



---

## NOTICE OF MEETING

**Notice is hereby given of the Extraordinary Meeting  
of the Invercargill City Council  
to be held in the Victoria Room, Civic Theatre,  
88 Tay Street, Invercargill on  
Friday 21 June 2024 at 2.00 pm**

Mayor W S Clark  
Cr A J Arnold  
Cr R I D Bond  
Cr P M Boyle  
Cr S J Broad  
Cr T Campbell  
Cr A H Crackett  
Cr G M Dermody  
Cr P W Kett  
Cr D J Ludlow  
Cr I R Pottinger  
Cr L F Soper  
Cr B R Stewart

MICHAEL DAY  
CHIEF EXECUTIVE

## Extraordinary Council - Public

21 June 2024 02:00 PM

<b>Agenda Topic</b>		<b>Page</b>
1.	Apologies	
2.	Declaration of Interest	
3.	Code of Conduct Investigation – United Fire Brigades Association (A5404315)	3
3.1	<a href="#">Appendix 1 - Letter from Chief Executive United Fire Brigades Association dated 28 March 2024 (A299928)</a>	3
3.2	<a href="#">Appendix 2 - Terms of Reference (A5405907)</a>	5
3.3	<a href="#">Appendix 3 - Advice as to the Scope of the Code of Conduct (A5405847)</a>	8
3.4	<a href="#">Appendix 4 - Invercargill City Council Code of Conduct Complaint Investigation (A5403875)</a>	11
3.5	<a href="#">Appendix 5 - Letter from the Mayor to Chief Executive United Fire Brigades Association dated 7 June 2024 (A5405848)</a>	21

## CODE OF CONDUCT INVESTIGATION – UNITED FIRE BRIGADES ASSOCIATION

**To:** Council

**Meeting Date:** Friday 21 June 2024

**From:** Bruce Robertson – Chair Risk and Assurance Committee

**Approved:** Michael Day - Chief Executive

**Approved Date:** Tuesday 18 June 2024

**Open Agenda:** Yes

**Public Excluded Agenda:** No

---

### Purpose and Summary

The Local Government Act requires that Councillors must comply with the Code of Conduct adopted by Invercargill City Council.

The Invercargill City Council Code of Conduct (the Code) provides:

*Invercargill City Council Elected Members have an important and privileged role representing the people of Invercargill. This Code of Conduct represents a commitment from all Elected Members to maintain high standards of behaviour, which is important for their credibility as city leaders and for the reputation of Invercargill.*

*As well as articulating agreed professional and ethical behaviours, encouraging teamwork and facilitating effective local democracy, the Code is of value to the Council as a resource and information guide for existing Elected Members and an aid to the public - enabling the public to evaluate behaviour.*

The Code also provides that Councillors should always endeavour to act individually and collectively in a manner that maintains confidence in the good governance of Council.

This report is to enable Council to satisfy its obligations under the Code by:

- receiving the independent investigator's report into the Code of Conduct complaint lodged by the Chief Executive on behalf of the United Fire Brigades Association against the Mayor;
- considering the findings of the independent investigator; and
- determining whether a penalty, or other form of action will be imposed following those deliberations.

## Recommendations

That Council:

1. Receives the report titled 'Code of Conduct Investigation – United Fire Brigades Association'.
2. Note the perceived conflict of interest of Councillors.
3. Request, in accordance with clause 15.2.21 of the Council Code of Conduct that the Mayor speak to any submissions on the complaint from the United Fire Brigades Association.
4. Determines there has been a material breach of the Code of Conduct.
5. Notes that the Mayor has tendered an apology to the United Fire Brigades Association.
6. Resolves that the following, if any, binding actions be undertaken by the Mayor:
  - a.

## Background

On 28 March 2024 the United Fire Brigades Association (UFBA) Chief Executive wrote a letter of complaint to Council (the Complaint). The Complaint is attachment A. The Complaint was subsequently referred by the Chief Executive to the Chair of the Risk and Assurance Committee (the Chair) in accordance with clause 15.2.2 of the Invercargill City Council Code of Conduct (the Code) as a complaint under the Code.

On or about 5 April 2024 the Chair informed the Mayor and the complainant that the matter would be referred for preliminary assessment in accordance with the Code.

Clause 15.2.6 of the Code requires the preliminary assessment to determine whether:

- a) The Complaint is frivolous or without substance and should be dismissed;
- b) The Complaint is outside the scope of the Code and should be redirected to another agency or process;
- c) The subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the Complaint;
- d) The Complaint is a non-material breach of the Code;
- e) The Complaint is a material breach of the Code and should be the subject of a full investigation to be completed by an independent investigator.

The preliminary assessment determined as required by clause 15.2.6(e) of the Code that, based on the Complaint, the Complaint should be referred to an independent investigator. In accordance with the Code the UFBA and Mayor were provided with a copy of the preliminary decision and advised of the intention to refer the Complaint for independent assessment.

No application for review of the preliminary decision has been received by Council.

The terms of reference for the independent review were agreed and are attachment B. Relevantly the terms of reference set out the purpose.

To ensure a level of fairness to the complainant and respondent the terms of reference for the investigator were extended to ensure the Code was applicable to this complaint. The full scope of the investigation is:

5. *The purpose of the investigation is to consider the Complaint and determine whether any breach of the Code has occurred.*
6. *Mayor Clark is the only Elected Member named in the Complaint.*
7. *Specifically, the investigation will consider:*
  - a. *whether the conduct described in the allegations falls within the scope of the Code; and if so*
  - b. *whether the allegations about Mr Clark's conduct can be substantiated; and if so*
  - c. *whether that conduct constitutes a breach of either clause 6.4 and / or clause 8.3 of the Code; and if so*
  - d. *what recommendations are appropriate in respect of any breach.*

The independent investigator provided separate advice as to the question of the scope of the Code and its application to the Complaint. This advice is attachment C (the Advice). The Advice notes that the Local Government Act requires Council to adopt of Code which sets out expectations councillors' behaviour towards the public. The Advice provides that the Code allows a complaint from a member of the public and refers to the Auditor-General review of Local Authority Codes of Conduct to support this finding. The conclusion of the independent legal advice is that the Code permits a complaint, by a member of the public, about the behaviour of Elected Members towards members of the public. The independent investigation was continued on that basis.

