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## 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 26 July 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 Agenda

26 July 2024 02:00 PM

| <b>Agenda Topic</b>   | <b>Page</b> |
|---|-------------|
| 1. Apologies  |             |
| 2. Declaration of Interest  |             |
| 3. <a href="#">Code of Conduct Investigation – Councillors Bond and Pottinger (A5453044)</a>  | 3           |
| 3.1 <a href="#">Attachment A - Report to the Chief Executive of the Invercargill City Council - Independent investigation into Code of Conduct complaint against Mayor Nobby Clark (A5453043)</a> | 8           |
| 3.2 <a href="#">Attachment B - Statement from Mayor Nobby Clark - Pottinger - Bond Code of Conduct (A5473301)</a>   | 47          |
| 3.3 <a href="#">Attachment C - Cr Pottinger CoC Submission (A5473314)</a>   | 48          |
| 3.4 <a href="#">Attachment D - Cr Bond CoC Submission (A5475210)</a>  | 49          |

## CODE OF CONDUCT INVESTIGATION – COUNCILLORS BOND AND POTTINGER

|                                |                               |
|--------------------------------|-------------------------------|
| <b>To:</b>                     | Council                       |
| <b>Meeting Date:</b>           | Friday 26 July 2024           |
| <b>From:</b>                   | Michael Day – Chief Executive |
| <b>Approved Date:</b>          | Tuesday 23 July 2024          |
| <b>Open Agenda:</b>            | Yes                           |
| <b>Public Excluded Agenda:</b> | No                            |

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### 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 Councillors Bond and Pottinger 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 – Councillors Bond and Pottinger'.
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 Councillors Bond and Pottinger.
4. Determines there has been a material breach of the Code of Conduct.
5. Resolves that the following, if any, binding actions be undertaken by the Mayor:
  - a.

## Background

On 3 April 2024 Councillors Bond and Pottinger (the Complainants) wrote a letter of complaint to the Chief Executive of Council (the Complaint). On 5 April 2024 the Mayor and the Complainants were advised that the matter had been accepted as a Complaint under the Invercargill City Council Code of Conduct (the Code) and 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, this matter meets the preliminary requirements for a valid complaint and therefore we recommend that you appoint an independent investigator under clause 15.2.8 of the Code to investigate the Complaint. The Complainants 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 independent reviewer was provided with a brief which set out the requirements of the investigation under the Code.

Following their inquiries, the independent investigator prepared a report in July 2024 (the Report). A copy of the Report is Attachment A.

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

- 2.1 We find that the conduct of Mayor Clark in his interview with Guy Williams, aired nationally on the “New Zealand Today” television programme on 21 March 2024 (Interview), was in breach of the Code. Specifically, Mayor Clark’s language and other conduct in the Interview was in breach of the following clauses of the Code:
- a. Clause 6.4 – “Respect for others” – We find that, in multiple instances during the Interview, Mayor Clark used language and otherwise conducted himself in a manner that was disrespectful, discourteous, insulting, degrading, offensive, and/or discriminatory.
  - b. Clause 8.3 – “Relationship with the Public” – We find that Mayor Clark failed to treat or interact with members of the public in a respectful and courteous manner. We also find that Mayor Clark failed to act in a way that upholds the reputation of the Council and failed to ensure that his behaviour, in the mind of the public, did not undermine the reputation of the Council.
  - c. Clause 9.3 – “Contact with the media on an elected member’s own behalf” – We consider that Mayor Clark’s comments in the Interview were offensive in nature and reflected adversely on the Council.
  - d. Clause 7.2 – “Mayor” – We consider that Mayor Clark’s language and other conduct during the Interview fell short of the standard of leadership required of a Mayor.

