and downplay the offence taken as 'snowflakes' being 'woke'.

Susan and Paula, as a 54 year old male I acknowledge that female politicians face an additional layer of abuse over and above their male counterparts e.g. the level of horse teeth comments and worse made about Jacinda Ardern. I thank you and all female politicians for your service, more so when you are subjected to this type of unacceptable abuse. Quite frankly, we're dreaming if we think we are even close to equality in what is still to a degree a 'mans world'.

Paula, thank you for reviewing the conduct and facilitating a complaint. I ask that HCC please treat this email as an additional formal complaint if at all possible (acknowledging I am not a HCC ratepayer).

From:
Sent: Tuesday, June 25, 2024 8:55 AM
To: Paula Southgate <paula.southgate@council.hcc.govt.nz>
Subject: Cr Bydder needs to go

Tēnā koe Mayor Southgate

I wish to formally complain about the conduct of councillor Andrew Bydder as reported by RNZ this morning. I do so with experience as a unionist who has held many employers to the standards of the Health and Safety at Work Act.

All workers, including mayors, have a right to a workplace that upholds their health, safety, and wellbeing. Cr Bydder's comments were abusive, belittling, and bullying. He has made Mayor O'Regan's workplace unsafe. He brings his own council, and the good work of all councils, into disrepute. He should be sacked. NZ has a problem with abuse and violence against women, including women in public office. Comments like Cr Bydder's are part of the problem.

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From: Paula Southgate
Sent: Friday, June 21, 2024 3:08 PM
To: Michelle Hawthorne <Michelle.Hawthorne@hcc.govt.nz>; Natasha Yarrall <Natasha.Yarrall@hcc.govt.nz>
Subject: Code of Conduct - Andrew Bydder

Good afternoon, I received a screen shot of a submission that Andrew had submitted to Waipa Council, on Friday June 21. I sent this to you on that day along with notification that I was making a complaint under the code of conduct. I am aware that this screenshot has been seen by numerous elected members from Waipa and Hamilton.

I consider this a breach of the code of conduct for elected members namely:

3.2 Respect in which members must be "courteous" and "not engaging in offensive (....) or abusive behaviour, not to be "insulting (....) malicious, degrading or offensive to the public or other elected members.

5. "Avoid abuse"

5.2 members must "act in a way that upholds the reputation of the local authority", act in a way "that does not undermine the reputation of Council or other elected members"

While I personally consider the language used in Mr Bydder's submission highly vulgar, offensive, malicious and threatening, I strongly believe this behaviour is not acceptable for publicly elected member.

I note I am aware of previous aggressive and rude behaviour towards both Mayors, staff and elected members of other Councils, who declined at the time to make a formal complaint.

As a result, I spoke with Andrew and advise him of my expectations of respect towards the public, his colleagues, staff, and other councillors. He assured me and others at that meeting that he would amend his behaviour.

This behaviour has cause people a great of deal distress and emotional harm and as Mayor I find this behaviour disturbing and completely unacceptable.

Numerous colleagues have shared their concern and extreme disappointment feeling that this undermines our professional reputation.

Warm regards, Paula Southgate

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From:
Sent: Tuesday, 25 June 2024 3:39 PM
To: Governance
Subject: Re: External Sender: Code of Conduct Complaint

Kia ora,

The conduct I would like to make a complaint about concerns the feedback process run by Waipā District Council during April and May for the Cambridge Connections project. A feedback form was submitted to that process by a Hamilton City Council elected member.

The elected member is Cr Andrew Bydder

The relevant sections of the Code of Conduct are: s. 3.2 and s. 3.5

How the conduct constitutes a breach of the Code of Conduct:

The language used by the elected member in the written feedback was abusive, insulting, aggressive and demeaning, and was directed at staff, elected members and the Mayor of Waipā District. This is a clear breach of the principle of Respect.

There are higher behaviour expectations of Local Government elected members compared to the general public, which includes modelling the values of Local Government that encourages trust, confidence and mutuality. The principle of leadership from the Code of Conduct embodies those values but this has not been upheld by the member concerned through his insulting and derisive language and the inappropriate actions called for in his feedback. The feedback sought was on future transportation options and so personal judgements of staff or elected members were completely inappropriate. It is disappointing to see this type of behaviour from an elected member when Local Government has been the target of antisocial behaviour and attacks, and we have been trying to get the sector to model the more respectful and co-operative behaviour we wish to see prevail.

As mentioned earlier I tried to submit this complaint via the online form but was not successful. I did agree to all the points concerning co-operating, release of the complaint and any other compliance requirements.

Appendix 3

From: "Social Pinpoint" <noreply@socialpinpoint.com>
Sent: Mon, 11 Mar 2024 19:09:03 +1300
To: "Cambridge Connections" <cambridgeconnections@waipadc.govt.nz>
Subject: External Sender: Cambridge Connections - What's your view? Form Submission
Categories: Green Category

CYBER SECURITY WARNING: This email is from an external source - be careful of attachments and links. Please follow the Cybersecurity Policy and report suspicious emails to Servicedesk



Cambridge Connections - What's your view? Form Submission

There has been a submission of the form Cambridge Connections - What's your view? through your Have your say Waipā website.

First Name

Andrew

Last Name

Bydder

Postal address

Email address

1. What do you like about the emerging preferred option C - Enhance transport options.

What the fuck are you retarded spastic cunts doing?

Garry Dyett better be sacked before he retires.

C is not the preferred option and this is not consultation.

3. Any other feedback?

You have learned nothing from the dogs and the innovating street bullshit. You continue to lie and disrespect the public. Get on your knees and beg forgiveness.

You better damn well provide my name and comments to every elected member.

O'Regan - get off your fat arse and do your job. Sack the entire staff.

To view all of this form's submissions, visit

https://haveyoursay.waipadc.govt.nz/index.php/dashboard/reports/forms_new/data/20

This is not SPAM. You are receiving this message because you have submitted feedback or signed up to Have your say
Waipā.

Feedback Reference Number	22
Name	Andrew Bydder
1a. Do you have a preferred option?	
1b. Please Specify (further information on choice of preferred option)	
2. What do you like about option A?	
3. What do you like about option B?	
4. What do you like about option C?	
1.1 What do you like about the emerging preferred option C - Enhance transport options.	<div></div> C is not the preferred option and this is not consultation.
2.2 What don't you like about the emerging preferred option? Option C – Enhance transport options	
5. Any other feedback?	<div></div>

Item 5

Attachment 2

Appendix 4

From: Mary Hill
Sent: Friday, 26 July 2024 10:30 AM
To: andrew.bydder@council.hcc.govt.nz
Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Importance: High
Sensitivity: Confidential

Tēnā koe Councillor Bydder,

I have interpreted your email below as a request for further time to respond to my letter of 6 July.

I have already advised Council that more time is required to conduct the investigation. The matter is now likely to be addressed Council's meeting on 12 September rather than the August meeting as originally proposed,

On that basis, I am in a position to extend the timeframe for any further response by you to my letter of 6 July for a further week, by **9 a.m. on Monday 5 August**. That allows for an additional weekend in case you are unable to devote work time to this issue.

That extension would still allow sufficient time for the second stage of the investigation (if I find that a material breach has occurred), which requires preparation of a report and further consultation with you and with the complainants in relation to that report.

I consider the proposed timeframes to be reasonable on the basis that you have had the substance of the complaints since 1 July when a summary was sent to you by Council along with the outcome of the preliminary assessment. That summary contained verbatim content from the complaints. You have had my letter setting out my preliminary assessment and reasons since 6 July. You have had copies of all of the complaints since 18 July, which are not materially different to the summary provided to you on 1 July.

In response to the conflict of interest issue, this was raised by you with Lance Vervoort on 11 July. Mr Vervoort properly referred the issue to me for my response. My response was then reported back to you on 15 July. I can confirm my response was that I am not aware of any submission, publication, or opinion of yours in any capacity on any issue other than the subject matter of the current code of conduct investigation which I have been appointed to carry out. I confirmed my original advice that I am not aware of any issue which might give rise to a potential conflict of interest. That remains the position.

Following that inquiry into the conflict of interest issue you raised, Council confirmed on 15 July that I should proceed with my investigation. I am proceeding on that basis.

Council's Chief Executive has appointed me personally to conduct this investigation based on my skills and experience in investigating complaints of this nature. I am exercising independent judgement. It is not an engagement of Cooney Lees Morgan. If you have further concerns relating to my appointment, those are matters to be raised with Mr Vervoort.

Ngā mihi

Mary Hill | Partner
 DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz

ANZ Centre, Level 3, 247 Cameron Road, Tauranga
 PO Box 143, Tauranga 3144, New Zealand | DX HP40001
www.cooneyleesmorgan.co.nz
 CooneyLeesMorgan

From: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>
Sent: Thursday, July 25, 2024 7:06 PM
To: Mary Hill <MHill@clmlaw.co.nz>
Cc: Cecilia Burgess <CBurgess@clmlaw.co.nz>
Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE
Sensitivity: Confidential

Mary

NO YOU WILL NOT BE COMMENCING THE SECOND STAGE ON MONDAY.

This is beyond incompetence. It is outright corruption.

You are LEGALLY required to provide reasonable timeframes. This is YET ANOTHER breach by you.

20 minutes ago was the first time you provided any attempt at VERIFICATION of the complaints. There is simply no way I can be expected to consider unverified complaints. Therefore the timeframe starts NOW, not 18 July. Hamilton City Council has had a WHOLE MONTH to provide me with VERIFICATION.

It is unreasonable to expect me to drop everything at a moment's notice, and I am fully committed for the next working day. Therefore I will begin to consider a response on Monday.

I note your refusal to apologise.

I note your refusal to consider the conflict of interest issue.

Get Celia to contact me urgently.

Andrew Bydder

From: Mary Hill <MHill@clmlaw.co.nz>
Sent: Thursday, July 25, 2024 6:33 PM
To: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>
Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE
Sensitivity: Confidential

Tēnā koe Councillor Bydder,

I have made inquiries of all persons who lodged a complaint, and I am satisfied that they intended to lodge a complaint against you pursuant to the Code of Conduct, subject to the following:

- One complaint was made using a false email address and phone number and will not be investigated further. It was not included in the copies of the complaints I have provided to you.
- Another complaint was made using an email address which did not appear to be valid, and subsequent inquiries have confirmed that the complaint was valid, and the complainant wishes to proceed. You have already been provided with a copy of that complaint.
- One email referred to me was not treated as a complaint from the outset (an email directly to you from Sue Crocker dated 25 June).

It is a matter for you whether you wish to provide any further response to my letter dated 6 July for my consideration. If so, that response should be provided within the timeframe set out in my email of 18 July, i.e. by **5 p.m. 26 July**.

I will be commencing the second stage of my investigation on Monday. That will involve assessing whether the breaches complained about are material. You will be consulted again as part of the second stage of the investigation if it proceeds to preparation of a report for Council, as required by the Code. You will also be given an opportunity to be heard by Council before it makes any decision in relation to the outcome of my investigation.

Ngā mihi

Mary Hill | Partner

DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz

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PO Box 143, Tauranga 3144, New Zealand | DX HP40001

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From: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>

Sent: Wednesday, July 24, 2024 8:58 PM

To: Mary Hill <MHill@clmlaw.co.nz>

Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Sensitivity: Confidential

Mary

I am truly astonished by your incompetence.

You cannot simply write "I am satisfied that the complaints which have been provided to you are valid and I will be continuing with my investigation."

You MUST provide evidence of this.

I am satisfied that I did nothing wrong, and you are wasting your time. Do you accept this statement?

At this point I have no reason to believe that any of the complaints are valid, so why should I bother reading them.

In fact, I am aware that one of the complaints was from a fake email address because I alerted the council to this fact. One of the other complaints was made by a friend of mine at my request because I wanted to screw with the

process. He has confirmed that he hasn't been checked. So I have proof that the complaints are not all valid. You have failed.

I also have no confidence that you don't have a conflict of interest. It is not good enough to simply say you have checked. What do you know about me? Do you know what other names I have used? Where is your proof. I have done some checking and our professional activities have overlapped.

So your time frame is complete bullshit. You have yet to start your investigation.

In fact you now have to start it with an apology.

Respectfully

Andrew Bydder

From: Mary Hill <MHill@clmlaw.co.nz>

Sent: Thursday, July 18, 2024 6:09 AM

To: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>

Subject: FW: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Sensitivity: Confidential

Tēnā koe Councillor Bydder,

I acknowledge receipt of your email dated 15 July.

My role is to consider the complaints made against you. My terms of reference do not include reviewing the process carried out by Hamilton City Council prior to my appointment. However, I do not accept that any of the issues that have raised invalidate my appointment or affect my investigation.

My investigation will be carried out fairly and according to due process. It will involve verification of the complaints made against you, an assessment of materiality, and if a material breach is found, then a report containing my findings, reasons and any recommended actions.

You have already been provided with copies of the complaints made by way of Council's website. I now **attach** the remainder of the complaints made through other means. The personal details of the complainants have been redacted to protect their privacy, except for Mayor Paula Southgate who has agreed to her details being disclosed. Each of these complainants has separately agreed to the conditions of making a complaint contained on Council's web-based form.

I am satisfied that the complaints which have been provided to you are valid and I will be continuing with my investigation.