Following interviews, the independent investigator prepared a report in June 2024 (the Report). A copy of the Report is attachment D. The draft report was provided to the Mayor for comment on or about 7 June 2024. The response of the Mayor is included in the final Report.

On or about 7 June 2024, the Mayor wrote to the Chief Executive of the UFBA. A copy of that correspondence is attachment E. The apology relevantly states:

*Regardless of the complaint investigation which is close to completion and what outcomes my Council agree are appropriate sanctions, I would like to take this opportunity to apologise to you personally, your staff and UFBA members present at the Invercargill dinner.*

The independent investigator makes the following findings relating to the specific terms of the Code:

*Clause 6.4*

- 54 Mayor Clark's conduct was a breach of clause 6.4 of the Code, both at the VIP table and during his speech.

*Clause 8.3*

- 59 Mayor Clark attended this event as a special guest. He was granted special privileges as a consequence – to sit at the 'top table' and to speak following the dinner. However, he did not take the necessary care with the speech he gave. I was told he routinely speaks without notes, but he should not need notes to be fair, respectful and courteous, as the Code requires of all Elected Members. The Mayor displayed no such qualities, which is a breach of clause 8.3.

The independent report makes the following recommendations:

- 60 This report is to be considered by Council. Council is best placed to determine what, if any, steps should be taken next.
- 61 However, it is evident that Mayor Clark's conduct has caused Ms X real distress and deeply offended firefighters who were present at the March event. Mr Clark should be asked to apologise to both. Irrespective of any intention (and by Mayor Clark's statement he contends he intended no harm to anyone) the effect of his conduct has been hurt, humiliation and anger and as a consequence the reputation of the Council has also been impacted. Offering up a genuine apology would be a respectful and courteous thing to do in the circumstances.
- 62 Mayor Clark has confirmed that he is prepared to apologise and, indeed, by the time Council considers this review he may have already made good on that point. If so, the fact of his apologies should be made public as a guide to others about what is expected of all Elected Members.
- 63 In the event that Council (or the Chief Executive) decides to publish the fact of Mayor Clark's apologies and / or this report the name of Ms X should be redacted. There is no public interest in knowing her identity and she should be allowed to put this event behind her without further risk.

Ms X has been provided with a copy of this report and has not objected to its publication in this form.

## Options

The Code provides that Council can delegate the consideration of the report to a Code of Conduct Committee to avoid bias. If Council was to take this path it would need to establish a Code of Conduct Committee with a majority of the members selected from the community in accordance with the Code. This option is not recommended. Although all Councillors have a perceived conflict of interest in this matter it is considered that the conflict can be appropriately managed at this time.

If Council elects to deal with the Complaint and the Report then the Code requires that Council:

- decide whether a material breach of the Code has occurred;
- if there was not a material breach of the Code was there an immaterial breach of the Code; and
- what if any penalty or action should occur in the event that there was a breach of the Code.

The Code provides that anyone with an interest in the Complaint may be invited to speak to any submissions that have been made, but may otherwise not take part in the hearing and decision-making process. The Mayors submissions are outlined a paragraph 44 of the independent investigators report.

The Code provides that consideration of the report will be in public except where the reasons for exemption from public disclosure under section 48 of the Local Government Official Information and Meeting Act apply. Council may determine to receive the report in public

but discuss the report in a public excluded session, noting that any final decision would be required to be made in a public meeting in accordance with the Code.

The independent investigation has determined that the conduct amounted to a breach of the Code. Council needs to determine it agrees with the assessment and whether the conduct is a material breach of the Code. Factors that may assist in the determination of materiality are set out in the Code as:

- The conduct was not stopped on request.
- The conduct appeared to be intentional, malicious, motivated by ill-will.
- The conduct caused serious harm, for example, reputation harm, or brought Council into disrepute.
- There is an ongoing pattern of breaches.
- Even though the conduct occurred on only one or two occasions, it represents a major departure from expected standards.

The Mayor has already apologised to the complainant and Ms X. Council needs to determine that those actions are sufficient or whether an additional penalty should be imposed. It can consider the following penalties and actions:

- a. A letter of censure to the members;
- b. A request (made either privately or publicly) for an apology;
- c. A vote of no confidence in the Elected Member
- d. Removal of certain council-funded privileges (such as attendance at conferences);
- e. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- f. Limitation on dealing with Council staff other than the Chief Executive;
- g. Suspension or removal from committees (including sub committees and joint committees) or any other Council bodies;
- h. An invitation to the Elected Member to consider resigning from Council.

Council may consider that a penalty will not be imposed where a respondent agrees to one or more of the following:

- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology.

## Attachments

- A Letter from Chief Executive United Fire Brigades Association dated 28 March 2024.
- B Terms of Reference
- C Advice as to the Scope of the Code of Conduct
- D Invercargill City Council Code of Conduct Complaint Investigation
- E Letter from the Mayor to Chief Executive United Fire Brigades Association dated 7 June 2024



28 March 2024

Michael Morris  
Manager of Governance  
Invercargill City Council  
Invercargill

By email: [michael.morris@icc.govt.nz](mailto:michael.morris@icc.govt.nz)

Dear Michael

**Letter of Complaint against Mayor of Invercargill, Nobby Clark**

I am writing to express my deep concern regarding the recent actions of Mayor Nobby Clark, which I believe constitutes a serious breach of the Invercargill City Council Code of Conduct, particularly sections:

- 6. Principles of Governance - 6.4 Respect for Other
- 8. Relationships and Behaviours - 8.3 Relationship with the Public

The United Fire Brigades' Association of New Zealand (UFBA) has been supporting firefighters for over 145 years. Our membership comprises around 14,000 firefighters from paid, volunteer, rural, urban, NZ Defence, airport, and industrial fire brigades. Our service to members includes advocacy and support, learning and development, and hosting challenge events and conferences across the nation.