The independent report makes the following recommendations:

- 2.2 We consider these breaches to be both material (as defined in the Code) and serious in nature. We consider that, at the very least, the following actions/penalties are warranted:
- a. A letter of censure to Mayor Clark.
  - b. A request that Mayor Clark publicly apologise.
- 2.3 We also recommend that Council seriously consider the further actions/penalties detailed below. We consider that these penalties/actions are warranted and would represent an appropriate exercise of Council’s discretion, particularly if satisfied that there is a risk of similar behaviour in the future:
- a. Taking steps to restrict Mayor Clark’s duties, particularly the public-facing aspects of his role or those involving media comment. Such a restriction could be for a specified period or until such time as Mayor Clark undertakes targeted education or training.
  - b. A vote of no confidence in Mayor Clark.
  - c. An invitation to Mayor Clark to consider resigning as Mayor.

## 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 Mayor's submissions are contained in Appendix C to the 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 material breach of the Code. Council needs to determine it agrees with the assessment. 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 made an apology to those offended by the interview. The Report addresses the impact of that apology at paragraphs 5.25 – 5.27 of the Report.

Council needs to determine that those actions are sufficient or whether an additional penalty should be imposed. It might 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**

Attachment A - Report to the Chief Executive of the Invercargill City Council - Independent investigation into Code of Conduct complaint against Mayor Nobby Clark (A5453043)



A5453043

# **Report to the Chief Executive of the Invercargill City Council**

Independent investigation into Code of Conduct complaint against Mayor Nobby Clark

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## TABLE OF CONTENTS

|     |  |    |
|-----|--|----|
| 1.  | Introduction .....                             | 1  |
| 2.  | Executive summary .....                        | 1  |
| 3.  | Process .....                                  | 2  |
| 4.  | Information considered.....                    | 5  |
| 5.  | Factual findings .....                         | 5  |
| 6.  | Points raised by Mayor Clark .....             | 9  |
| 7.  | Points raised by the complainants .....        | 10 |
| 8.  | Code of Conduct .....                          | 12 |
| 9.  | Specific findings on breaches of the Code..... | 14 |
| 10. | Penalties and actions .....                    | 17 |
| 11. | Next steps .....                               | 18 |

## APPENDICES

|    |  |     |
|----|--|-----|
| A. | Complaint .....                                | A1  |
| B. | Preliminary Assessment by Anderson Lloyd ..... | A4  |
| C. | Input from Mayor Clark .....                   | A7  |
| D. | Input from Councillor Bond .....               | A8  |
| E. | Summary of media coverage .....                | A10 |
| F. | Briefing document .....                        | A14 |

## Report to the Chief Executive of the Invercargill City Council

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**Dated:** 6 July 2024

### 1. Introduction

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- 1.1 Wynn Williams has been appointed by the Chief Executive of the Invercargill City Council (**Council**) to independently investigate a complaint relating to the conduct of the Invercargill Mayor Nobby Clark. Our appointment is pursuant to clause 15.2.14 of the Council's Code of Conduct dated November 2022 (**Code**).
- 1.2 Pursuant to clause 15.2.17 of the Code, this Report summarises the independent investigation, sets out the rationale for the findings of the investigation, and makes recommendations for appropriate penalties / actions.