While you have already been provided with the substance of these complaints in the summary provided by Council, and have provided a preliminary response below, I am prepared to extend the time for any further comments on the matters raised in my letter dated 6 July to **5 p.m. Friday 26 July**.

I have advised Council that these extended timeframes will mean that the outcome of my investigation and any report will not be available for consideration at the Council meeting on 1 August. However I anticipate it will be available for consideration at a September meeting. As previously explained, if I find a material breach and go on to prepare a report containing my findings, reasons and any recommendations, you will be further

consulted at that stage of the investigation. If I do not find that any material breach has occurred, you (and the complainants) will be advised of that outcome and my reasons.

If I do not hear from you further by 5 p.m. on 26 July I will proceed to the next stage of the investigation, taking into account the comments you have provided in your email below.

Ngā mihi

Mary Hill | Partner

DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz

ANZ Centre, Level 3, 247 Cameron Road, Tauranga

PO Box 143, Tauranga 3144, New Zealand | DX HP40001

www.cooneyleesmorgan.co.nz

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From: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>

Sent: Monday, July 15, 2024 12:19 PM

To: Mary Hill <MHill@clmlaw.co.nz>

Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Sensitivity: Confidential

Hello Mary

Under the Terms Of Reference paragraph 7, the investigator shall ensure that (a) due process is respected, and (c) the concepts of natural justice and fairness will apply in the determination of the complaint.

I note that although Hamilton City Council has followed a process in the past, that does not mean their process legitimately followed either due process or natural justice. I am requiring this case to comply, which may therefore result in different actions.

Hamilton City Council has already breached (a) and (c). This complaint process must comply with NZ Bill of Rights s27 Right to Justice in every respect, and this is true of **each and every** determination in the process. Council made a determination in Step 2 Preliminary Assessment that a material breach could have occurred. This determination failed at least two crucial requirements. Firstly, the complaints were not verified in any meaningful and transparent way, and secondly, I was not given any opportunity to participate.

Given the information available to me, it is possible that all the complaints could have been found to be from false email address, as I am aware of such a complaint, and also that my preliminary comments could have led to the complaints being dismissed. Therefore, a finding that no material breach occurred would have been a possibility, and thus the determination is false.

This invalidates your appointment as an investigator. The process cannot proceed past Stage 2 until Stage 2 is completed properly.

I have raised this matter with the chief executive, and his response ignored NZBORA. He is therefore biased and incompetent.

It is therefore your responsibility under the Terms Of Reference Due Process to address this issue before proceeding.

The Code of Conduct Step 4 states:

"The CE's Office will refer the complaint to an independent investigator selected from the approved Panel of Independent Investigators".

This authorises the CE's Office to refer the complaint, but it does not explicitly grant the CE's office to select the investigator. Natural justice requires that I should participate in the selection of the investigator in order to prevent bias that the CE has already exhibited. The failure to do so invalidates your appointment.

You note in your letter paragraph 1 that you have completed a conflict check. I am aware of possible conflicts that are sufficient to raise concern. Natural justice requires that I participate in the conflict check process, because, obviously, I may have a conflict with you, not just you with me. This also invalidates your appointment.

In the interests of time, I will, without prejudice, continue to address some important matters.

In paragraph 10, you note you have undertaken an initial assessment of materiality, and you have reached a 'considered' view as a result. While this may not be a determination, it clearly suggests a bias. You did this without my participation and without my evidence.

Just one example of the failure is paragraph 11 (f). As the complaints have not been adequately and transparently verified at the time of your preliminary assessment, this conclusion could not be reached.

Before we proceed any further, I require you to provide a full verification of the complaints. The names of the complainants are not provided to me, so I cannot do this. Therefore, I need transparency that it has been done properly. I am aware of one complaint that was made from a false email address. All emailed complaints must be confirmed as real people from independent IP addresses. All written complaints must be confirmed as real people from physical addresses.

I must be provided with the full text of each complaint, other than redacted names. You must have completed an assessment of each complaint that it complies with the required information including clause references.

There is no cumulative effect of complaints, so the sheer number of them is irrelevant if they do not comply.

Only then will I begin to address the complaints. You do not get to waste my time with illegitimate complaints.

We will then discuss the next steps in the investigation, including timeframe, if you have not withdrawn for reasons noted above.

Andrew Bydder

From: Mary Hill <MHill@clmlaw.co.nz>

Sent: Saturday, July 6, 2024 1:41 PM

To: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>

Subject: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Sensitivity: Confidential

Tēnā koe Councillor Bydder,

Please see my letter **attached** in relation to the above matter, together with the attachments referred to. Please acknowledge receipt.

Ngā mihi

Mary Hill | Partner

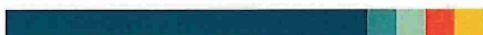
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PO Box 143, Tauranga 3144, New Zealand | DX HP40001

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 info@clmlaw.co.nz
 www.cooneyleesmorgan.co.nz

Ref: 498132-14

6 August 2024

The Chief Executive
 Hamilton City Council
 Private Bag 3010
 Waikato Mail Centre
HAMILTON 3240

BY EMAIL: Lance.Vervoort@hcc.govt.nz

CODE OF CONDUCT INVESTIGATION - COUNCILLOR ANDREW BYDDER

1. On 3 July 2024 your office appointed me to investigate various complaints relating to conduct alleged to have been carried out by Cr Andrew Bydder, which the complainants consider to have breached Hamilton City Council's Code of Conduct for Elected Members (**Code**).
2. Upon receipt of the complaints, the Code requires me to undertake a two stage investigation.¹ The first stage requires an assessment of whether the complaints are material and a full investigation required. I am entitled to make whatever initial inquiry is necessary to determine the materiality of an alleged breach, subject to the principles of proportionality, independence (separation), and natural justice set out in Section 6 of the Code.
3. I have made inquiries to verify the complaints and have consulted with Cr Bydder on my preliminary finding that the complaints raise material breaches of the Code. There are 23 verified complaints. Cr Bydder has been provided with complete copies of all verified complaints.²
4. Following my investigation into materiality, I have now found that the conduct referred to in the verified complaints amounts to a material breach of the Code by Cr Bydder. The Code requires me to inform you if I find a material breach has occurred (Step 4B, para 15).
5. Upon receipt of this advice, the Code requires you to inform the complainants and Cr Bydder of my finding of materiality. You may wish to inform them by providing a copy of this letter. The contact details of the complainants will be sent to you separately in confidence. I understand you have contact details for Cr Bydder.
6. I am then required to prepare a report for the Council on the seriousness of the breach. That report will also set out my reasons for my finding of materiality. In preparing that report, I am required to consult with the complainant, Cr Bydder and any affected parties. Cr Bydder will have an opportunity to be heard before Council makes any decision in relation to my report.
7. I will send you a copy of my final report once completed. You will then be required to follow the steps in the Code to enable my report to be considered by Council.

Yours sincerely



MARY HILL

Partner

DDI: 07-927 0590

E-mail: mhill@clmlaw.co.nz

¹ Steps 4 and 4B, Schedule 3 to the Code.

² With identifying details redacted to protect the identity of the complainants, except for Mayor Southgate who has consented to her identifying details being disclosed.

From: Mary Hill
Sent: Monday, 15 July 2024 3:11 PM
To: Lance Vervoort
Cc: Michelle Hawthorne
Subject: RE: Conflict of interest - Mary Hill

Kia ora Lance,

Thank you for sending me a copy of the email below in which Andrew Bydder raises a potential conflict of interest in relation to my appointment.

I can advise that I am not aware of any submission, publication or opinion from Andrew Bydder in any capacity on any issue other than the subject matter of the current code of conduct investigation which I have been appointed to carry out.

I can therefore confirm my original advice that I am not aware of any issue which might give rise to a potential conflict of interest.

Given the issue has been raised directly with Council I will leave you to respond. You may wish to provide a copy of my email to Councillor Bydder so that he is aware the issue has been properly raised with me and the nature of my response.

Please confirm that I should continue with my investigation given that no conflict of interest has been identified.

Ngā mihi

Mary Hill | Partner
DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz
ANZ Centre, Level 3, 247 Cameron Road, Tauranga
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CooneyLeesMorgan

From: Michelle Hawthorne <Michelle.Hawthorne@hcc.govt.nz>
Sent: Monday, 15 July 2024 4:36 PM
To: Mary Hill
Subject: FW: Conflict of interest - Mary Hill

Hi Mary,

See below. Please take this as confirmation from Lance to continue the investigation.

Mish

From: Lance Vervoort <Lance.Vervoort@hcc.govt.nz>
Sent: Monday, July 15, 2024 4:16 PM
To: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>
Subject: RE: Conflict of interest - Mary Hill

Hi Cnr Andrew,

Thanks for your email.

Before accepting her appointment, Mary Hill completed a conflict check and confirmed that she has no conflict of interest.

I am satisfied that none of the matters raised in your email give rise to any reasonable apprehension that Ms Hill will not approach her role impartially. She is called on to investigate complaints that you have engaged in conduct that is in breach of the Code of Conduct. The complaints are not about your views of planning laws and processes. The fact that she is a member of professional bodies and practices as an RMA lawyer does not mean that she has any conflict of interest in relation to the matters she has been asked to investigate.

In response to the issues you have raised, I have contacted Ms Hill and she has advised that she is not aware of any submission, publication, or opinion of yours in any capacity on any issue other than the subject matter of the current code of conduct investigation which she have been appointed to carry out. She has confirmed her original advice that she is not aware of any issue which might give rise to a potential conflict of interest.

Accordingly, I have can confirm I have instructed Ms Hill will carry on with her investigation.

Regards
Lance

Lance Vervoort
Tumu Whakarae | Chief Executive

DDI: +64 7 07 838 6492 | Mob: +64 21 245 0174 | Email: lance.vervoort@hcc.govt.nz

Appendix 5

Item 5

Attachment 2

Relevant sections from Code of Conduct

3.2 RESPECT

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;
- recognising and encouraging ideas and contributions from others;
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode or unreasonable or demanding behaviour including when there is a power imbalance);
- not making personal attacks;
- respecting the impartiality and integrity of staff;
- not interrupting when others are expressing their point of view;
- not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- not insulting, intimidating, being malicious, degrading or offensive to the public or other Elected Members.

3.5 LEADERSHIP

Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the city. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council.

These principles complement, and work in conjunction with, the governance principles relating to local authorities (sections 14 and 39 LGA).

5.2 RELATIONSHIP WITH THE PUBLIC

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will, when interacting with the public (whether electronically or verbally):

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner;
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy; and
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

Appendix 6

15 August 2024
Chief Executive
Hamilton City Council

Dear Lance

Review of Investigator's Draft Report

I have benefitted enormously from the publicity related to this matter, and offer my thanks to Mayor Southgate. It has strengthened my reputation as someone who is prepared to stand up to council bullies, in this case, WDC, and messages of support outnumbered complaints by 10 to 1.

However, there is a time to get on with council work for both myself and HCC staff without unnecessary distractions. I am genuinely prepared to look for resolutions.

Unfortunately, I also care about due process, and I am shocked by the performance of the investigator. I have particularly low expectations of councils and consultants, so to come in that far below them is speleologically significant.

After considering this report, there is no point in continuing to liaise with Mary Hill (MH). Prior to the report, she formed opinions in a preliminary assessment prior to contacting me, failed to carry out complaint validations, refused to communicate with me, and used unreasonable timeframes to prevent me from participating. Yet the report itself surpasses that level of incompetence. She alters CoC text, omits important law, misrepresents facts, makes unsubstantiated claims, fabricates spurious arguments, and lacks transparency in any decision making. It is blatantly dishonest.

I discuss a brief selection of the issues here, chosen because a logical thread can be made that clearly illustrates both MH's failings and the correct outcome.

The purpose of doing this is to alert you to a need to rethink this process. I discuss this further in the conclusion.

Freedom of expression.

MH considers this in her report but gets the law fundamentally wrong.

The Code is required to follow the LGA Schedule 7 Clause 15. This is not hard to find. It is the first paragraph of Section 1 of the CoC.

Part 2(a) limits the CoC to actions in the capacity of the Elected member. This is not hard to find. It is the second paragraph of Clause 15.

MH does find in her paragraph 26 that the submission was a "personal one" to WDC. Therefore, the matter can be terminated here. A "personal one" is clearly not actioned in the capacity of the Elected member.

MH tries to get around this by arguing that the CoC can add additional rules beyond Part 2(a), such as "applying to members at all times." This is partly correct. It is, of course, limited by not being able to override other laws.

The NZBORA Section 14 establishes a right to freedom of expression. This explicitly includes the freedom to impart opinions of any kind. The CoC cannot override this law. This is a complete defence of the complaints against me.

MH tries to get around this by arguing in her paragraph 17 that NZBORA is subject to justified limitations. She makes a reference to NZBORA Section 5 as her basis for allowing the CoC to extend to private communication, thus overriding Section 14.

Tellingly, she does not quote Section 5 in her report.

Section 5 is clear. I suggest you look it up. "The rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. "

This means NZBORA is NOT subject to justified limitations, EXCEPT where reasonably prescribed by LAW, and such limitations have to be demonstrably justified.

This is the EXACT opposite of what MH implies. Her omission on the wording is deliberate and intended to mislead. The CoC is NOT law. It CANNOT limit NZBORA. Regardless of what is written in the CoC, it is not enforceable when not acting in the capacity as a member.