On Saturday 16 March 2024, we hosted the UFBA Firefighter Challenge in Invercargill. There were 160 firefighters from all over the South Island in attendance along with many volunteer helpers, staff, family supporters, and local dignitaries. I personally extended an invitation to the Mayor of Invercargill and his wife to attend the Prizegiving dinner as our honoured guest, to support our members and celebrate their achievements during the event.

The Mayor and his wife attended the Prizegiving dinner and were seated at the VIP table along with our President, Invercargill MP Penny Simmonds, and senior UFBA staff.

It has come to my attention through several reliable sources, that the Mayor engaged in conversations with the gathered officials, where he articulated some disturbing and offensive views.

Initially, our guests passed the comments off as “banter”, however, the banter intensified including making disparaging and misogynistic remarks about his wife, disparaging remarks about Aucklanders, and young people in positions of authority, which was clearly directed at others sitting at the table and those who hold office in nearby parts of the country. The Mayor also described a massive divide between volunteer and paid firefighters, which is simply unfounded and misleading. When others at the table challenged the Mayor during these conversations, the Mayor threatened to talk about them on stage.





According to witnesses, during the Mayor's speech at the lectern on stage, he proceeded to mock, disrespect, degrade, offend, and embarrass our members, staff and other guests as follows:

- The Mayor disrespected our members by stating that volunteer firefighters are second-class citizens.
- The Mayor made a personal attack on the appearance of our MC and the fact she lived in Ponsonby, Auckland.
- The Mayor made another personal attack on our MC, challenging her competence as a communications professional.
- The Mayor implied that the UFBA President and our MC were having an affair, which is untrue.

All in attendance were horrified and appalled by the Mayor's hateful and disrespectful rhetoric. Many of our members and guests left the room in disgust at this behaviour from the Mayor. This has proven traumatic for my staff whereby we are providing professional support services to them.

Furthermore, our members in attendance at the Prizegiving dinner were all firefighters – many of whom are volunteer firefighters and all deserve nothing but absolute admiration and respect for the service they provide to all communities throughout New Zealand, including Invercargill.

If the allegations are proven, the behaviour of the Mayor has officially damaged the reputation of the Invercargill City Council in the view of the UFBA and our members.

The UFBA was pleased to host our event in Invercargill and no doubt the local economy benefitted. We may need to review any future plans to bring our business and members back to Invercargill if the attitude and values of the local Mayor are reflective of the city he represents.

Thank you for your attention, I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Butzbach', written in a cursive style.

William (Bill) Butzbach  
**Chief Executive Officer**  
**UFBA**

## Code of Conduct Complaint | Terms of Reference

### Background

1. On 28 March 2024 the Invercargill City Council (**Council**) received a letter from William (Bill) Butzbach outlining a series of complaints about Mayor Clark. Mr Butzbach is the Chief Executive Officer of the United Fires Brigades Association (**UFBA**).
2. Mr Butzbach's alleges that:
  - (a) On 16 March 2024 Mayor Clark, accompanied by his wife, attended a prizegiving dinner for the UBFA Firefighter Challenge held in Invercargill. Mayor Clark was a guest of the UBFA and was seated at the VIP's table as UBFA's 'honoured guest'.
  - (b) In the course of the evening Mayor Clark made a number of comments which Mr Butzbach alleges are offensive, including:
    - making disparaging and misogynistic remarks about his wife;
    - making disparaging remarks about Aucklanders and young people in authority;
    - stating that volunteer firefighters are second class citizens;
    - making personal attacks on the MC, who had flown from Auckland to MC the event;
    - challenging the competence of the MC; and
    - implying that the MC and the UFBA President were having an affair.
3. The letter has been considered by the Council's in-house legal team and has been classified as a Complaint under the Council's Code of Conduct for Elected Members 2022 (**the Code**). In particular, the Complaint alleges Mayor Clark breached:
  - (a) Clause 6.4 – respect for others; and
  - (b) Clause 8.3 – relationship with the public.
4. The Council's legal team has carried out a preliminary assessment of the Complaint and determined that it should be the subject of a full investigation. Linda Clark from Dentons Kensington Swan has been engaged to carry out the investigation.

### Purpose

5. The purpose of the investigation is to consider the Complaint and determine whether any breach of the Code has occurred.
6. Mayor Clark is the only Elected Member named in the Complaint.
7. Specifically, the investigation will consider:
  - (a) whether the conduct described in the allegations falls within the scope of the Code; and if so
  - (b) whether the allegations about Mr Clark's conduct can be substantiated; and if so
  - (c) whether that conduct constitutes a breach of either clause 6.4 and / or clause 8.3 of the Code; and if so
  - (d) what recommendations are appropriate in respect of any breach.

## Process

8. Clause 15 of the 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 this section of the Code, including clause 15.1 of the Code which sets out the guiding principles applicable and clause 15.2.16 of the Code which requires the investigator to:
  - (a) consult with the Complainant (in this case the author of the initiating letter), the Respondent, and any affected parties; and
  - (b) refer to any relevant documents or information.
9. In particular, the investigator shall ensure that:
  - (a) due process is respected;
  - (b) the approach for investigating and assessing the Complaint 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) Mr Clark is given the opportunity to consider and respond to any allegations made against him.
10. In accordance with clause 2 of the Code, the investigator may take the following factors into account when assessing materiality:
  - (a) the conduct was not stopped on request;
  - (b) the conduct appeared to be intentional, malicious, motivated by ill-will;
  - (c) the conduct caused serious harm, for example, reputation harm, or brought the Council into disrepute;
  - (d) there is an ongoing pattern of breaches; and
  - (e) even though the conduct only occurred on one or two occasions, it represents a major departure from the expected standards.
11. The investigator will prepare a report for the Chair of the Risk and Assurance Committee, who will share it with the Chief Executive.
12. In preparing that report the investigator will:
  - (a) interview the Complainant and others who attended the function on 16 March 2024;
  - (b) interview Mr Clark and / or receive written responses from him;
  - (c) interview any other person who the investigator considers could assist her inquiry; and
  - (d) refer to any relevant documentation or other evidence, if any exist.
13. Interviews will be digitally recorded and transcribed. The investigator will delete all recordings and transcriptions 30 days after the report has been provided to the Chair of the Risk and Assurance Committee.
14. 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..