### 2. Executive summary

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- 2.1 We find that the conduct of Mayor Clark in his interview with Guy Williams, aired nationally on the "New Zealand Today" television programme on 21 March 2024 (**Interview**), was in breach of the Code. Specifically, Mayor Clark's language and other conduct in the Interview was in breach of the following clauses of the Code:
  - (a) Clause 6.4 – "Respect for others" – We find that, in multiple instances during the Interview, Mayor Clark used language and otherwise conducted himself in a manner that was disrespectful, discourteous, insulting, degrading, offensive, and/or discriminatory.
  - (b) Clause 8.3 – "Relationship with the Public" – We find that Mayor Clark failed to treat or interact with members of the public in a respectful and courteous manner. We also find that Mayor Clark failed to act in a way that upholds the reputation of the Council and failed to ensure that his behaviour, in the mind of the public, did not undermine the reputation of the Council.
  - (c) Clause 9.3 – "Contact with the media on an elected member's own behalf" – We consider that Mayor Clark's comments in the Interview were offensive in nature and reflected adversely on the Council.
  - (d) Clause 7.2 – "Mayor" – We consider that Mayor Clark's language and other conduct during the Interview fell short of the standard of leadership required of a Mayor.
- 2.2 We consider these breaches to be both material (as defined in the Code) and serious in nature. We consider that, at the very least, the following actions / penalties are warranted:
  - (a) A letter of censure to Mayor Clark.
  - (b) A request that Mayor Clark publicly apologise.
- 2.3 We also recommend that Council seriously consider the further actions / penalties detailed below. We consider that these penalties / actions are warranted and would represent an appropriate exercise of Council's discretion, particularly if satisfied that there is a risk of similar behaviour in the future:
  - (a) Taking steps to restrict Mayor Clark's duties, particularly the public-facing aspects of his role or those involving media comment. Such a restriction could be for a specified period or until such time as Mayor Clark undertakes targeted education or training.
  - (b) A vote of no confidence in Mayor Clark.
  - (c) An invitation to Mayor Clark to consider resigning as Mayor.

### 3. Process

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#### *Governing provisions and Code of Conduct*

- 3.1 The Council is a territorial authority subject to the Local Government Act 2002 (**LGA**). The Mayor is a member of the governing body of the Council as defined by the LGA.<sup>1</sup>
- 3.2 The LGA requires the Council to adopt a code of conduct for members setting out, among other things, expectations about the manner in which members may conduct themselves while acting in their capacity as members.<sup>2</sup>
- 3.3 The Council adopted its Code of Conduct on 1 November 2002. As well as setting out standards of conduct, the Code also details a process for the receipt, investigation and resolution of complaints.

#### *Summary of the complaint, investigation and decision process*

- 3.4 The Code outlines the following process for the preliminary assessment and investigation of a complaint:
- (a) The Chief Executive will refer the complaint to either the Council's internal legal team or an external lawyer.<sup>3</sup>
  - (b) The referral is for a preliminary assessment, addressing specified questions including:<sup>4</sup>
    - (i) Whether the complaint is frivolous or without substance and should be dismissed.
    - (ii) Whether the complaint alleges a material<sup>5</sup> breach of the Code and should be the subject of a full investigation by an independent investigator.
  - (c) Where the preliminary assessment finds that the complaint alleges a material breach of the Code and that a full investigation is required, the Chief Executive will then refer the complaint to an independent investigator.<sup>6</sup>
  - (d) The independent investigator is to:
    - (i) Undertake an investigation appropriate to the scale of the breach.<sup>7</sup>
    - (ii) Consult with the complainant, respondent and any affected parties.<sup>8</sup>
    - (iii) Undertake a hearing with relevant parties.<sup>9</sup>
    - (iv) Prepare a report for the Chief Executive setting out the rationale for the findings and any recommendations for resolving the breach and/or appropriate penalties.<sup>10</sup>

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<sup>1</sup> See the definition of "member" in s 5 of the Act.

<sup>2</sup> Schedule 7, clause 15.

<sup>3</sup> Clause 15.2.3.

<sup>4</sup> Clauses 15.2.5 and 15.2.6

<sup>5</sup> Part 2 of the Code outlines factors to be taken into account in determining materiality.

<sup>6</sup> Clause 15.2.14.

<sup>7</sup> Clause 15.2.17.

<sup>8</sup> Clause 15.2.16.

<sup>9</sup> Clause 15.2.16. We consider that such a hearing can be conducted on the papers, particularly where, as here, key participants have not sought to be heard in person.

<sup>10</sup> Clause 15.2.17.