In an act of desperation, MH tries to argue that "He was entitled to freely and publicly express his views" (correct) but the "Code can restrict the manner in which he expressed that opinion". This sounds very much like an attempt at a limitation!

MH is not just wrong, she tried very hard to lie.

Interestingly, MH's opinion contradicts the Tompkins Wake opinion. Obviously at least one of them is wrong, although in this case, it is both.

Validation

The COC Process section, step 4 point 9 (a) establishes the first step for the investigator is to assess whether each complaint is frivolous or without substance and should be dismissed i.e. validate each complaint.

This is important. I am under no obligation to respond to invalid complaints. No timeframe for me can commence until I have received verification/validation. Additionally, the principles of natural justice require this to be done in a transparent manner. Transparency means the obligation is on the investigator to provide proof that the validation process has been carried out. It is not sufficient to simply state "I am satisfied that the complaints are valid", as MH did.

MH's preliminary assessment, correspondence with myself, and her report show so many failures to provide proper validation that it amounts to an outright refusal to do her job. Her report contains several statements that are false. However, I will deal with only two failures here.

MH notes in her report in 11 Part A paragraph 2 that MH contacted some of the complainants. She states that "The Code also places an onus on the complainants to IDENTIFY [my capitals] which sections of the Code their complaints relate to. While four of the complaints did not refer to specific sections of the Code by number, I have found that it was clear from the words used which sections were being relied upon."

She has misrepresented the CoC in her report by deliberately altering the text. Step 1 b puts the onus on the complainant to ENSURE they have referred to the relevant sections of the code, not as she writes "IDENTIFY". ENSURE is absolute. MH cannot find it was 'clear enough'. Nor can she approach them to subsequently confirm. The CoC requires her to assess the complaint itself, not the complainant. The onus is on the complainant to get it right, not the prompter to guide the complainant. She actively falsified FOUR invalid complaints to include them in her report.

The lack of transparency affects other complaints. MH refers to an unspecified number of general inquiry forms which appear to have been incomplete. I am also aware of at least one other fake complaint that she validated.

In her paragraph 21, MH mistakenly claims that the number of complaints is significant. This belief affects her judgment. As a matter of law, there is no cumulative effect of complaints, with each one required to be taken on its merits. By using the number of complaints as a guide while including a significant number of invalid complaints, her decision making is corrupted.

Until I get proper evidence that the complaints provided to me are valid, then Step 4 point 10 is incomplete, because I am not responding to false complaints. The report is both premature and invalid.

Materiality of complaints

I have not read any of the complaints and will not do so until they are properly validated. I am relying here on MH's compilation that includes invalid complaints. She identifies just 3 areas of possible breach.

5.2 Relationship with the public

MH has accepted complaints alleging a breach of this section.

At no point has she considered the obvious and simple fact that my submission to WDC did not interact with the public.

My submission was made on-line. I interacted with a virtual server, which uses software to automatically redact offensive language.

Three months later, WDC staff deliberately intervened in the system to remove the redactions, which is a breach of their own council policy. WDC staff deliberately distributed it to WDC elected members. The WDC elected mayor deliberately distributed it to HCC elected mayor, who deliberately distributed it to the media, who deliberately distributed it to the public.

At no stage did I interact with the public.

In fact, I remain 5 degrees of separation from the public. I cannot be held responsible for what others publish.

I did not interact with any of the complainants. All complaints about this section of the CoC are dismissed as frivolous. MH failed in her job.

However, it is worth noting that the HCC mayor interacted with the public in a manner that breached the CoC, It was not fair, equitable, honest, did not consider all points of view, did not treat the public in a courteous manner, did not act in a way that upholds the reputation of the local authority, and

did undermine the reputation of the council and other elected members. She materially breached CoC 5.2.

3.5 Leadership

About the only thing MH gets right in her report is something she still managed to get wrong. Paragraph 26 refers to the leadership provisions of section 3.2 of the Code. I assume she means 3.5, as that is the leadership provision. She rightly dismisses this as not being a material breach.

3.2 Respect

The CoC requires elected members to treat everyone with respect. "Respect" is not defined, is highly subjective, and is a continuum based on a sliding scale of values. I contend that I treated WDC with respect, specifically the respect they deserved and earned through their repeated illegal behaviour, utter contempt for the public, and Mayor O'Regan's broken election promises.

MH refers to offensive language.

It must be noted that no WDC staff or elected members, including O'Regan and Dyet, made a complaint. It appears they were not offended.

It is not for others to be offended on their behalf.

We can establish a simple principle: if Alf tells Bob that Charlie is a prick, Charlie is not offended. If Bob tells Charlie that Alf said he is a prick, then Charlie is offended. Alf did not tell Charlie. Alf did not offend Charlie. Bob caused the offence.

Apply this principle to my submission. I did not cause offence to the complainants. Mayor Southgate certainly did.

MH is confused in paragraph 19. She notes that offensiveness is subjective, then identifies that an objective test must be used. She proposes considering what is offensive to a reasonable member of the public. This is strange, because that remains highly subjective. The correct test is already established in law. The Films, Videos, and Publications Act determines what is acceptable to be broadcast or distributed. The FVPA sets a PG13 rating on the language used. None of the WDC staff or complainants required parental guidance or can claim to be offended according to a level that is specifically set by Parliament as socially acceptable.

MH again uses the number of complaints to assess the materiality. In paragraph 21, she regards the 23 complaints she received as significant and alleges that is somehow objective. Logically, the number of invalid complaints must reduce the materiality. If the validation process had been carried out properly, there could be a meaningful conclusion, however, there are currently no known valid complaints, so the conclusion is meaningless.

Furthermore, this issue received national media coverage. 23 complaints out of 5 million people is objectively insignificant. It can safely be assumed that there are more than 23 lunatics, extremists, and Green party voters, so this is nowhere near the number required to be considered a sample consistent with MH's reasonable member of the public.

Such an argument suggests that the number of complaints could be offset by the number of messages of support I received, in order to find an average that could represent the reasonable member of the public. I can proudly state that I received more than 100 messages of support, including from 4 elected members of WDC, 30 voters in Waipa, and 10 disabled people.

Recommendations

Quite apart from the above dismissals of any and all breaches, It is not possible to reach a determination finding against me because NZBORA requires the principles of natural justice to have been followed. This clearly did not happen.

It would be unlawful to apply any of the recommendations. There is an important legal distinction between 'unlawful' and 'illegal'. In fact, it was unlawful to have carried out this investigation, given I raised the issue of validation, NZBORA, jurisdiction, and freedom of expression prior to the investigation commencing.

This is an important point, because elected members such as the Deputy Mayor, can be held personally accountable for unlawful expenditure under LGA Section 44. Her role in the CoC process exposes her to repaying the entire cost of the investigation.

MH notes an option for a censure. I do not accept that. I have more than sufficient grounds for a judicial review in that event, which would then necessitate Section 44. It would also set a precedent for the public to expect a CoC against Mayor Southgate's actual breaches to be treated in a very serious manner.

MH notes other options. There is no training course for invalid complaints. I clearly have a more detailed knowledge of the law and the CoC than staff or your advisers. I have no need for a mentor. I will not apologise to WDC. It is up to the people of Hamilton to determine whether I am suited to the role of an elected member.

CONCLUSION

The draft report is the product of a failed process and an incompetent investigator. It is an embarrassment to HCC. To be blunt, Michelle Hawthorne should have dismissed all complaints that did not comply in Step 1 of the process. She should then have considered the jurisdiction issue, which is simply following the precedent of complaints about Dave Macpherson, to dismiss any remaining complaints. There was no need for the Tompkins Wake preliminary assessment. In the event, TW obviously let themselves be biased by the Mayor's public statements, coming up with a report that was highly dubious.

I do not accept further delays. It is within the authority of yourself and the DM to consider the draft report along with this letter, and reach a determination that the submission was a private matter between myself and WDC, not subject to the CoC. Mayor Southgate could then apologise to me publicly, and the matter terminated.

Yours faithfully

Andrew Bydder

From:
Sent: Friday, 23 August 2024 2:37 PM
To: Mary Hill
Subject: Re: Confidential - Draft Report - Code of Conduct Investigation

Thanks Mary for all your work on this.

I would like to politely disagree with your recommendation regarding an apology, where you state "Councillor Bydder be invited to tender a written apology to Mayor O'Regan and to an appropriate organisation for people with disabilities. I recommend that this option be voluntary and flexible as to timing. If not genuine, then I see little benefit in requiring an apology."

I request that this be made compulsory. Whether genuine or not, there is much value to be had in requiring a public apology. I would like to request that a PUBLIC apology be made to the disability community - and reparations made. These reparations may be private. But the apology MUST be public, as the offense was public.

With respect, you are not a member of the disability community. If members of the disability community are calling for a public apology, whether "genuine" or not, then a compulsory public apology must be made. I respectfully ask that you honour these wishes.

Ngaa mihi

On Wed, 21 Aug 2024 at 16:05, Mary Hill <MHill@clmlaw.co.nz> wrote:

Tēnā koe,

You have lodged a complaint under Hamilton City Council's Code of Conduct relating to a public submission made by HCC Councillor Andrew Bydder to Waipā District Council. I have been appointed by HCC to undertake an independent investigation into the complaints.

The Code requires me to make an initial assessment into the materiality of the breach. If I find the breach to be material, I am then required to prepare a report on the seriousness of the breach. The Code requires me to consult with Councillor Bydder and with complainants in preparation of that report.

You will already have been advised by HCC of my finding that a material breach has occurred. I am now circulating a draft of the substantive findings and recommendations section of my report to

complainants for their written feedback before I finalise the report. The findings and recommendations in my draft report are not final, and I will be considering any feedback from Councillor Bydder and / or complainants before finalising the report.

All complainants and Councillor Bydder will also get an opportunity to provide a written submission to HCC on my final report which will be considered by Council at a public meeting. Councillor Bydder will also get an opportunity to be heard by the Council at that meeting.

I **attach** a pdf copy of the substantive findings and recommendations section of my draft report. If you wish to make any comments for my consideration before I finalise it, please email them to me by **5 p.m. Tuesday 27 August**.

The Code requires you to treat this draft report as confidential, because the findings are not yet final. My final report will be considered at a public meeting.

Ngā mihi

Mary Hill | Partner

DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz

ANZ Centre, Level 3, 247 Cameron Road, Tauranga

PO Box 143, Tauranga 3144, New Zealand | DX HP40001

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From: Wednesday, 21 August 2024 4:07 PM
Sent: Mary Hill
To: Re: Confidential - Draft Report - Code of Conduct Investigation
Subject:

Thank you for your email Mary.

I have nothing further to add to the report.

Kind regards,

On Wed, 21 Aug 2024 at 4:05 PM, Mary Hill <MHill@clmlaw.co.nz> wrote:

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From:
Sent: Wednesday, 21 August 2024 4:38 PM
To: Mary Hill
Subject: Re: Confidential - Draft Report - Code of Conduct Investigation

Kia ora Mary,

I have read it and find it a very thorough and fair report that sums up Mr Bydder's statements and actions accurately.

I feel just as strongly about it now as I did when I lodged the complaint.

Thank you

On 21 Aug 2024, at 4:05 PM, Mary Hill <MHill@clmlaw.co.nz> wrote:

Tēnā koe,

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Ngā mihi

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<image001.jpg>

<MHH-498132-14-218-1 Confidential draft report following investigation 21 August 2024.pdf>

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From:
Sent: Wednesday, 21 August 2024 4:41 PM
To: Mary Hill
Subject: Re: Confidential - Draft Report - Code of Conduct Investigation

Tēnā koe Mary

Thanks for your draft report - it seems very thorough and balanced. My only suggestion is that it is not only the two people named who are affected by this kind of conduct: it can have a chilling effect on any woman or, I believe, person with a disability, or anyone else, who wants to have faith in, or is considering standing for, local government throughout the country. Such communication give council workplaces the appearance of being unhealthy, unsafe, toxic spaces for people to work in - particularly for women or people with a disability - and these are groups already under-represented in councils. Robust dialogue about issues is of course to be expected, personalised attacks are not. Abusive behaviour affects bystanders, not only those directly abused. I agree with your comments about bringing council into disrepute.

Thanks again for sharing with me your draft report. I appreciate it.

Kind regards,

From: Mary Hill <MHill@clmlaw.co.nz>
Sent: Wednesday, August 21, 2024 4:05 PM
Subject: Confidential - Draft Report - Code of Conduct Investigation

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Ngā mihi

Mary Hill | Partner

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From: Wednesday, 21 August 2024 4:44 PM
Sent: Mary Hill
To:
Subject: Fwd: Confidential - Draft Report - Code of Conduct Investigation
Attachments: MHH-498132-14-218-1 Confidential draft report following investigation 21 August 2024.pdf

Hi Mary

Thanks for sharing the draft findings and for the opportunity to provide a response to the draft report.

I again reiterate that Councillor Bydder had multiple options to reflect on his deplorable conduct and apologise and that he instead choose to double down, including doubling down even after the offensive comments to the disability community was spelt out to him via the media. Therefore, IMO the sanctions amount to a 'slap on the wrist with a wet bus ticket'. I strongly believe that Councillor Bydder needs a carrot and a stick response. The carrot being attending training to 'lift his game' and the stick being the removal of benefits including but not limited being stripped of any additional roles such as chairing committees so that there is an adverse financial impact for his conduct.