### **Completion of report**

15. The investigator is to provide a report setting out the findings and recommendations (if any) before 30 June 2024.

## MEMORANDUM – Legally privileged

To: Andrew Cameron  
Chief Risk Officer  
Invercargill City Council

From: Linda Clark

Date: 12 May 2024

Matter number: ICC444/2001

Subject: **Code of Conduct complaint**

- 1 This memorandum sets out the preliminary steps required before we can commence the independent investigation of the complaint by the United Fire Brigade Association (**UFBA**) about the alleged conduct of Mayor Nobby Clark at a UFBA event on 16 March 2023.
- 2 There are two issues to be resolved, namely:
  - a A question of scope:
    - i is the conduct complained of within the scope of the Code of Conduct (**the Code**)?
    - ii can a member of the public make a complaint under the Code?
  - b Terms of reference need to be agreed.

### **A question of scope**

- 3 Mayor Clark has raised this issue as a reason for not cooperating with any investigation. He claims clause 3 of the Code limits the scope of the conduct that can be the subject of a complaint and therefore the alleged conduct is out of scope.
- 4 Mayor Clark does not specifically raise the issue of whether a member of the public is entitled to make a complaint. But we consider this is a related question of scope.

*Does the Code permit a complaint about the behaviour of Elected Members towards members of the public?*

- 5 In short, the answer is yes but this is not entirely straight-forward.

Fernanda Lopes & Associados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons is an international legal practice providing client services worldwide through its member firms and affiliates. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

- 6 As you correctly identify in the preliminary assessment, the Code as drafted and as adopted by Council on 1 November 2022 contains a number of inconsistencies.
- 7 Clause 3 defines the scope of the Code as being ‘designed to deal with the behaviour of Elected Members towards each other, the Chief Executive and staff and the media’. There is no mention in clause 3 of the behaviour of Elected Members towards the public in general.
- 8 Other key provisions in the Code do reference the public and also define behaviours towards the public which if breached would constitute a breach of the Code, in particular:
- a Clause 4 defines how the Code will be applied. Under clause 4 the Code applies to Elected Members ‘at all times in their official capacity’ and further that ‘Elected Members must have this standard of behaviour in mind in the public arena whether as a part of a public rally, public speech or via websites or social media platforms. Clause 4 requires that ‘where a connection of any kind can be made to the behaviour of an Elected Member in their official capacity, then this Code of Conduct will apply’. (emphasis added)
  - b Clause 6.4 (one of the clauses cited in the complaint) requires Elected Members to have respect for others. This obligation is broadly defined such that clause 6.4 refers to ‘people, including other Elected Members’. This clearly extends the obligation so that every Elected Member must have respect for others beyond other Elected Members. Clause 6.4 also refers to ‘not making any unreasonable, unwelcome or unsolicited comments to the public or other Elected Members’. (emphasis added)
  - c Clause 8 (also cited in the complaint) deals with relationships and behaviours. It is described as setting out ‘Council’s agreed standards of behaviour between Elected Members; Elected Members and staff; and Elected Members and the public’. Any breach of the clause 8 standards ‘represents a breach of this Code’. The standards expected for Elected Members relationship with the public is expressly stated at clause 8.3. How Elected Members are required to manage their relationship with the media is covered extensively by a different provision, clause 9. (emphasis added)
- 9 Were the Code as a whole to be interpreted in such a way that the limited scope of clause 3 prevails over all other clauses this would also be inconsistent with the Local Government Act 2002 (LGA).
- 10 Under the LGA, Sch 7, clause 15(1) all councils must adopt a Code of Conduct. That Code ‘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 towards one another, staff and the public’.<sup>1</sup>
- 11 Notwithstanding clause 3, the ICC Code does set standards of what is expected from Elected Members in public and in their relationships with the public. Consequently, if an Elected Member breaches any of the behaviour standards included in the Code either at a public event, or in respect to any member of the public, provided the Elected Member was acting in their official capacity at the time that conduct could be the subject of a complaint. The key question to ask here is: in what capacity was the Elected Member acting at the time of any allegedly inappropriate conduct? The answer to that question will inform whether or not the Code applies.

---

<sup>1</sup> LGA, Sch 7, cl 15)2)(a)(i).

*Can a member of the public make a complaint about an Elected Member?*

- 12 Clause 15 of the Code states that ‘any Elected Member or the Chief Executive (including on behalf of a member of staff of Council) may make a complaint’.
- 13 We take this to mean that when it adopted the Code Council anticipated that complaints would be made by Elected Members or by the Chief Executive. However, unlike the Codes of Conduct adopted by some other councils, there is nothing in the Code that prohibits a member of the public making a complaint.<sup>2</sup>
- 14 This leaves the question open to the discretion of Council.
- 15 In consideration of this, guidance provided by the Office of the Auditor-General on the application of local authority codes of conduct may be useful.<sup>3</sup>

Few codes expressly say whether or not members of the public are permitted to make a complaint under a council’s code. One case involving the Mayor of Whanganui, which received a large amount of media coverage, arose from complaints from members of the public, but very few complaints have in fact arisen in that manner.

Accordingly, many councils have not yet considered whether they would permit a complaint under their code to be made by someone outside the council. Most, when asked, said they probably would. After all, some aspects of the code are likely to relate to the public. The Act requires that, among other things, a code must cover members’ ‘behaviour toward ... the public’.

- 16 Those Councils with Codes of Conduct that expressly allow complaints to be made by members of the public include the Christchurch City Council and the Auckland Council.
- 17 We do not take Mayor Clark’s objections to be a complaint about the identity or standing of the complainant per se. His issue, as set out above, is that the alleged conduct is outside of scope.
- 18 However, for completeness we bring this related issue to your attention at the outset.