- 3.5 On receipt of the investigator’s report, the Chief Executive is to prepare a report for Council addressing the findings and the question of whether any penalty should be imposed or other form of action taken.<sup>11</sup> The Code includes a non-exhaustive list of potential penalties or other actions which can be taken in response to a finding that there has been a material breach of the Code.<sup>12</sup>
- 3.6 On receipt of the Chief Executive’s report, the Council is to undertake a hearing and/or decision-making process which should include:<sup>13</sup>
- (a) A briefing from the independent investigator if necessary.<sup>14</sup>
  - (b) An opportunity for the complainant(s) and respondent to speak to any submissions made.
- 3.7 Council is then to decide whether a material breach of the Code has occurred and what, if any penalty should be imposed or action taken.<sup>15</sup>

*Summary of the process undertaken in the present case to date*

- 3.8 On 3 April 2024, the Chief Executive of the Council, Michael Day, received a written complaint from Councillors Ria Bond and Ian Pottinger in respect of the conduct of Mayor Clark (**Complaint**).<sup>16</sup> The Complaint related to the conduct of Mayor Clark during an interview on an episode of the television programme titled “New Zealand Today” aired nationally on 21 March 2024.
- 3.9 The Complaint alleged various material breaches of the Code. A copy of the Complaint is included as **Appendix A** to this Report.
- 3.10 The Chief Executive appointed law firm Anderson Lloyd to undertake the preliminary assessment required by the Code. Both Mayor Clark and the complainants were advised of this step as is required by the Code.<sup>17</sup> Mayor Clark was provided with a copy of the Complaint.
- 3.11 On 22 April 2024, Anderson Lloyd sent the Chief Executive a letter detailing their preliminary assessment of the Complaint. The preliminary assessment concluded that:
- (a) The Complaint is not frivolous or without substance and should not be dismissed.
  - (b) The Complaint is not outside the scope of the Code.
  - (c) The Complaint has not previously been assessed in accordance with the Code.
  - (d) The Complaint alleged conduct that, if established, could be considered “material” applying the guidance in the Code.
- 3.12 A copy of the Anderson Lloyd letter detailing their preliminary assessment is included as **Appendix B** to this Report.
- 3.13 Following the preliminary assessment, Wynn Williams was appointed to conduct a full and independent investigation.

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<sup>11</sup> Clause 15.2.18.

<sup>12</sup> Clause 16.1.

<sup>13</sup> Clause 15.2.22.

<sup>14</sup> Whilst it is ultimately a matter for Council, we consider that this Report speaks for itself and that a briefing on the findings may not be necessary.

<sup>15</sup> Clause 15.2.22.

<sup>16</sup> Clause 15.2.1.

<sup>17</sup> Clause 15.2.4.

- 3.14 On 18 May 2024, we were provided with the complaint file from the Council.
- 3.15 On 27 May 2024, we sent letters to Mayor Clark, Councillor Bond and Councillor Pottinger advising that the Complaint was referred to Wynn Williams for independent investigation. The letters noted the process for dealing with complaints as set out in the Code.<sup>18</sup>
- 3.16 We also invited each party to provide additional input for the purpose of the independent investigation, either in writing or in person. In response:
- (a) Mayor Clark advised that he did not wish to participate in the investigation but did provide comments via email dated 28 May 2024 to explain his reasons for not participating. A copy of Mayor Clark’s email is included as **Appendix C** to this Report.
  - (b) Councillor Bond provided further comments in a letter to Wynn Williams dated 10 June 2024. A copy of Councillor Bond’s letter is included as **Appendix D** to this Report.
  - (c) Councillor Pottinger advised that he did not wish to make any further comments but noted via a phone call that he agreed with the comments made by Councillor Bond.
- 3.17 Given the above responses and the absence of disputed evidential issues, we determined that the hearing required by clause 15.2.16 of the Code could properly be conducted on the papers, without the need for an in-person hearing as part of the investigation.