I note that you have made a distinction regarding his abusive conduct not having occurred on a HCC matter and therefore the abusive conduct has deemed by association to be less worthy of stronger action by the HCC elected members. I disagree. There is case law where employees have been sanctioned and indeed dismissed for conduct that did not occur in relation to performing their employment. Please read the linked article below in regarding to Guy Hallwright being dismissed for conduct that did not relate to his employment role. Mr Hallwright challenged that dismissal unsuccessfully at the ERA and then lost his appeal at the Employment Court.

<https://www.nzherald.co.nz/nz/guy-hallwright-fails-to-win-job-back/EOAZ5GBKFKKAC6BFYW5X722WEE/>

I acknowledge that Councillor Bydder is an elected official, not an HCC employee. Yet the overarching concept should apply, and I'd argue even more so given his abuse was directed at local elected officials in a neighbouring council. I also draw your attention to the gross misconduct by the Green MP Darleen Tana. That conduct was not related directly to her MP role yet she has faced significant repercussions from that misconduct.

A further significant aggravating feature is that your report suggests that Councillor Bydder failed to fully engage with your review into his conduct, and that he favoured to try to 'bat it away' by claiming freedom of expression under the BORA. That amounts to yet further 'doubling down' by Councillor Bydder.

Had his same ongoing conduct (including multiple 'doubling down' examples) been committed by a HCC employee I have no doubt that the employee would have at the least faced a formal written warning. Elected officials should be held to a lower standard than HCC employees.

It is my opinion that Councillor Bydder will feel emboldened by the draft findings as it is apparent that even at this stage he does not accept that his conduct was abusive, not just offensive.

In summary, I believe there should be financial repercussions for the aggressive conduct which is in effect workplace bullying. I urge that you redonise imposing a recommendation that imposing financial disadvantage such as removal from HCC committees.

Regards

----- Forwarded message -----

From: **Mary Hill** <MHill@clmlaw.co.nz>

Date: Wed, 21 Aug 2024 at 16:05

Subject: Confidential - Draft Report - Code of Conduct Investigation

To:

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Ngā mihi

Mary Hill | Partner

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From:
Sent: Thursday, 22 August 2024 10:23 AM
To: Mary Hill
Subject: Re: External Sender: Confidential - Draft Report - Code of Conduct Investigation

Kia ora Mary,

Thanks for your draft report which I have read. I'm comfortable with your findings and recommendations, except on two points:

1. You appear to limit the impact of Cr Bydder's submission to the Mayor and Elected Members of Waipa District Council, but it is clear from the words used in his submission, his insults are directed at staff as well. This is not mentioned in your findings and it follows through to your draft recommendations that an apology to the staff involved is not put forward. Personally, I feel they deserve an apology too.
2. Your assessment of the role that applied to Cr Bydder in making the submission was in his personal capacity and I disagree with this. I look at his direction to the staff in his submission where he states: "You better damn well provide my name and comments to every elected member". I consider that a member of the public in the general sense of the word would not make such a statement, and in fact it only makes sense for these words to be used if the submitter considered their name to have meaning or significance beyond an anonymous member of the public. I am faced with the logical conclusion that Cr Bydder is wanting to use his public standing as an elected member for Local Government to amplify his submission.

Ngaa mihi

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From: Mary Hill <MHill@clmlaw.co.nz>
Sent: Wednesday, August 21, 2024 4:09:01 PM
To:
Subject: External Sender: Confidential - Draft Report - Code of Conduct Investigation

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Please follow the Cybersecurity Policy and report suspicious emails to Servicedesk

Tēnā koe,

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Mary Hill | Partner

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From:
Sent: Tuesday, 27 August 2024 3:48 PM
To: Mary Hill
Subject: RE: Confidential - Draft Report - Code of Conduct Investigation

Kia ora

Thank you for the opportunity to comment. For the most part I agree with the draft report. I have a comment re: para 36 and some aspects of para 38.

Para 36: High risk of repeating the conduct, intervention might increase his awareness that the code of conduct does actually apply to him but does it address the harm he has caused?

Para 38 (a) agree

(b) This might address the code of conduct but how will that address harm caused?

(c) This may address the harm caused if his mentor is not one of his echo chamber.

(d) If he is yet to apologise then this recommendation may be no more than ticking the box

From: Mary Hill <MHill@clmlaw.co.nz>
Sent: Wednesday, August 21, 2024 4:05 PM
Subject: Confidential - Draft Report - Code of Conduct Investigation

Tēnā koe,

You have lodged a complaint under Hamilton City Council's Code of Conduct relating to a public submission made by HCC Councillor Andrew Bydder to Waipā District Council. I have been appointed by HCC to undertake an independent investigation into the complaints.

The Code requires me to make an initial assessment into the materiality of the breach. If I find the breach to be material, I am then required to prepare a report on the seriousness of the breach. The Code requires me to consult with Councillor Bydder and with complainants in preparation of that report.

You will already have been advised by HCC of my finding that a material breach has occurred. I am now circulating a draft of the substantive findings and recommendations section of my report to complainants for their written feedback before I finalise the report. The findings and recommendations in my draft report are not final, and I will be considering any feedback from Councillor Bydder and / or complainants before finalising the report.

All complainants and Councillor Bydder will also get an opportunity to provide a written submission to HCC on my final report which will be considered by Council at a public meeting. Councillor Bydder will also get an opportunity to be heard by the Council at that meeting.

I **attach** a pdf copy of the substantive findings and recommendations section of my draft report. If you wish to make any comments for my consideration before I finalise it, please email them to me by **5 p.m. Tuesday 27 August**.

The Code requires you to treat this draft report as confidential, because the findings are not yet final. My final report will be considered at a public meeting.

Ngā mihi

Mary Hill | Partner

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Written Submission

I am submitting this letter and six attachments for the agenda as a matter of public record.

The attachments are:

- **Code of Conduct - Essential Information.**
This comprises relevant legislation and a brief commentary. EMs need to be familiar with the legislation as it affects decision-making. I will expand on the commentary during my right to be heard.
- **Draft Report Following Investigation.**
This is a reference document to points made in Lance Letter. I suggest reading the Lance Letter first and checking references in this report.
- **Lance Letter.**
This is an analysis of the draft Report Following Investigation. It selects 4 key points with references to the draft Report. These points highlight the dishonesty of the investigator. A comparison can then be made with the final Report, which you will be provided with as part of the agenda. The investigator made significant changes in the final report in response to my letter, thereby proving I was right. She promptly claims that I was "inaccurate". This exposes her extreme bias. If I was inaccurate, she had no need to make the changes.
I expect EMs to have carefully considered this letter.
- **Email - Timeframes**
EMs (other than Maria) have already seen this. The investigator has misled the public in statements to media that she provided reasonable timeframes. This email confirms the truth to the public.
Email - LGOIMA delay
- EMs have already seen this. This email confirms to the public that Hamilton City Council has withheld evidence vital to the defence.
- **Email – Private Capacity**
This email sent to another councillor clearly notes that there is separation between actions in the capacity as an Elected Member vs a private individual. Why am I being treated differently to other EMs?
I expect EMs to have carefully considered this email.

I will table further documents during my right to be heard. These documents are evidence with reference to points I will be raising, and it is not necessary for EMs to pre-read them.

Andrew Bydder

2 September 2024

CODE OF CONDUCT – ESSENTIAL INFORMATION

Elected members considering the Code of Conduct complaints against Andrew Bydder need to be familiar with the following legislation.

Local Government Act 2002

Schedule 7 Clause 15:

The code of conduct must set out—

- (a) understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—
 - (i) behaviour toward one another, staff, and the public;

The submission transcript that is the subject of the complaints does not refer to Andrew Bydder's capacity as a member of Hamilton City Council. It is an agreed fact that he made the submission in relation to his private property in Waipa, from his private property in Waipa, using his private computer in his private time. The investigator concluded that Andrew Bydder was acting in his personal capacity, not as a member of Hamilton City Council.

This should have been the end of the matter.

Andrew Bydder informed council staff prior to the preliminary investigation that he was acting in his personal capacity. Mayor Southgate noted in public statements that Andrew Bydder was not acting as a councillor. There is no good faith defence open to elected members in making any determination that they believed on reasonable grounds or relied on advice from others that Andrew Bydder acted in his capacity as a member.

In order to progress the complaints, the investigator tries to claim that the Code of Conduct extends the powers to include private actions. Her argument is that if Parliament wanted to *prevent* the powers being extended to private actions, Parliament would have expressly stated that. This argument is facetious and unlawful. Facetious because the reverse logic is also true - if Parliament *wanted to extend* the powers to private actions, then Parliament would have *expressly* stated that. Unlawful because such an argument implies the Code of Conduct could extend powers to allow members to rob banks, however, robbing banks remains unlawful.

It is a fundamental principle of law that Parliament does not act or grant powers by omission. The Code of Conduct only applies to members conducting themselves while acting in their capacity as members. THERE IS NO CASE TO ANSWER.

New Zealand Bill of Rights Act 1990

Section 14 Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

The Free Speech Union has publicly stated that the right applies to Andrew Bydder.

New Zealand Bill of Rights Act 1990

Section 5 Justified limitations

The rights and freedoms contained in this Bill of Rights may be subject **only to** such reasonable **limits prescribed by law** as can be demonstrably justified in a free and democratic society.

In her draft report, the investigator claimed that the Code of Conduct could limit the right to Freedom of Expression under Section 5. This was refuted because Section 5 clearly states **ONLY** laws can limit a right. The Code of Conduct is not a law. There is wording in the HCC Code that attempts to place limits, however, it is not enforceable. The investigator accepted this and removed her claim in respect to Section 5 in her final report.

Andrew Bydder has a right in law that supersedes the Code of Conduct, regardless of what is written in the Code. **THERE IS NO CASE TO ANSWER.**

New Zealand Bill of Rights Act 1990

Section 27 Right to justice

Every person has the right to the observance of the **principles of natural justice by any tribunal or other public authority which has the power to make a determination** in respect of that person's rights, obligations, or interests protected or recognised by law.

Principles of natural justice include:

- Avoidance of the perception of bias
- Right to be heard
- Reasonable timeframes
- Transparency
- Documentation of decision making
- Due process

Each step in the Code of Conduct process has required council staff, the Deputy Mayor, or the investigator to make multiple determinations in order to proceed this far. **EVERY** one of these determinations is subject to all the principles, and there have been many breaches.

Elected members have been informed of 2 significant breaches by way of emails from Andrew Bydder, which together have demonstrated a clear bias, which is yet another breach. The investigator failed to provide Andrew Bydder with a reasonable timeframe to respond, and council's failure to provide LGOIMA documents have prevented him from presenting evidence (right to be heard).

A single breach of Section 27 is a miscarriage of justice. A new process must be carried out with a new unbiased investigator, overseen by new unbiased staff.

Local Government Official Information and Meetings Act 1987 (LGOIMA)

Section 14 Extension of time limits

(1) Where a request in accordance with section 10 is made or transferred to a local authority, the chief executive of that local authority, or an officer or employee authorised by that chief executive, may extend the time limit set out in section 12 or section 13(1) in respect of the request if—

- (a) the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the local authority; or
- (b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

Andrew Bydder's LGOIMA request for information regarding former councillor David Macpherson to establish precedents was not completed within the required timeframe and the reasons given do not comply with Section 14. This has a material impact on his defence.

Crimes Act 1961

Part 6 Crimes affecting the administration of law and justice

official means any person in the service of the Sovereign in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or **any member or employee of any local authority** or public body,

bribe means any money, valuable consideration, office, or **employment, or any benefit**, whether direct or indirect

Hamilton City Council has demonstrated contempt for NZBORA and LGOIMA on many occasions. This is because neither Act imposes significant penalties. However, other Acts do. Failing to apply the principles of natural justice or ignoring breaches of LGOIMA time limits are omissions of proper action.

Elected members and council employees are subject to the Crimes Act Part 6. Receiving employment or political gain while intending to omit proper action in an official capacity is corruption.

Section 105 Corruption and bribery of official

(1) Every official is liable to **imprisonment for a term not exceeding 7 years** who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other **person in respect of any act done or omitted**, or to be done or omitted, by him or her in his or her official capacity.

Regardless of whether elected members dislike Andrew Bydder or found his submission to be offensive, to do anything other than dismiss the complaints outright is corruption.

Section 35 Arrest of persons found committing certain crimes

Every one is justified in arresting without warrant—

- (a) **any person whom he or she finds committing any offence against this Act** for which the maximum punishment is not less than **3 years' imprisonment**:

Members of the public who believe councillors are corrupt in finding against Mr Bydder have the legal authority to arrest them (citizen's arrest). They may use reasonable force to do so. Arrested members must accompany him to a police station to be formally charged.

If members of the public believe there is a pattern of corrupt behaviour, they may make a citizen's arrest at the next time they meet the elected member.

LOCAL GOVERNMENT ACT 2002

43 Certain members indemnified

(1) A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the Local Electoral Act 2001 or appointed by the local authority, for—

(a) costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and

(b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.

(2) Subsection (1) does not apply to a member's liability for a loss under section 46.