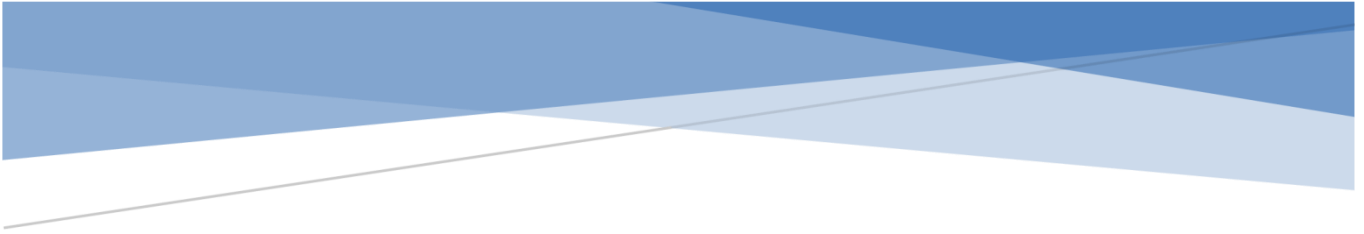
**Terms of Reference**

- 19 A draft terms of reference is attached to this memorandum. This needs to be approved before we can begin and as a first step, following approval, a copy of the Terms of Reference will be sent to both the complainant and Mayor Clark.

Linda Clark  
Partner  
Dentons Kensington Swan

<sup>2</sup> See the MacKenzie District Council Code of Conduct. It states that complaints can only be made by Elected Members or the Chief Executive.

<sup>3</sup> [Part 5: Experiences of councils that have used their code — Office of the Auditor-General New Zealand \(oag.parliament.nz\)](#)



# INVERCARGILL CITY COUNCIL CODE OF CONDUCT COMPLAINT INVESTIGATION

Confidential

June 2024

Linda Clark  
Dentons Kensington Swan  
[linda.clark@dentons.com](mailto:linda.clark@dentons.com)



## Introduction

- 1 On 16 March 2024 firefighters from across the South Island gathered in Invercargill for the United Fire Brigades' Association (**UFBA**) Firefighter Challenge. The Firefighter Challenge is a highly anticipated event at which firefighters compete, in front of an audience, in a variety of events, with the winners progressing to a National Firefighter Challenge. The event attracted more than 100 participants, including career firefighters, volunteer firefighters and firefighters from the armed forces and airports.
- 2 At the end of the competition, a formal dinner was held for all participants, with the winners in each category recognised and awards presented. The formal Prizegiving Dinner is regarded as an important occasion for the firefighter community.
- 3 As is usual practice, UFBA organisers of the event invited the local MP and Mayor as special guests. Both Penny Simmonds, MP for Invercargill, and Nobby Clark, Invercargill Mayor, attended the dinner and both were seated at 'the VIP table'.
- 4 On 28 March 2024 the Invercargill City Council (**Council**) received a letter of complaint from Bill Butzbach, the UFBA CEO concerning the conduct of Mayor Clark at the firefighters' event. Mr Butzbach alleged that:
  - a The Mayor engaged in conversations with officials at the event where 'he articulated some disturbing and offensive views';
  - b He made 'disparaging and misogynistic remarks about his wife';
  - c He made 'disparaging remarks about Aucklanders, and young people in positions of authority';
  - d He described 'a massive divide between volunteer and paid firefighters';
  - e He 'disrespected our members by stating that volunteer firefighters are second class citizens';
  - f He 'made a personal attack on the appearance of our MC and the fact she lived in Ponsonby, Auckland';
  - g He also challenged 'her competence as a communications professional';
  - h He 'implied that the UFBA President and our MC were having an affair, which is untrue'.
- 5 Mr Butzbach described the Mayor's comments as 'hateful and disrespectful rhetoric' and said attendees at the event were 'horrified and appalled' by his conduct.
- 6 Council officers have determined this is a complaint under the Council's Code of Conduct for Elected Members 2022 (**the Code**). In particular, it refers to alleged breaches of Clause 6.4 and Clause 8.3 of the Code. In May 2024, I was engaged to investigate those alleged breaches.

## Terms of Reference

- 7 The purpose of the investigation is to consider the Complaint and determine whether any breach has occurred.
- 8 Mayor Clark is the only Elected Member named in the Complaint.
- 9 Specifically, the investigation is to consider:
  - a whether the conduct described in the allegations falls within the scope of the Code;
  - b whether the allegations about Mr Clark's conduct can be substantiated; and if so
  - c whether that conduct constitutes a breach of either clause 6.4 and / or clause 8.3 of the Code; and if so
  - d what recommendations are appropriate in respect of any breach.
- 10 A copy of the Terms of Reference was provided to Mayor Clark prior to the commencement of my investigation.
- 11 To complete my inquiry I interviewed a range of people who attended the event, including those who were seated at the same table as the Mayor, some who sat with the general audience, and others who had a formal role in organising the Prizegiving Dinner or in seeing it run smoothly on the night. I also interviewed the Mayor's partner, who attended the event with Mr Clark. I invited Mayor Clark to participate in this investigation but he chose not to be interviewed nor, initially, to provide a written statement. He was shown a draft of this report prior to its finalisation and at that stage he provided a short statement. He did so while maintaining that the Code does not apply in these circumstances. Mr Clark's position is that members of the public cannot make complaints under the Code.
- 12 Notwithstanding Mayor Clark's position and the information provided by his partner, there is a high degree of unanimity between others interviewed about what happened during this event. I rely on their accounts for my findings. No recordings of the event appear to exist.

## Report in summary

- 13 This investigation finds Mayor Clark breached the Code, in particular clauses 6.4 and 8.3.
- 14 He attended a formal dinner in his capacity as Mayor and his conduct at that event left others feeling hurt, humiliated and angry.
- 15 The Mayor's partner, who attended the dinner with him, described Mr Clark as has having a unique sense of humour. But others who witnessed what happened categorically say his comments went well beyond harmless banter. They describe him singling out a female contractor at the event and repeatedly denigrating her and insulting her, in what one witness described as a 'nasty' attack. They also describe him insulting firefighters with comments about volunteer firefighters being 'second class citizens'.
- 16 These comments were made in the context of a formal and much anticipated Prizegiving Dinner at which Mr Clark was a special guest, and given an opportunity to speak.
- 17 The Code requires Elected Members to treat members of the public courteously and respectfully. Mayor Clark did neither. Instead he engaged in the kind of conduct the Code expressly prohibits, including engaging in offensive and abusive behaviour, making a personal attack and making degrading and insulting remarks.
- 18 Members of the public who invite an Elected Member to their special events do not expect this kind of behaviour and should not have to put up with it. Mr Clark should apologise.
- 19 When provided with a draft of this report on 6 June 2024 Mayor Clark acknowledged some of his comments were 'inappropriate'. While he maintains his overall conduct was not as described, he also indicated an immediate willingness to apologise for what was said.