#### *Investigation principles*

- 3.18 Our investigation has been conducted in a manner consistent with the following principles, as outlined in clause 15.1 of the Code:

The following principles will guide any processes for investigating and determining whether a breach under this Code has occurred:

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
  - that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
  - that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This is conditional on the nature of an alleged breach, and requires that affected parties:
    - have a right to know that an investigation process is underway;
    - are given due notice and are provided with an opportunity to be heard;
    - have a right to seek appropriate advice and be represented;
    - have their privacy respected.
- 3.19 As is set out above, to observe the principles of natural justice each party has been:
- (a) fully informed of the process being adopted; and
  - (b) provided the opportunity to be heard in person and/or in writing.

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<sup>18</sup> Clause 15.2.15.

## 4. Information considered

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- 4.1 Clause 15.2.16 of the Code requires the independent investigator to refer to any relevant documents or information. In addition to the documents provided to us by the Council, we have also had access to publicly available relevant information.
- 4.2 We have reviewed and considered the following information as part of our investigation:
- (a) The Complaint (**Appendix A**).
  - (b) The letter from Anderson Lloyd detailing their preliminary assessment of the Complaint (**Appendix B**).
  - (c) The further input from Mayor Clark (**Appendix C**).
  - (d) The further input from Councillor Bond (**Appendix D**).
  - (e) The “New Zealand Today” episode aired on 21 March 2024, which remains online and available to the viewing public free of charge via the Three Now streaming service.<sup>19</sup>
  - (f) The media articles collated in the “summary of links to media coverage” document provided by the Council (copy included as **Appendix E** to this Report).
  - (g) Correspondence from the Council’s Chief Executive to Mayor Clark, Councillor Pottinger and Councillor Bond detailing the process being adopted to assess and investigate the Complaint.
  - (h) The Code.
  - (i) A briefing document provided by the Council’s Chief Risk Officer for the purpose of our independent investigation (copy included as **Appendix F** to this Report).

## 5. Factual findings

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- 5.1 The chronological narrative below sets out our factual findings based on all of the information and evidence considered. It provides the factual foundation for our conclusions in part 9 regarding breaches of the Code.

### *Arts Foundation event*

- 5.2 On or about 6 March 2023, Mayor Clark attended an Arts Foundation of New Zealand and Arts Council of New Zealand Toi Aotearoa (Creative New Zealand) event.
- 5.3 On or about 7 March 2023, an Instagram account named “invercarg\_ill” posted a video of Mayor Clark from the event, in which he said the following regarding freedom of expression in relation to a proposed new Invercargill art gallery:<sup>20</sup>
- (a) “Does poetic expression override some of our societal norms?”
  - (b) “If we have art or poetry that uses words like ‘queer’, ‘n\*\*\*\*\*’,<sup>21</sup> ‘fuck the bitch’, which I have heard recently – is that beyond our tolerance?”

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<sup>19</sup> <https://www.threenow.co.nz/shows/new-zealand-today/season-4-ep-7/S2065-249/M83446-946>

<sup>20</sup> <https://thespinoff.co.nz/politics/08-03-2023/bleak-invercargills-mayor-just-used-the-n-word>

<sup>21</sup> Throughout this report we have used the euphemistic descriptor “N-word” to refer to the racial slur used by Mayor Clark. Where Mayor Clark is quoted and the term “n\*\*\*\*\*” is used, this is an instance where Mayor Clark has used the word in full.

- 5.4 The comments were made in reference to a poem titled “The Savage Coloniser” by Tusiata Avia in an Auckland show which received government funding via Creative New Zealand. That poem had referred to hunting Captain James Cook and white men with butchers’ knives.<sup>22</sup>
- 5.5 The above Instagram account no longer exists so we have not viewed the original video in full. However, a section of the video containing the above comments is included in the relevant New Zealand Today episode (as well as in various other media articles).
- 5.6 Council emails released under the Local Government Official Information and Meetings Act 1987 reveal that Lisa Knight, the Council’s Strategic Communications Manager, sent Mayor Clark an email on 8 March 2023 advising him to apologise for the comments made and suggested wording for such an apology.<sup>23</sup>
- 5.7 On or around 8 March 2023, Mayor Clark was interviewed on 1News in relation to his comments at the Arts Foundation event. During that interview, Mayor Clark is reported to have used the N-word a further six times.<sup>24</sup> He also stated that he would not apologise for his language at the event.
- 5.8 On or around 9 March 2023, Mayor Clark was interviewed on Newshub on the same topic. He is reported to have used the N-word a further eight times in that interview.<sup>25</sup> Mayor Clark was clear in stating that he hated the word and the negative connotations it carried. He repeated his position that he would not be making an apology.