The immunity enjoyed by elected members has limits:

- If the member was not acting in good faith, then there is no immunity. As noted above, elected members cannot claim to have acted in good faith if they assume Andrew Bydder was acting in his capacity as an elected member. They cannot claim to have acted in good faith by relying on reports where there is the perception of bias.
- Costs of defending corruption charges are not indemnified if the elected member loses the case.
- Liability for the cost of the Code of Conduct process is not indemnified if the elected member knew there was no case to answer based on the information provided in this document.

LOCAL GOVERNMENT ACT 2002

Section 44 Report by Auditor-General on loss incurred by local authority

(1) For the purposes of this section and sections 45 and 46, a local authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the local authority has not been fully compensated for the action or omission concerned:

(a) money belonging to, or administrable by, a local authority has been unlawfully expended;

(c) a liability has been unlawfully incurred by the local authority; or

(2)

If the Auditor-General is satisfied that a local authority has incurred a loss, the Auditor-General may make a report on the loss to the local authority, and may include in the report any recommendations in relation to the recovery of the loss or the prevention of further loss that the Auditor-General thinks fit.

Section 46 Members of local authority liable for loss

(1) If the Auditor-General has made a report on a loss to a local authority under section 44, then, without limiting any other person's liability for the loss, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.

(4) It is a defence to any proceedings under subsection (2) if the defendant proves that the act or failure to act resulting in the loss occurred—

(a) without the defendant's knowledge; or

(b) with the defendant's knowledge but against the defendant's protest made at or before the time when the loss occurred; or

(c) contrary to the manner in which the defendant voted on the issue at a meeting of the local authority; or

(d) in circumstances where, although being a party to the act or failure to act, the defendant acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any of the following persons:

(i) an employee of the local authority whom the defendant believed on reasonable grounds to be reliable and competent in relation to the matters concerned:

(ii) a professional adviser or expert in relation to matters that the defendant believed on reasonable grounds to be within the person's professional or expert competence.

It was clear from the outset that there was no case to answer. Elected members are expected to know the Local Government Act, including Schedule 7 Clause 15 because it is referred to in the first line of the Code of Conduct. The Code applies only to members acting in their capacity as members. The Deputy Mayor had an administrative role in the complaints process and had a duty to reject the complaints. It was unlawful to make an expenditure on the process. Anyone may apply to the Attorney General to recover the expenditure from the Deputy Mayor.

Elected members doing anything other than dismissing the complaints is unlawful. There is no defence to claim any alternative was done without the defendant's knowledge, or that it was done in good faith, or that the defendant relied on reasonable grounds for advice from council staff or the investigator given the demonstrated NZBORA breaches. Any costs claimed by Andrew Bydder are recoverable from the elected members.

REPORT FOLLOWING INVESTIGATION

Consultation Draft

Author: Mary Hill, independent investigator appointed by Hamilton City Council

Date: Consultation draft dated 12 August 2024

Introduction

1. I have been appointed by Hamilton City Council (**HCC**)¹ to investigate complaints made against HCC Councillor Andrew Bydder under the HCC Code of Conduct for Elected Members dated 12 May 2022 (**Code**).
2. The Terms of Reference governing my appointment, dated 3 July 2024 (**ToR**), are appended to this Report at **Appendix 1**.
3. The complaints are summarised in Appendix A to the ToR. There are 24 complaints summarised. They relate to a public submission made by Councillor Bydder to Waipā District Council (**WDC**) in relation to the Cambridge Connections project (**Project**). The submission contains comments which the complainants consider (in general terms) to amount to offensive behaviour in breach of the Code.
4. This Report documents the investigation process I have undertaken and the outcome of my investigation. It has been prepared on the basis that it will be considered at a public meeting of Hamilton City Council. It will be a matter for the Council to determine whether there are grounds for withholding any parts of my Report from the public agenda and / or to exclude the public from any part of the meeting which considers my Report, in accordance with the Local Government Official Information and Meetings Act 1987 (**LGOIMA**).

Scope of investigation

5. The purpose of my investigation as set out in the ToR is *"to consider the Complaint(s) and determine whether any breach of the Code has occurred."*
6. If I find that a breach of the Code has occurred, the ToR invite me to provide my recommendation on the actions Council may wish to consider if it resolves to accept my Report. I may also include any recommendations and make any observations I consider may be useful for the Council and / or Elected Members.

Investigation process

7. I am required to carry out the investigation in accordance with the process set out in the Code. Section 6 deals with breaches of the Code and sets out some key principles which have guided my investigation (**Section 6 Principles**). They emphasise that the process undertaken should be proportionate to the apparent seriousness of the alleged breach, and require the application of natural justice and fairness, including ensuring that affected parties are aware that the investigation underway, are given due notice and an opportunity to be heard, may seek advice and be represented, and have their privacy respected.
8. Prior to commencing my investigation I was required to confirm to HCC, and did confirm, that I am not aware of any matter which might give rise to a conflict of interest

¹ References in this Report to HCC are to the Chief Executive or in-house legal counsel. The CE's office and the Legal Team have roles under the Code. Where I am referring to Council as a body of elected members that will be specified in my Report.

in conducting the investigation. I subsequently confirmed, in response to an issue raised by Councillor Bydder,² that I am not aware of any submission, publication or opinion from Andrew Bydder in any capacity on any issue other than the subject matter of this investigation. Following that advice, HCC confirmed (on 15 July) that I should continue with my investigation. No conflicts of interest have arisen during my investigation.

9. The process I am required to follow is contained in Schedule 3 of the Code. Steps 4 to 4B relate to the stage to be carried out by the independent investigator. It is not within my terms of reference to review the process that has been carried out prior to the complaints being referred to me. Regardless, I am satisfied that any process issues arising before referral of the complaints to me have not materially affected my investigation. That is because I have separately and independently verified the complaints referred to me, and have separately and independently investigated and made findings in relation to the materiality of the breaches of the Code raised in the complaints.
10. The Section 6 Principles recognise that my approach should be proportionate to the apparent seriousness of the alleged breach. In my opinion a proportionate approach should always be subject to ensuring the principles of natural justice are adhered to. I have ensured that the timeframes for consultation at all stages of the investigation process have been fair and reasonable, and extended timeframes in response to concerns raised by Councillor Bydder.
11. I have followed a two-step process, as required by the Code, which involves an assessment of materiality (initial and final), followed by a report on the seriousness of the breach (if a material breach is found).

A. Assessment of materiality

1. Initial assessment

- (a) Upon receipt of the complaints I undertook an initial assessment of materiality to ascertain whether a full investigation was required. At that stage the Code indicates that I may make whatever initial inquiry is necessary to determine the materiality of an alleged breach.
- (b) The Code defines an alleged breach as material where "*in the reasonable opinion of an independent investigator, it would, if proven, bring an Elected Member or the Council into disrepute (for example in the mind of the public, any behaviour that negatively risks or undermines the reputation of the Council or another Elected Member) or, if not addressed, reflect adversely on another Elected Member of the Council.*"³
- (c) Because each complaint of itself gives rise to a separate right to an investigation and resolution of the complaint, I considered it important to independently validate each of the complaints before proceeding further with the investigation.

² Email Hill to Vervoort and Vervoort to Bydder dated 15 July 2024. Copies included at **Appendix 4**.

³ Code, Section 6.1, p12.

2. Validation

Of the 24 complaints referred to me, I have validated 22.⁴ One further complaint was referred to me by HCC following my initial engagement. That complaint has been validated by me. Complete copies of the 23 validated complaints are appended to this Report at **Appendix 2**. Councillor Bydder has been provided with full copies of all verified complaints.⁵

- (a) The Code contemplates completion of a “complaint form”. Although not all complaints were completed using HCC’s standard on-line complaint form, I have contacted the complainants who used the general inquiry form, and all have confirmed that they lodged a complaint and agree to the matters they are required to acknowledge in the standard on-line form.⁶ I have treated those complaints as valid. The Code also places an onus on complainants to identify which sections of the Code their complaints relate to.⁷ While four of the complaints did not refer to specific sections of the Code by number, I have found that it was clear from the words used which sections were being relied upon. For completeness those four complainants have subsequently confirmed which sections of the Code they are relying on.⁸
- (b) I have also validated the submission made to WDC that is the subject of the complaints. A copy of the unredacted submission is appended to this report at **Appendix 3**.⁹ WDC has confirmed that the submission was lodged on 11 Mar 2024 using an on-line web form and was accepted. A redacted version of the submission was published on WDC’s website on 13 June 2024,¹⁰ but the comments that have given rise to the complaints were redacted. However, WDC elected members were provided with the full unredacted submission following the Committee meeting held on 18 June 2024.¹¹ A screenshot of the submission containing the comments that have given rise to the complaints, but with personal details redacted and certain words partially obscured, was subsequently circulated to elected members of

⁴ One complaint included an invalid email and phone number and was therefore unable to be validated. It has not been considered further (the complaint is dated 26 June 2024, “*Fire this guy bydder – he sucks*”, p4 Appendix A, ToR). Another complaint was an email sent directly to Cr Bydder rather than lodged with HCC and has not been treated as Code complaint (the correspondence dated 25 June 2024, commencing “*Dear Mr Bydder ...*”, p4 Appendix A, ToR).

⁵ With identifying details redacted to protect the identity of the complainants, except for Hamilton Mayor Paula Southgate who has consented to her identifying details being disclosed.

⁶ The form requires agreement to details of the complaint being disclosed to the respondent, acknowledgment that the complaint will remain confidential while the investigation is underway, agreement to participate in the investigation process and acknowledgement that the outcome may be considered in an open meeting (subject to legal requirements). Two complainants did not wish to participate further in the investigation process. That is their right and I do not consider that invalidates their complaints.

⁷ Schedule 3 Code, Step 1(b), p22.

⁸ Four of those complainants rely on section 3.2 (Respect) and one also relies on 5.2 (Relationship with the public).

⁹ A residential address and personal email address are included in the form but have been redacted in accordance with WDC’s privacy policy in relation to on-line submissions.

¹⁰ It was included in the public agenda for a WDC Committee meeting held on 18 June 2024 as part of consideration of feedback received on the Project. A copy of the redacted submission included in the public agenda is included at **Appendix 3** to this Report.

¹¹ I understand this occurred on 27 June 2024.

HCC and became public. A copy of that screenshot was provided with some of the complaints and is included at **Appendix 2**.

- (c) I am satisfied that the submission was made by Councillor Bydder. It contains his name and his personal contact details.¹² He has not denied making the submission.¹³
 - (d) I wrote to Councillor Bydder on 6 July 2024 setting out my initial assessment that the complaints raise alleged breaches of the Code which, if proven, meet the materiality threshold in Section 6 of the Code. I set out reasons for my assessment. I requested a response to the initial assessment by 5 p.m on 22 July (within 10 working days). Copies of the original web-form complaints were sent to Councillor Bydder on 8 July and copies of the non-webform complaints were provided on 18 July once they had all been validated. Councillor Bydder responded raising various procedural issues (addressed at para 13 below) and seeking further time.¹⁴ Extensions to the timeframe for Councillor Bydder to respond to my initial materiality assessment were granted until 5 p.m. Friday 26 July and subsequently until 9 a.m. Monday 5 August.¹⁵ Copies of that correspondence is included at **Appendix 4**.
 - (e) Apart from the procedural issues raised (which I responded to), Councillor Bydder has provided no substantive response to my initial assessment of materiality dated 6 July.
3. *Final assessment of materiality*
- (a) On 6 August I made a determination that the 23 validated complaints raise material breaches of the Code in relation to conduct by Councillor Bydder. I informed the Chief Executive of HCC of my assessment as required by the Code.¹⁶ The Chief Executive confirmed he would advise the complainants and Councillor Bydder of my finding, as required by the Code.

B. Report on Seriousness of Breach

1. Consultation

- (a) In preparing my Report on the seriousness of the breach, I am required under the Code to consult with the complainant, respondent and any affected parties. I consider that the two parties named in the submission by Councillor Bydder (WDC Mayor Susan O'Regan, and WDC Chief Executive Garry Dyet) are affected by the conduct. I have consulted with both those parties and neither of them wish to participate in the investigation.
- (b) I have the option of conducting a hearing with relevant parties. I have elected not to hold a hearing. I do not consider that to be warranted given that the complaints relate to a written submission and there are no factual matters in dispute which require the testing of evidence. My report is recommendatory and I have no power to make any decision on

¹² A title search has confirmed that the address provided is a property owned by Andrew Bydder.

¹³ In the opinion piece dated 4 July 2024 (refer below footnote 19), Councillor Bydder admits making the submission.

¹⁴ Emails Bydder to Hill dated 15, 24 and 25 July 2024.

¹⁵ Emails Hill to Bydder dated 18, 25 and 26 July 2024.

¹⁶ Letter Hill to Lance Vervoort dated 6 August 2024. Copy included at **Appendix 4**.

the complaints. That decision will be made by the full Council,¹⁷ which must provide Councillor Bydder with an opportunity to be heard before it makes any decision on the complaints.

- (c) Councillor Bydder and all complainants have been given an opportunity to provide written feedback on my draft report and Councillor Bydder has also been offered an opportunity to discuss the draft report with me. I have considered that feedback before finalising my recommendations.