## Codes of Conduct

- 20 Every council must have a Code of Conduct.<sup>1</sup> To comply with the Local Government Act 2002 (**LGA**) the Code of Conduct must set out the understandings and expectations adopted by the local authority about the manner in which elected members may conduct themselves while acting in their capacity as councillors, including behaviour towards one another, staff and the public.
- 21 Local Government New Zealand (**LGNZ**) has described the codes as being an 'important part of building community confidence in our system and processes'.<sup>2</sup> In particular LGNZ states codes contribute to:
- a good governance of the city, district or region;
  - b effective decision making and community engagement;
  - c the credibility and accountability of the local authority to its communities; and
  - d a culture of mutual trust and respect between members of the local authority and with management.
- 22 Under the LGA, Sch 7, cl 15(4) a member of a local authority *must* comply with their council's Code of Conduct. The Invercargill City Council's Code was adopted by Council on 1 November 2022.

## The Invercargill City Council's Code

- 23 The Code applies to all elected members.
- 24 For the purposes of this investigation, the key clauses are as follows:

<sup>1</sup> Local Government Act 2002, Sch 7, Part 1, cl 15.

<sup>2</sup> Te Tikanga Whanonga a LGNZ: the Local Government Code of Conduct, October 2022, p 4.

- a *Clause 4 (Application)*: The Code applies to Elected Members at all times in their official capacity as Elected Members, and as representatives of Invercargill City Council and the wider community. Elected Members, like all citizens, are entitled to freedom of expression and play an important role in putting issues out for public debate and discussion. As a community leader and elected representative, this comes with a concurrent responsibility to be respectful, and open-minded to alternative views. Elected Members must have this standard of conduct in mind in the public arena whether as a part of a public rally, public speech or via websites or social media platforms.

Where a connection of any kind can be made to the behaviour of an Elected Member in their official capacity, then this Code of Conduct will apply.

- b *Clause 6 (Principles of Governance)*:

- i *Clause 6.4 (Respect for others)*: Elected Members will treat people, including other Elected Members with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- Treating people, including other Elected Members, with respect and courtesy, regardless of their 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.

- c *Clause 8 (Relationships and Behaviours)*:

- i *Clause 8.3 (Relationship with the Public)*: To maintain a productive relationship with the public, Elected Members will:

- Interact with members of the public in a fair, respectful, equitable and honest manner;
- Treat members of the public in a courteous manner;
- Act in a way that upholds the reputation of Council and values community involvement in local democracy; and
- Ensures their behaviour, in the mind of the public, does not undermine the reputation of Council or other Elected Members.

- d *Clause 15 (Breaches of the Code)*: All complaints must relate to the conduct of an Elected Member when acting in their capacity as an Elected Member. All complaints will be considered in a manner that is consistent with the principles in clause 15.1, which are:

- i That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;

- ii That the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code.
- 25 There is one further relevant clause, which Mayor Clark insists supports his position that this complaint should not be considered as a Code of Conduct complaint. For completeness, I include it here although this investigation was only commenced after Council officers had determined that the UFBA complaint could be managed under the Code.
- 26 Clause 3 states that 'the Code is designed to deal with the behaviour of Elected Members towards:
- a each other
  - b the Chief Executive and staff
  - c the media'.
- 27 Mayor Clark's position is that clause 3 defines the total scope of the Code which he notes is 'silent on the inclusion of public complaints'. As outlined above, however, the Code clearly applies to any conduct of an Elected Member when they are acting in their official capacity (clause 4) and expressly refers to their relationship with and behaviour towards members of the public (clause 8).

## **The complaint investigated**

### **Planning for the Firefighters' Challenge event**

- 28 The UFBA event organiser contacted the Mayor's office on 28 February 2024 inviting him to be a guest at the Prizegiving Dinner.
- 29 Prior to the event, the UFBA events team provided background information to the Mayor's office, including a briefing pack and suggested speaking notes which referred to the Firefighter Challenge event itself and a prompt that, as speaker, he may wish to congratulate participants and thank them for their service as firefighters.
- 30 The same preparatory steps were taken with the office of the local MP, Ms Simmonds.
- 31 Both Ms Simmonds and Mr Clark were also invited to attend any of the events to be held during the day.

### **The 16 March Prizegiving Dinner**

- 32 With the exception of one interviewee (the Mayor's partner who attended the function with Mr Clark), all other interviewees described the Mayor's conduct in similar ways. The descriptions of Mr Clark's conduct from the time he arrived at the venue included that he was 'antagonising in conversation', 'argumentative', 'bizarre' and 'completely inappropriate'.
- 33 Interviewees could not recall the precise words used but there was agreement that:
- a Mayor Clark targeted the UFBA's communications contractor, Ms X,<sup>3</sup> commenting critically on her clothes, her manicured fingernails, her place of residence, her competence and her experience both while he was sitting at the VIP table and later in a speech to the entire audience.
  - b A number of interviewees described being made uncomfortable about the comments about Ms X. Said one, 'He was nasty about [Ms X]'. Said another, 'He singled her out in front of the whole room. It was defamatory'. And another, 'He zoned in on [Ms X]. Her made her feel silly'.
  - c All recalled that, during his speech, he said words to the effect that there was 'a love interest' between Ms X and UFBA President Warren Maslin. Both Mr Maslan and Ms X had been sitting at the VIP table with Mayor Clark. One of those sitting in the general audience understood Mr

---

<sup>3</sup> Ms X's name has been redacted in the interests of maintaining her privacy.

Clark to mean 'Warran and [Ms X] were sleeping together'. He described the comment as 'very strange' and 'offensive'.