Findings

- 12. This section of my Report sets out my findings on the procedural matters raised by Councillor Bydder, and the reasons for my substantive finding that the complaints raise material breaches of the Code by Councillor Bydder, including my assessment of the seriousness of the breaches. The final section of my Report sets out options for addressing the breaches, including my recommendations for Council's consideration once it has provided Councillor Bydder with an opportunity to be heard.

Procedural issues

- 13. Councillor Bydder has raised three procedural issues in correspondence with me prior to my finding of a material breach on 6 July. I have responded directly to Councillor Bydder in relation to those matters. The issue and my response are summarised below. I do not consider that any of the matters raised by Councillor Bydder have affected the process undertaken in this investigation, which has been carried out in accordance with the Code including the Section 6 Principles. They are addressed here for completeness. Copies of the relevant correspondence is included at **Appendix 4**.

- (a) Conflict of interest: Councillor Bydder suggested that he should be involved in selecting the independent investigator. It is not appropriate for the respondent to select the investigator. That would compromise the independence of the investigation. Councillor Bydder also suggested that I may be aware of other submissions he has made in other contexts. I have addressed that issue at para 8 above.
- (b) Invalid complaints: Councillor Bydder raised the possibility that all of the complaints could have come from a false email address and advised that he had asked a friend to lodge a false complaint to test the process. My validation process (described above) ensured that only complaints which included valid contact details and confirmation of agreement to the requirements for lodging a complaint under the Code were considered further.
- (c) Nature of engagement: Councillor Bydder requested clarification as to whether my appointment was a personal one or whether HCC had engaged Cooney Lees Morgan (my firm). I clarified that the appointment was personal to me but that the engagement was between HCC and CLM. I advised him to raise any further concerns about these matters with HCC.

Substantive findings

- 14. The complaints generally raise concerns about the type of language contained in the submission and the personal nature of the comments relating to the Mayor and Chief Executive of WDC. Some of the complaints relate to the subsequent comments made

¹⁷ Apart from Mayor Southgate (a complainant) and Councillor Bydder (the respondent).

by Councillor Bydder in the media about the nature of the complaints and the complainants. In summary, the complaints raise the following themes:

- Abusive, offensive and derogatory language
- Threatening language and personal attacks
- Ablest and sexist language
- Caused distress and emotional harm
- Breach of the Human Rights Act (discriminatory behaviour)
- Breach of Workplace Health and Safety Legislation (comments against WDC Mayor create an unsafe workplace environment)
- Bullying and harassment
- Unprofessional behaviour
- Absence of respect and leadership
- Lack of dignity for others and specifically for the rights of disabled people
- Breach of expected behaviour of a councillor which requires higher standards than other members of the public
- Undermining the reputation of the Council, Councillors and the Waikato
- Discouraging good people from standing for election
- Use of public office or freedom of speech as reasons for choice of language
- Being dismissive of the complaints in the media
- Absence of apology or remorse

15. The following sections of the Code (paraphrased) are considered by complainants to have been breached. These are set out in full in **Appendix 5** to my Report.

- (a) **3.2 Respect:** Elected members will treat everyone (including other members) with respect and courtesy;
- (b) **3.5 Leadership:** Elected members should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council;
- (c) **5.2 Relationship with the Public:** Interact with members of the public in a fair, respectful, equitable and honest manner and treat members of the public in a courteous manner.

16. I consider that the reasons for my preliminary assessment¹⁸ remain appropriate in relation to my finding that a material breach of the Code has been established. They are:

- (a) The Code applies to Councillor Bydder as an HCC Elected Member (Code, p3);
- (b) The Code deals with behaviour of Elected Members towards each other, the media and the public (Code, p3);
- (c) The Code applies at all times, not only in Councillor Bydder's official capacity but also as a representative of Council and the wider community (Code, p3);
- (d) While Councillor Bydder is entitled to freedom of expression, this must be balanced against his concurrent responsibility to be respectful (Code, p3);

¹⁸ Set out in my letter to Councillor Bydder dated 6 July 2024, included at **Appendix 4**.

- (e) Respectful behaviour involves treating all people with respect and courtesy and not engaging in aggressive, offensive, abusive, harassing, bullying or discriminatory behaviour; not making personal attacks; and not making unreasonable, unwelcome, insulting, degrading or offensive comments to the public (Code, p4).
 - (f) The complaints received from members of the public allege that (and I have found that) the comments in the submission fell below the standard of respect and courtesy required by the Code.
17. Although Councillor Bydder has not provided a substantive response to my preliminary finding and reasons, it is evident from his comments in the media that he considers the right of free speech justifies his comments.¹⁹ His earlier responses raising procedural points refer to the New Zealand Bill of Rights Act 1990 (NZBORA). It is useful to briefly address the law on this issue. NZBORA applies to the performance of public functions, including conduct governed by, and procedures under, the Code. While NZBORA affirms that everyone has the right to freedom of expression,²⁰ that right is subject to justified limitations.²¹ The question is whether the restrictions in the Code preventing offensive behaviour or making offensive comments in public (to paraphrase), are reasonable restrictions on the right to freely express opinions. It is clear that justified limits on freedom speech may include restrictions on disorderly behaviour or behaviour which gives rise to unreasonable anxiety or disturbance to members of the public.²² In this case, the opinion Councillor Bydder wished to express related to a public project. He was entitled to freely and publicly express his views or position on that matter. However, that right is subject to the provisions of the Code which restrict the *manner in which* he expressed that opinion. The Code deals directly with the right to freedom of expression and explains that this is subject to the concurrent responsibility to be respectful.²³
18. I find that the provisions of the Code which (to paraphrase) require respectful behaviour, including treating all people with respect and courtesy and not engaging in offensive behaviour, not making personal attacks, and not making unreasonable, unwelcome, insulting, degrading or offensive comments to the public,²⁴ are justifiable restrictions on the right to freedom of expression by elected members. I further find that Councillor Bydder has breached those provisions of the Code.
19. I acknowledge that different people will have different interpretations and levels of tolerance in relation to the concept of offensive comments and the type of behaviour that is governed by the Code. However, it is clear that the test is an objective one, i.e. what is offensive to a reasonable member of the public. It is also clear that context is important. The number and type people to whom the offensive behaviour is displayed are relevant considerations.²⁵ Ultimately the decision is a matter of judgment according to the circumstances of the case.²⁶
20. I find that the particular words used in the submission meet the threshold of being “*unreasonable, unwelcome, insulting, degrading or offensive comments to the public*” on any objective standard. They include an expletive that most reasonable members of the public would consider highly confronting, and disparaging comments of a

¹⁹ *An Example of Rage Against the Machine* by Andrew Bydder dated 4 July 2024 (thebdf.co.nz).

²⁰ Including the freedom to seek, receive, and impart information and opinions of any kind in any form. Section 14, NZBORA.

²¹ Section 5, NZBORA.

²² *Brooker v Police* [2007] NZSC 30.

²³ Code, p3.

²⁴ Code, Section 3.2.

²⁵ *Angus v Ports of Auckland* [2011] NZEmPC125.

²⁶ *Brooker v Police*, above note 22.

personal nature in relation to a senior public official (the WDC Mayor). The words by Councillor Bydder include terms that are widely considered to be derogatory and discriminatory about people with disabilities. While they may have been intended as offensive language more generally, rather than specifically directed at people with disabilities, I nevertheless find that they meet the objectively offensive standard.

21. The comments have generated what I find to be a genuine and consistent reaction from 23 members of the public. I consider that number to be significant and the complaints to be consistent with an objective reasonable standard rather than the subjective views of a few. Overall, I find that the comments contained in the submission by Councillor Bydder amount to offensive behaviour, involve personal attacks on Mayor O'Regan and Mr Dyet, and involve unreasonable, unwelcome, insulting, degrading and / or offensive comments made to the public in breach of Section 3.2 of the Code.
22. I also find that the conduct is contrary to the provisions of the Code relating to the relationship of elected members with the public. Section 5.2 requires elected members to interact with members of the public in a fair, respectful and courteous manner, to act in a way that upholds the reputation of the local authority, and to ensure their behaviour does not undermine the reputation of the Council or other Elected Members in the mind of the public. It is my opinion that those provisions apply whether or not the elected member is interacting with the public in an official or personal capacity. Councillors have a public profile and their conduct in any public setting has the potential to undermine their reputation as elected members and in turn the reputation of the Council which they are a member of. In my opinion the breach of Section 5.2 also meets the materiality threshold in that the comments have undermined the reputation of both Councillor Bydder and the Council in the mind of the public. A number of the complaints specifically raise reputational issues, including the complaint by Mayor Southgate who explains that *"Numerous colleagues have shared their concern and extreme disappointment feeling that this undermines our professional reputation."* Complaints by members of the public raise similar concerns.
23. It is important to distinguish between the right of an elected member to publicly express a personal opinion, and public conduct by an elected member which brings the Council or that member into disrepute. Councillor Bydder was entitled to express a personal opinion in relation to the WDC Project by making a public submission in his personal capacity. It is not the case here that the opinion was at risk of being attributed to the Council. The issue is that the way in which the personal opinion was expressed amounts to behaviour that has undermined the reputation of Councillor Bydder the Council in the eyes of the public.
24. The Code provides an example of this distinction between expressing a personal view, and expressing it in a manner which brings the elected member or council into disrepute.²⁷
25. I am aware that clause 15(2) of Schedule 7 to the Local Government Act 2002, which relates to Codes of Conduct required to be adopted by local authorities, provides that: *"The code of conduct must set out ... understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members ..."*. While Codes of Conduct must include provisions addressing the conduct of members acting in their capacity as members (as this Code does), I do not interpret that provision as restricting the scope of Codes of Conduct to such matters. If that was Parliament's intention it would have made it clear that Codes shall only address those matters. In my opinion, a Code of Conduct may also include understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in a personal capacity

²⁷ Code, Schedule Five, example one.

where such conduct has a bearing on the reputation of the Council or its members. As explained above, the Code in this case is very clear about when conduct in a personal capacity might give rise to a breach of the provisions of the Code and includes a specific example. In any event, any challenges to the scope of the Code are matters to be raised when the Code is being developed and adopted by Council, not through a collateral challenge in the context of a particular complaint.

26. I have also considered whether the leadership provisions of Section 3.2 of the Code have been breached given some complaints refer to those provisions. Those provisions require elected members to act individually and collectively in a way that maintains public confidence in the good governance of the Council. Elected Members agree to be bound by the Code and demonstrate adherence to those principles through their leadership of the city. In my opinion that section of the Code focusses on the role of elected members in their official capacity and requires them to demonstrate good governance and leadership of Hamilton City Council. In this case the submission was a personal one made by Councillor Bydder to WDC. While I have found that the submission breaches other sections of the Code, I do not find that it amounts to a material breach of Councillor Bydder's obligations to demonstrate good governance and leadership of HCC.
27. In conclusion, I find that the complaints raise material breaches of Sections 3.2 and 5.2 of the Code (respect, and relationship with the public). I find those breaches to be serious to the extent that they demonstrate a lack of judgement and appreciation of the public persona of elected members, which extends to dealings with the public in a personal capacity, and the importance of elected members conducting themselves in a respectful and courteous manner in all of their public interactions so as not to bring themselves or the Council into disrepute. I have not found a breach of Section 3.5 (leadership).

Recommendations

28. The decision whether to accept the findings in my Report and / or to impose a penalty or some other form of action rests with the full Council under the Code. However, the ToR request that I provide recommendations on the actions Council may wish to consider if it resolves to accept my findings.
29. The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in Section 6.3 of the Code. Any censure or penalty must be proportional to the behaviour that is found to be in breach of the Code
30. The Code sets out a number of options for addressing a breach of the Code. In the case of material breaches, the Council may require one or more of the following:
 - (a) A letter of censure to the member;
 - (b) A request (made either privately or publicly) for an apology;
 - (c) A vote of no confidence in the member;
 - (d) Removal of certain Council-funded privileges or Council appointments;
 - (e) Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
 - (f) Limitation on any dealings with Council staff so that they are confined to the CE only;
 - (g) Suspension or removal from Committees (including joint committees), task forces or other Council bodies; and/or
 - (h) An invitation for the member to consider resigning from the Council.
31. The Council may decide that a penalty will not be imposed where the respondent agrees to one or more of the following:

- (a) Attend a relevant training course;
 - (b) Work with a mentor for a period;
 - (c) Participate in voluntary mediation (if the complaint involves a conflict between two members);
 - (d) Tender an apology.
- 32. There is a presumption that the outcome of the complaints process will be made public unless there are grounds, such as those set out in LGOIMA, for not doing so.
- 33. Many of the complaints raise concerns about way the issue has / has not been responded to by Councillor Bydder including absence of an apology, undermining the complaints in the media, and a lack of willingness to engage with disability advocates to better understand why the behaviour is considered offensive.
- 34. Several of the complaints call for the resignation of Councillor Bydder.
- 35. The options outlined at para 29 (c) to (h) above are significant penalties and in my opinion are unlikely to be a proportionate response in the circumstances of this case, which arose in the context of a personal submission to another Council rather than a matter associated with the governance of Hamilton City Council.
- 36. However, I have found that the breaches demonstrate a lack of judgement and appreciation of the conduct required of an elected member when acting in public. I have found that the particular conduct in this case has damaged the reputation of both Councillor Bydder as a elected member and brought the office and the Council into disrepute in the sense that the public esteem in one of its members has been materially diminished.
- 37. The absence of remorse by Councillor Bydder and the fact that this is not an isolated incident gives rise to a risk that, without an appropriate response, this type of conduct could occur again.
- 38. The comments relating to people with disabilities have been particularly distressing to members of that community and the personal comments about Mayor O'Regan have been particularly offensive to people who respect the Mayor.²⁸
- 39. I therefore recommend the following course of action:
 - (a) Council issues a formal letter of censure to Councillor Bydder, including advice that any further conduct of this nature is likely to result in more serious penalties including the potential for a vote of no confidence or an invitation to consider resignation;
 - (b) Councillor Bydder be required to attend a relevant training course(s) which may cover matters such as conduct expected of elected members including dealing with members of the public and the media, and the requirements of the HCC Code. It may be useful for all elected members to attend this training;
 - (c) Councillor Bydder be encouraged to work with a mentor to supplement the training. In my experience it is important for a mentoring relationship to be voluntary. This recommendation is only likely to be useful if Councillor Bydder is willing to participate.

²⁸ Four complaints were made by WDC Councillors.

- (d) Councillor Bydder be invited to tender a written apology to Mayor O'Regan and to an appropriate organisation for people with disabilities.²⁹ I do not consider it necessary for the contents of those apologies to be made public. I recommend that this option be voluntary and flexible as to timing. If not genuine, then I see little benefit in requiring an apology.
40. If Councillor Bydder is unwilling to accept any of the recommendations that require a commitment by him, or fails to implement them, then I would recommend that Council invites Councillor Bydder to give serious consideration to whether he is suited to the role of an elected member.
41. I consider it to be in the public interest for Council's decision in relation to the complaints including any required course of action to be made public.³⁰

Mary Hill
[...] 2024

²⁹ Such as Cerebral Palsy NZ or IHC.

³⁰ I do not consider there to be grounds under LGOIMA for withholding Council's decision, assuming it doesn't contain confidential information or legal advice. Complainants have consented to complaints being published. My Report records my findings and does not amount to legal advice or contain confidential information. HCC may wish, but is not obliged, to take separate legal advice on my Report.

15 August 2024
 Chief Executive
 Hamilton City Council

Dear Lance

Review of Investigator's Draft Report

I have benefitted enormously from the publicity related to this matter, and offer my thanks to Mayor Southgate. It has strengthened my reputation as someone who is prepared to stand up to council bullies, in this case, WDC, and messages of support outnumbered complaints by 10 to 1.

However, there is a time to get on with council work for both myself and HCC staff without unnecessary distractions. I am genuinely prepared to look for resolutions.

Unfortunately, I also care about due process, and I am shocked by the performance of the investigator. I have particularly low expectations of councils and consultants, so to come in that far below them is speleologically significant.

After considering this report, there is no point in continuing to liaise with Mary Hill (MH). Prior to the report, she formed opinions in a preliminary assessment prior to contacting me, failed to carry out complaint validations, refused to communicate with me, and used unreasonable timeframes to prevent me from participating. Yet the report itself surpasses that level of incompetence. She alters CoC text, omits important law, misrepresents facts, makes unsubstantiated claims, fabricates spurious arguments, and lacks transparency in any decision making. It is blatantly dishonest.

I discuss a brief selection of the issues here, chosen because a logical thread can be made that clearly illustrates both MH's failings and the correct outcome.

The purpose of doing this is to alert you to a need to rethink this process. I discuss this further in the conclusion.

Freedom of expression.

MH considers this in her report but gets the law fundamentally wrong.

The Code is required to follow the LGA Schedule 7 Clause 15. This is not hard to find. It is the first paragraph of Section 1 of the CoC.

Part 2(a) limits the CoC to actions in the capacity of the Elected member. This is not hard to find. It is the second paragraph of Clause 15.

MH does find in her paragraph 26 that the submission was a "personal one" to WDC. Therefore, the matter can be terminated here. A "personal one" is clearly not actioned in the capacity of the Elected member.

MH tries to get around this by arguing that the CoC can add additional rules beyond Part 2(a), such as "applying to members at all times." This is partly correct. It is, of course, limited by not being able to override other laws.

The NZBORA Section 14 establishes a right to freedom of expression. This explicitly includes the freedom to impart opinions of any kind. The CoC cannot override this law. This is a complete defence of the complaints against me.

MH tries to get around this by arguing in her paragraph 17 that NZBORA is subject to justified limitations. She makes a reference to NZBORA Section 5 as her basis for allowing the CoC to extend to private communication, thus overriding Section 14.

Tellingly, she does not quote Section 5 in her report.

Section 5 is clear. I suggest you look it up. "The rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. "

This means NZBORA is NOT subject to justified limitations, EXCEPT where reasonably prescribed by LAW, and such limitations have to be demonstrably justified.

This is the EXACT opposite of what MH implies. Her omission on the wording is deliberate and intended to mislead. The CoC is NOT law. It CANNOT limit NZBORA. Regardless of what is written in the CoC, it is not enforceable when not acting in the capacity as a member.

In an act of desperation, MH tries to argue that "He was entitled to freely and publicly express his views" (correct) but the "Code can restrict the manner in which he expressed that opinion". This sounds very much like an attempt at a limitation!

MH is not just wrong, she tried very hard to lie.

Interestingly, MH's opinion contradicts the Tompkins Wake opinion. Obviously at least one of them is wrong, although in this case, it is both.

Validation

The COC Process section, step 4 point 9 (a) establishes the first step for the investigator is to assess whether each complaint is frivolous or without substance and should be dismissed i.e. validate each complaint.

This is important. I am under no obligation to respond to invalid complaints. No timeframe for me can commence until I have received verification/validation. Additionally, the principles of natural justice require this to be done in a transparent manner. Transparency means the obligation is on the investigator to provide proof that the validation process has been carried out. It is not sufficient to simply state "I am satisfied that the complaints are valid", as MH did.

MH's preliminary assessment, correspondence with myself, and her report show so many failures to provide proper validation that it amounts to an outright refusal to do her job. Her report contains several statements that are false. However, I will deal with only two failures here.

MH notes in her report in 11 Part A paragraph 2 that MH contacted some of the complainants. She states that "The Code also places an onus on the complainants to IDENTIFY [my capitals] which sections of the Code their complaints relate to. While four of the complaints did not refer to specific sections of the Code by number, I have found that it was clear from the words used which sections were being relied upon."

She has misrepresented the CoC in her report by deliberately altering the text. Step 1 b puts the onus on the complainant to ENSURE they have referred to the relevant sections of the code, not as she writes "IDENTIFY". ENSURE is absolute. MH cannot find it was 'clear enough'. Nor can she approach them to subsequently confirm. The CoC requires her to assess the complaint itself, not the complainant. The onus is on the complainant to get it right, not the prompter to guide the complainant. She actively falsified FOUR invalid complaints to include them in her report.

The lack of transparency affects other complaints. MH refers to an unspecified number of general inquiry forms which appear to have been incomplete. I am also aware of at least one other fake complaint that she validated.

In her paragraph 21, MH mistakenly claims that the number of complaints is significant. This belief affects her judgment. As a matter of law, there is no cumulative effect of complaints, with each one required to be taken on its merits. By using the number of complaints as a guide while including a significant number of invalid complaints, her decision making is corrupted.

Until I get proper evidence that the complaints provided to me are valid, then Step 4 point 10 is incomplete, because I am not responding to false complaints. The report is both premature and invalid.

Materiality of complaints

I have not read any of the complaints and will not do so until they are properly validated. I am relying here on MH's compilation that includes invalid complaints. She identifies just 3 areas of possible breach.

5.2 Relationship with the public

MH has accepted complaints alleging a breach of this section.

At no point has she considered the obvious and simple fact that my submission to WDC did not interact with the public.

My submission was made on-line. I interacted with a virtual server, which uses software to automatically redact offensive language.

Three months later, WDC staff deliberately intervened in the system to remove the redactions, which is a breach of their own council policy. WDC staff deliberately distributed it to WDC elected members. The WDC elected mayor deliberately distributed it to HCC elected mayor, who deliberately distributed it to the media, who deliberately distributed it to the public.

At no stage did I interact with the public.

In fact, I remain 5 degrees of separation from the public. I cannot be held responsible for what others publish.

I did not interact with any of the complainants. All complaints about this section of the CoC are dismissed as frivolous. MH failed in her job.

However, it is worth noting that the HCC mayor interacted with the public in a manner that breached the CoC, It was not fair, equitable, honest, did not consider all points of view, did not treat the public in a courteous manner, did not act in a way that upholds the reputation of the local authority, and

did undermine the reputation of the council and other elected members. She materially breached CoC 5.2.

3.5 Leadership

About the only thing MH gets right in her report is something she still managed to get wrong. Paragraph 26 refers to the leadership provisions of section 3.2 of the Code. I assume she means 3.5, as that is the leadership provision. She rightly dismisses this as not being a material breach.

3.2 Respect

The CoC requires elected members to treat everyone with respect. "Respect" is not defined, is highly subjective, and is a continuum based on a sliding scale of values. I contend that I treated WDC with respect, specifically the respect they deserved and earned through their repeated illegal behaviour, utter contempt for the public, and Mayor O'Regan's broken election promises.

MH refers to offensive language.

It must be noted that no WDC staff or elected members, including O'Regan and Dyet, made a complaint. It appears they were not offended.

It is not for others to be offended on their behalf.

We can establish a simple principle: if Alf tells Bob that Charlie is a prick, Charlie is not offended. If Bob tells Charlie that Alf said he is a prick, then Charlie is offended. Alf did not tell Charlie. Alf did not offend Charlie. Bob caused the offence.

Apply this principle to my submission. I did not cause offence to the complainants. Mayor Southgate certainly did.

MH is confused in paragraph 19. She notes that offensiveness is subjective, then identifies that an objective test must be used. She proposes considering what is offensive to a reasonable member of the public. This is strange, because that remains highly subjective. The correct test is already established in law. The Films, Videos, and Publications Act determines what is acceptable to be broadcast or distributed. The FVPA sets a PG13 rating on the language used. None of the WDC staff or complainants required parental guidance or can claim to be offended according to a level that is specifically set by Parliament as socially acceptable.

MH again uses the number of complaints to assess the materiality. In paragraph 21, she regards the 23 complaints she received as significant and alleges that is somehow objective. Logically, the number of invalid complaints must reduce the materiality. If the validation process had been carried out properly, there could be a meaningful conclusion, however, there are currently no known valid complaints, so the conclusion is meaningless.

Furthermore, this issue received national media coverage. 23 complaints out of 5 million people is objectively insignificant. It can safely be assumed that there are more than 23 lunatics, extremists, and Green party voters, so this is nowhere near the number required to be considered a sample consistent with MH's reasonable member of the public.

Such an argument suggests that the number of complaints could be offset by the number of messages of support I received, in order to find an average that could represent the reasonable member of the public. I can proudly state that I received more than 100 messages of support, including from 4 elected members of WDC, 30 voters in Waipa, and 10 disabled people.

Recommendations

Quite apart from the above dismissals of any and all breaches, It is not possible to reach a determination finding against me because NZBORA requires the principles of natural justice to have been followed. This clearly did not happen.

It would be unlawful to apply any of the recommendations. There is an important legal distinction between 'unlawful' and 'illegal'. In fact, it was unlawful to have carried out this investigation, given I raised the issue of validation, NZBORA, jurisdiction, and freedom of expression prior to the investigation commencing.

This is an important point, because elected members such as the Deputy Mayor, can be held personally accountable for unlawful expenditure under LGA Section 44. Her role in the CoC process exposes her to repaying the entire cost of the investigation.

MH notes an option for a censure. I do not accept that. I have more than sufficient grounds for a judicial review in that event, which would then necessitate Section 44. It would also set a precedent for the public to expect a CoC against Mayor Southgate's actual breaches to be treated in a very serious manner.

MH notes other options. There is no training course for invalid complaints. I clearly have a more detailed knowledge of the law and the CoC than staff or your advisers. I have no need for a mentor. I will not apologise to WDC. It is up to the people of Hamilton to determine whether I am suited to the role of an elected member.

CONCLUSION

The draft report is the product of a failed process and an incompetent investigator. It is an embarrassment to HCC. To be blunt, Michelle Hawthorne should have dismissed all complaints that did not comply in Step 1 of the process. She should then have considered the jurisdiction issue, which is simply following the precedent of complaints about Dave Macpherson, to dismiss any remaining complaints. There was no need for the Tompkins Wake preliminary assessment. In the event, TW obviously let themselves be biased by the Mayor's public statements, coming up with a report that was highly dubious.

I do not accept further delays. It is within the authority of yourself and the DM to consider the draft report along with this letter, and reach a determination that the submission was a private matter between myself and WDC, not subject to the CoC. Mayor Southgate could then apologise to me publicly, and the matter terminated.

Yours faithfully

Andrew Bydder

Dear councillors, Mayor and CE

The email below was sent by the CE's appointed investigator at 6.33pm last night (Thursday 25 July). As you will see it references communications since 6 July, nearly three weeks ago. During this time, I have requested VERIFICATION of the complaints, yet this is the first time I have received any form of verification. The importance of this cannot be understated because, as the investigator notes, **two of the complaints were found to be invalid.**

The NZ Bill of Rights Section 27 Rights to Justice requires this process to be carried out according to the principles of natural justice.