- 34 Ms X had never met Mayor Clark previously and she said he did not attend the challenge races during the day so had not seen her at work. She reports being very distressed by the Mayor's conduct towards her. She is a self-employed communications specialist and MC with decades of experience. For the past six years she has been contracted by the UFBA to assist with key events, including the Firefighters' Challenge. We were told they rate her very highly. On the day in question she had been a commentator during the challenge races and was well known to the competitors and their supporters. She says Mayor Clark criticised her appearance, told others sitting beside her (including the UFBA President who ultimately was employing her at the event) that she was 'useless', that she couldn't do her job and that he was 'convinced' she was in a relationship with Mr Maslin.
- 35 She says the comments were 'deeply humiliating' and she 'wished the ground would open up and swallow her'. She felt unable to defend herself in front of those who were employing her to be there, fearing it would provoke even more comments from the Mayor. The whole episode reduced her to tears and even days later she was made anxious thinking about having to appear and host another event.
- 36 Other interviewees also agreed that Mayor Clark, again during his speech, spoke at length about the status of volunteer firefighters. Mr Clark referenced a family connection with volunteer firefighters. Interviewees agreed he said words to the effect that there was 'a division' between kinds of firefighters and in particular that:
- a He felt sorry for volunteer firefighters because they are not treated the same as career firefighters.
  - b Volunteer firefighters are second class citizens.
  - c They have lower quality equipment - 'second hand stuff' or 'hand me down gear'.
  - d Career firefighters are paid to sit around waiting for a call-out.
- 37 During Mr Clark's speech one veteran firefighter walked out in protest. The man had family members who are both career and voluntary firefighters competing in that day's Firefighters' Challenge. He told this investigation the way Mr Clark spoke about individuals was 'inexcusable' and that his 'pointed comments about career firefighters' left him uncomfortable and angry. The man said he did not want to listen to Mr Clark, who he described as 'absolutely divisive' and 'nasty'. He said he returned to the room only once Mr Clark had finished speaking.
- 38 There was also unanimity among those interviewed, both those sitting close to the Mayor and in the general audience, that he made disparaging comments about the ability of young people to hold down demanding jobs, or be leaders. These comments were also described as 'odd' and 'bizarre'. He also made disparaging remarks about the Mayor of Gore, based on his youth.
- 39 Notably, all interviewees agreed the Mayor did not speak from notes and he did not congratulate the winners of the day's competition.
- 40 After the speech, the event's MC (not Ms X) took to the stage. He challenged Mayor Clark's comments directly, referring to him as 'mis-informed' or 'ill-informed'. He was given a standing ovation.
- 41 After the awards had been handed out, the UFBA President said he 'leaned close' to Mr Clark and remonstrated with him. The President said he told Mr Clark, 'You have no idea. You so misread the room'. He said Mr Clark did not reply but a short time later Mr Clark and his partner left the venue.

- 42 As noted above, the Mayor's partner provided a different interpretation of events. She accepted that Mr Clark caused offence at the Prizegiving Dinner but she said he did not intend to make anyone uncomfortable. His sense of humour was, she said, 'unique'.
- 43 She, in turn, felt aggrieved by the comments made by the MC following Mr Clark's speech, and by the President's post awards remonstrations. She said she did not feel welcome. She also said she observed some firefighters in the room supporting Mr Clark's comments about volunteer firefighters. None of the others interviewed accepted this.
- 44 Mayor Clark provided a short statement once he had the opportunity to see this report in draft form. The statement says:
- a While sitting at the VIP table, 'there was a high level of fun at the table – very jovial', with 'banter which went both ways'.
  - b 'The statements regarding me and my behaviour are overly harsh / critical and in my view are not reflective of what happened on the night'.
  - c He confirms he did speak without notes and that he referred to a 'love fest around our table'. 'This was not intended to do any harm but I acknowledge its inappropriateness.'
  - d He also confirms that he referred to 'second class citizens', but he denies this was in the context referred to in the complaint. He says 'what I actually said was there can sometimes be a perception that volunteers are like second class to the main firefighters but that was not what I hear ...without the volunteers in our outlying areas, we would be in dire straits'. He accepts that the 'second class comment' created concern, but says that was not his intent.
  - e He says as he left the venue 'a volunteer came up to me and said, 'We think you were right on the mark with your comments – can you give the team a wave before you leave'. Which, he says, he did.

**Does the conduct fall within the scope of the Code?**

- 45 Under clause 4 of the Code, 'where a connection of any kind can be made to the behaviour of an Elected Member in their official capacity, then this Code of Conduct will apply'.
- 46 There is no question that Mr Clark was attending the Prizegiving Dinner in his capacity as Mayor of Invercargill. The invitation was extended through the Mayor's office. He was seated at the table for designated 'VIPs' and I was told he was introduced to the stage as 'His Worship'.
- 47 At all times, whether he was engaged in conversation with others at the VIP table, or giving a speech, or merely mingling with attendees at the event, he was acting in his official capacity as Mayor and therefore his conduct falls within the scope of the Code.

**Are the allegations about Mayor Clark's conduct substantiated?**

- 48 The wording of the letter of complaint from Mr Butzbach identified a number of aspects of Mr Clark's behaviour as being allegedly in breach of the Code. I have grouped the complaint as an inquiry about the following alleged conduct, namely that Mayor Clark:
- a made disparaging and personal remarks about Ms X, both at the table and to the general audience during his speech;
  - b made divisive and disrespectful remarks about volunteer firefighters and the difference between volunteer firefighters and others; and
  - c made a public remark, implying that the UFBA President and Ms X were 'having an affair'.
- 49 Mr Butzbach did not attend the Prizegiving Dinner and therefore was not a witness. However, the recollections of those who did attend were strikingly similar. It is apparent from Mayor Clark's short

statement that his recollection is different to others. But on reflection he has still accepted some of his comments were inappropriate.

50 In weighing up the differing accounts of what was said and how it was said, I find those witnesses who attended as organisers and participants of the Prizegiving Dinner to be credible. They have no reason to exaggerate their accounts. They do not live in Invercargill and most had not heard of Mayor Clark until that evening. On the basis of their descriptions the allegations at (a), (b) and (c) above are substantiated.