Obviously, I am not required to respond to invalid complaints. Until now, I did not know which complaints were invalid, and it was possible that all complaints were invalid. Therefore, I can only begin to respond now.

The investigator is giving me until 5pm today (Friday 26 July) to review and respond to the complaints. So three weeks of delays by her, and I get 1 day. This is unacceptable. I am fully committed today with prior engagements.

Natural justice also includes reasonable timeframes. The investigator has broken the law.

This is the latest in a series of illegal actions as part of this process.

I note that the verification process should have been undertaken by the preliminary assessment. When that was not done, I raised the matter with Michelle Hawthorne. She refused to address it. I raised the matter with CE Lance Vervoort. He refused to address it. Council staff released a press statement referring to the number of complaints as 24. Had the council ensured the complaints process was carried out properly, that number would have been different. The public was misled in a manner that is defamatory. I have serious concerns about staff bias in this matter. The principles of natural justice require there to be NO PERCEPTION of bias.

The process must be carried out in strict accordance with the law and the code of conduct. I have evidence that the alleged breaches are not material and that they are not within the council's jurisdiction. I am prevented from presenting this evidence due to the investigator's actions. I therefore require this investigation to be terminated.

Councillor Andrew Bydder

From: Mary Hill <MHill@clmlaw.co.nz>

Sent: Thursday, July 25, 2024 6:33 PM

To: Andrew Bydder <Andrew.Bydder@council.hcc.govt.nz>

Subject: RE: CODE OF CONDUCT INVESTIGATION - CONFIDENTIAL CORRESPONDENCE

Sensitivity: Confidential

Tēnā koe Councillor Bydder,

I have made inquiries of all persons who lodged a complaint, and I am satisfied that they intended to lodge a complaint against you pursuant to the Code of Conduct, subject to the following:

- One complaint was made using a false email address and phone number and will not be investigated further. It was not included in the copies of the complaints I have provided to you.

- Another complaint was made using an email address which did not appear to be valid, and subsequent inquiries have confirmed that the complaint was valid, and the complainant wishes to proceed. You have already been provided with a copy of that complaint.
- One email referred to me was not treated as a complaint from the outset (an email directly to you from Sue Crocker dated 25 June).

It is a matter for you whether you wish to provide any further response to my letter dated 6 July for my consideration. If so, that response should be provided within the timeframe set out in my email of 18 July, i.e. **by 5 p.m. 26 July.**

I will be commencing the second stage of my investigation on Monday. That will involve assessing whether the breaches complained about are material. You will be consulted again as part of the second stage of the investigation if it proceeds to preparation of a report for Council, as required by the Code. You will also be given an opportunity to be heard by Council before it makes any decision in relation to the outcome of my investigation.

Ngā mihi

Mary Hill | Partner

DD 07 927 0590 | FX 07 578 1433 | E MHill@clmlaw.co.nz

ANZ Centre, Level 3, 247 Cameron Road, Tauranga

PO Box 143, Tauranga 3144, New Zealand | DX HP40001

www.cooneyleesmorgan.co.nz

CooneyLeesMorgan



As you can see, I stated in the request "identifying names shall be redacted". It was refused because "withholding the names...is necessary"

And I asked for "records of a response to each complaint" i.e. the official outcome sent to the complainant. It was rejected because of "communication between council and its legal advisers" – I did not ask for that!

----- Original Message -----

From: Official Information <officialinformation@hcc.govt.nz>

To: "andrew.bydder@xtra.co.nz" <andrew.bydder@xtra.co.nz>

CC: Official Information <officialinformation@hcc.govt.nz>

Date: 30/08/2024 15:53 NZST

Subject: LGOIMA 416483

Kia ora,

We refer to your information request below. Hamilton City Council provides the following response.

Your request:

Please provide all complaints received by council concerning David MacPherson, including those rejected for not meeting code of conduct criteria. Identifying names shall be redacted, however dates shall be provided.

Please provide all records of a response to each complaint, including rejections for not meeting code of conduct criteria.

Our response:

I refer to your request dated 30 July 2024 for all complaints received by council concerning David MacPherson, including those rejected for not meeting code of conduct criteria. Identifying names shall be redacted, however dates shall be provided, and all records of a response to each complaint, including rejections for not meeting code of conduct criteria.

Council has decided to grant your request in part. This information will be provided to you shortly.

Council has decided to refuse your request in part under section 7(2)(a) and (g) of LGOIMA. This is because:

- Withholding the names of complainants and third parties (other than Council staff) is necessary to protect the privacy of natural persons. Council considers that complainants and third parties have a privacy interest in their personal information. This information was obtained by Council by way of the complaints process, which is not a public process. Complainants would have a reasonable expectation of privacy in this context, and third parties even more so, as they did not initiate a complaint. Disclosure of complaint names may cause these individuals distress, as the complaints are closed. Disclosure of complainant names is also likely to reduce the likelihood that people will use the code of conduct complaints process in future, which undermines the value of the Code of Conduct. Council

considers that there is little public interest in the identity of the complainants and third parties and that on that basis the privacy interest outweighs this consideration.

- **Withholding communications between Council and its legal advisors is necessary** in order to protect legal privilege. Some the documents are subject to legal professional privilege. Given that legal professional privilege is regarded as a fundamental element in the administration of justice, the public interest in ensuring the maintenance of the privilege is very high. On this basis, Council considers that the interest in maintaining the privilege is not outweighed by any other consideration.

In order to protect privacy and legal privilege, some redactions have been made to the documents which will be provided, and some information has been withheld.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Ngaa mihi

Keeley Faulkner

Official Information Coordinator

Legal services

Governance & Assurance Team | Partnerships, communication & Maaori

Email: officialinformation@hcc.govt.nz



Hamilton City Council | Private Bag 3010 | Hamilton 3240 | www.hamilton.govt.nz

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I support flexibility at work. While it suits me to send this email now, I don't expect a response outside of your own working hours.

From: Official Information <officialinformation@hcc.govt.nz>

Sent: Tuesday, August 27, 2024 5:29 PM

To: Andrew Bydder <andrew.bydder@xtra.co.nz>

Cc: Official Information <officialinformation@hcc.govt.nz>

Subject: LGOIMA extension

Kia ora,

We refer to your information request below. Hamilton City Council provides the following response.

I refer to your official information request dated 30 July 2024 for Dave Macpherson Code of Conducts.

The Local Government Official Information and Meetings Act requires that we advise you of our decision on your request no later than 20 working days after the day we received your request. Unfortunately, it will not be possible to meet that time limit and we are therefore writing to notify you of an extension of the time to make our decision, to the 3rd of September 2024.

This extension is necessary because we are consulting with third parties who are necessary to make a decision on your request are such that a proper response cannot reasonably be made within the original time limit.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact us.

Ngaa mihi

Keeley Faulkner

Official Information Coordinator

Legal services

Governance & Assurance Team | Partnerships, communication & Maaori

Email: officialinformation@hcc.govt.nz



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I support flexibility at work. While it suits me to send this email now, I don't expect a response outside of your own working hours.

From: Andrew Bydder <andrew.bydder@xtra.co.nz>

Sent: Tuesday, July 30, 2024 10:07 AM

To: Official Information <officialinformation@hcc.govt.nz>

Subject: OIA

Hi HCC

Please provide all complaints received by council concerning David MacPherson, including those rejected for not meeting code of conduct criteria. Identifying names shall be redacted, however dates shall be provided.

Please provide all records of a response to each complaint, including rejections for not meeting code of conduct criteria.

Regards

Andrew Bydder
ph022 632 7400

From: Michelle Hawthorne <Michelle.Hawthorne@hcc.govt.nz>

Sent: Monday, September 18, 2023 6:43 PM

To: [REDACTED]

Subject: Cr [REDACTED] - Social Media Posts - costs

Hi [REDACTED]

As discussed today I have been asked to write to you regarding the number of complaints Council has received regarding your social media posts from members of the public.

Since May, Council has received and reviewed four formal complaints from members of the public -

- 13/05/23 - Facebook post [REDACTED]
- 19/07/23 - Facebook comments in response to [REDACTED]
[REDACTED]
- 01/08/23 - Facebook post promoting [REDACTED]
- 22/08/23 - Facebook post regarding [REDACTED]

Not all of these have reached the threshold of being considered a breach of the code, however Council has an obligation to assess and respond to each complaint. For the majority of complaints, Tompkins Wake are engaged to provide an initial assessment. This helps provide confidence to all Elected Members and the public that these assessments are without bias. Typically, the review of a complaint by Tompkins Wake is between \$800 - \$1,400. Staff time managing the complaint process internally is in addition to this.

You are asked to consider the content of your social media posts, and whether removing reference to Hamilton City Council or a separate private account(s) is something you would be prepared to do. This may provide the public with additional clarity as to what might be considered actions in your capacity as an Elected Member vs as a private individual.

Ngaa mihi / kind regards,

Michelle (Mish) Hawthorne LLB

Governance and Assurance Unit Manager

Governance and Assurance

Business Services

Email: michelle.hawthorne@hcc.govt.nz

I support flexibility at work. While it suits me to send this email now, I don't expect a response outside of your own working hours.

Complainant submission 1:

I am not sure I have anything to add to this; having read through the original words by Cr Bydder, I still find them as sickening as when I first saw them reported; they are disgusting and demeaning and not befitting an elected official. So I would just like to add that a person who communicated with his peers in this manner, then refuses to accept or acknowledge any responsibility, is a disgrace and must be reprimanded in the strongest way possible. Thank you for sharing this report and thank you for your hard work bringing all of this together.

Complainant submission 2:

In response to the final report on the Code of Conduct complaints against Cr Bydder for his extraordinarily offensive written submission to Waipa Council, I think there can be no more damning evidence of Cr Bydder's complete disregard for other people, and his total lack of remorse for his behaviour, than the bizarre statements and accusations he has made to the investigator, Mary Hill, as detailed in her report at section 13. These are repeated below for convenience.

Given his behaviour, it seems very unlikely that he will respond positively to any form of intervention, and is most likely to merely abuse those appointed to try to help him see the error of his ways. He has continued to attack and insult anyone who disagrees with his approach since the presentation of his submission, and continues to demonstrate that he is unfit to hold public office. While Council cannot force him to resign, it should ensure he holds no positions of responsibility for the remainder of his hopefully short tenure. He is an embarrassment to the city.

Procedural issues [copied from Mary Hill's final report]

13. Councillor Bydder has raised three procedural issues in correspondence with me prior to my finding of a material breach on 6 July, and some further issues in his 15 August Letter which responds to my draft report. I responded directly to Councillor Bydder in relation to the preliminary matters raised with me, and I have addressed the further issues in this Report. Each issue and my response is summarised below. I do not consider that any of the matters raised by Councillor Bydder have affected the process undertaken in this investigation, which has been carried out in accordance with the Code including the Section 6 Principles. They are addressed here for completeness.

(a) Conflict of interest: Councillor Bydder suggested that he should be involved in selecting the independent investigator. It is not appropriate for the respondent to select the investigator. That would compromise the independence of the investigation. Councillor Bydder also suggested that I may be aware of other submissions he has made in other contexts. I have addressed that issue at paragraph 8 above.

(b) Invalid complaints: Councillor Bydder raised the possibility that all of the complaints could have come from a false email address and advised that he had asked a friend to lodge a false complaint to test the process. My validation process (described above) ensured that only complaints which included valid contact details and confirmation of agreement to the requirements for lodging a complaint under the Code were considered further. As explained above, one complainant who provided a valid email address and responded confirming that they lodged the complaint and agreed to it being considered further, also advised that they did not wish to participate further in the investigation process. Given they did not confirm which specific provisions of the Code they relied upon, that complaint has not been investigated further.

(c) Nature of engagement: Councillor Bydder requested clarification as to whether my appointment was a personal one or whether HCC had engaged Cooney Lees Morgan (my firm). I clarified that the appointment was personal to me but that the engagement was between HCC and Cooney Lees Morgan. I advised him to raise any further concerns about these matters with HCC.

(d) General process issues: In the 15 August Letter Councillor Bydder states that I *"formed opinions on a preliminary assessment without contacting [him]", "refused to communicate with [him]" and "used unreasonable timeframes to prevent [him] from participating."* None of those statements are accurate. The process that I have followed is set out above. My preliminary assessment of materiality, which I am required to make under the Code, was provided in writing to Councillor Bydder for his comments by letter dated 6 July. The letter (contained in **Appendix 4**) makes it clear that *"This is a preliminary assessment undertaken for the purposes of allowing you to provide comment before a final decision is made. It is not a determination that any breach has occurred."* I initially provided Councillor Bydder with 10 working days to respond to that assessment and granted subsequent extensions of a further 10 working days. I have also provided Councillor Bydder with an opportunity to provide written feedback on my draft report, or to discuss the draft report with me.²² I have never refused to consider feedback provided by Councillor Bydder on my assessments.²³

(e) Allegations against investigator: In his 15 August Letter to Lance Vervoort, Councillor Bydder has made various allegations including that I have been *"actively dishonest"*, *"tried very hard to lie"* and have *"actively falsified"* complaints. Those are serious allegations to make and are wholly rejected.