51 A further allegation, that Mr Clark made 'misogynistic remarks about his wife', was not substantiated by any of the interviewees.

### **Is this conduct a breach of the Code?**

#### *Clause 6.4*

52 Clause 6.4 requires an Elected Member to treat people with respect and courtesy. As set out in the Code it also expressly prohibits a number of behaviours. These include:

- a being aggressive, offensive, abusive, bullying;
- b making personal attacks;
- c making unreasonable, unwelcome or unsolicited comments to the public;
- d insulting, being malicious, degrading or offensive to the public.

53 The conduct as described by witnesses at the event is all of these. Mayor Clark's conduct, particularly towards Ms X, was described as 'nasty' and 'vile'. He 'zoned in on her'; her 'singled her out'. And what he said about her was personal, degrading, abusive, offensive, insulting and bullying. To the onlookers there, it was not, as his partner claimed, an expression of a 'unique' sense of humour. The victim of these remarks was left in tears and shocked. On the night, some of those who witnessed the speech took steps later to 'check in' on Ms X to see if she was alright because they were so concerned. This indicates the extent to which Mr Clark's speech crossed a line.

54 Mayor Clark's conduct was a breach of clause 6.4 of the Code, both at the VIP table and during his speech.

#### *Clause 8.3*

55 Clause 8.3 refers to an Elected Member's relationship with the public. It requires an Elected Member to, among other things:

- a interact with members of the public in a fair, respectful and honest manner;
- b treat members of the public courteously;
- c ensure their behaviour, in the mind of the public, does not undermine the reputation of Council and other Elected Members.

56 The members of the UFBA spoken to for this investigation did not consider that Mayor Clark interacted with them fairly, respectfully or courteously. In particular, his comments about volunteer firefighters and the difference between volunteers and career firefighters were regarded as offensive, divisive and trouble-making. Historically, a division did exist between the different groups of firefighters but successive leaders have worked hard to address this and to ensure that all firefighters feel valued and supported equally. The UFBA Firefighters' Challenge is a key fixture in promoting the 'family' of firefighters and all groups of firefighters compete and support the event. Repeatedly, in interviews firefighters expressed their strong reaction to the Mayor's remarks about there being a 'division' between firefighters. They described being insulted and angered by his comments. A



number mentioned that this was a ‘formal, auspicious occasion’, with firefighters all in dress uniform. In that context, to that audience the comments were, as described, ‘completely inappropriate’.

57 It is telling that the event’s MC felt compelled to address the Mayor’s comments about the fire service when he spoke following Mr Clark, and that he was given a standing ovation.

58 Further, the description of the Mayor by those interviewed indicates that his conduct did undermine the reputation of Council.

*‘I was shocked that he’s in the role of leadership.’*

*‘I have never seen anything like it.’*

*‘I was texting people during the speech being like, ‘do we try and get him off stage?’’*

*‘Within 10 to 15 minutes [after the speech] he got up and walked out and no one acknowledged him.’*

*‘Heaps of us have said that we wished that we got up and made him sit down’.*

*‘It ruined the night.’*

59 Mayor Clark attended this event as a special guest. He was granted special privileges as a consequence – to sit at the ‘top table’ and to speak following the dinner. However, he did not take the necessary care with the speech he gave. I was told he routinely speaks without notes, but he should not need notes to be fair, respectful and courteous, as the Code requires of all Elected Members. The Mayor displayed no such qualities, which is a breach of clause 8.3.

## **Recommendation**

60 This report is to be considered by Council. Council is best placed to determine what, if any, steps should be taken next.

61 However, it is evident that Mayor Clark’s conduct has caused Ms X real distress and deeply offended firefighters who were present at the March event. Mr Clark should be asked to apologise to both. Irrespective of any intention (and by Mayor Clark’s statement he contends he intended no harm to anyone) the effect of his conduct has been hurt, humiliation and anger and as a consequence the reputation of the Council has also been impacted. Offering up a genuine apology would be a respectful and courteous thing to do in the circumstances.

62 Mayor Clark has confirmed that he is prepared to apologise and, indeed, by the time Council considers this review he may have already made good on that point. If so, the fact of his apologies should be made public as a guide to others about what is expected of all Elected Members.

63 In the event that Council (or the Chief Executive) decides to publish the fact of Mayor Clark’s apologies and / or this report the name of Ms X should be redacted. There is no public interest in knowing her identity and she should be allowed to put this event behind her without further risk.

William (Bill) Butzbach  
Chief Executive Officer  
United Fire Brigade Association

7 June 2024

Hi Bill

I acknowledge your complaint dated 28 March 2024.

Regardless of the complaint investigation which is close to completion and what outcomes my Council agree are appropriate sanctions, I would like to take this opportunity to apologise to you personally, your staff and UFBA members present at the Invercargill dinner.

I would have made the apology as soon as I was advised of it, but I was advised to let the investigation run its course, as there are some important issues involved.

While I might want to contend that some of the issues raised are not clear for me, I accept that my behaviour was not good enough as an invited guest speaker.

For me, I felt terrible after the dinner and within a couple of days, and well before the complaint was lodged, I sought some specialist advice, as I do not normally present this way at public meetings.

You may not be aware that your dinner was my first public event after I had returned from a heart attack and open heart by-pass surgery.

The cardiac specialist I consulted advised me, after I approached them after your event, that I suffer from what is commonly referred to as 'brain fade' – a condition resulting from being on a heart/lung machine during the surgery (at the time, I did advise my colleagues of this impact).

The advice:

- The condition means that the brain wanders and doesn't also keep to a normal pattern – by joining and mixing thoughts
- With my tendency to have banter, this is now a risk for me 'going too far'
- The condition could take 2 years to pass but will improve over time
- That the way to avoid this effect is to read from predetermined notes (which I rarely do)

At a subsequent public meeting, on Youth Crime in our City, I used predetermined notes and I kept on track / and on what was appropriate to discuss.

So, again, I sincerely apologise for the unease I created for those at the event.

Regards

Nobby Clark  
Mayor  
Invercargill City Council