#### *New Zealand Today Interview*

- 5.9 New Zealand Today is a television series hosted by comedian Guy Williams which aired its fourth season on television channel Three between February and March 2024. It is described as a comedy where Guy Williams “visits small-town New Zealand to investigate what he thinks are the most interesting stories in New Zealand today”.<sup>26</sup> Examples of other stories in the fourth season include a man in Timaru said to be famous for outrunning the Police on a mobility scooter and a baker in Christchurch who sells erotic-themed cakes.
- 5.10 Though the precise date of the Interview between Mayor Clark and Guy Williams is not clear, we understand the Interview took place in mid-2023 in the Mayoral lounge. The episode featuring the Interview did not air until 21 March 2024.
- 5.11 On 19 March 2024, in apparent anticipation of the Interview being aired, the Southland Tribune published an article titled “Mayor expects to be 'stitched up' in TV interview”.<sup>27</sup> Mayor Clark provided the following comments for the article:
- (a) “His [Mr Williams] primary focus was to trap me on the N-word, and he wasn’t able to do that. I signed a non-disclosure [agreement] before the interview that allowed them to cut and paste, so you can only imagine what the cutting and pasting will be”.

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22 <https://www.newshub.co.nz/home/new-zealand/2023/03/invercargill-mayor-nobby-clark-defends-saying-n-word-repeats-it-8-times-in-newshub-interview.html>

23 <https://www.stuff.co.nz/national/131532271/nobby-clark-swatted-away-invercargill-council-apology-advice>

24 <https://www.nzherald.co.nz/nz/invercargill-mayor-nobby-clark-says-n-word-again-rationalises-earlier-use/PQEUQY7O4BF2BF5OZFPUYD6TTE/>

25 <https://www.newshub.co.nz/home/new-zealand/2023/03/invercargill-mayor-nobby-clark-defends-saying-n-word-repeats-it-8-times-in-newshub-interview.html>

26 <https://www.threenow.co.nz/shows/new-zealand-today/S2065-249>

27 <https://southlandtribune.substack.com/p/mayor-expects-to-be-stitched-up-in>

- (b) “At the end [of the interview], he was highly elevated, and he said to me, ‘this is the most difficult interview I’ve ever done’. Because I just wouldn’t play ball with him”.
  - (c) “I said, ‘look, if you are worried about the N-word, spell it out, say it’. It took me about 20 minutes to get him to do that”.
  - (d) “I said to him, ‘do you expect to lose your job in the media now because you’ve used the N-word’? Because I had pressure on me to resign as Mayor because I used it”.
  - (e) “I’ve watched all his recent [programmes] that he’s done, and nobody comes out of it that good”.
  - (f) “I would say I’ll be trashed in it, but hey, I’ve got broad shoulders. I’ll be judged on the outcomes for the city. If someone wants to judge me on a TV programme or my stand on co-governance, so be it”.
- 5.12 On 21 March 2024, the New Zealand Today episode featuring the Interview aired nationally. As is noted above, the episode remains available for viewing without charge on the Three Now streaming service.<sup>28</sup>
- 5.13 The first eight minutes of the episode focus on a former Paraparaumu Councillor who had worn a KKK style hood to a Council meeting in a supposedly satirical protest. The remaining fourteen minutes of the episode focus on Mayor Clark’s use of the N-word, initially at the Arts Foundation event and then in subsequent interviews. The episode heavily features excerpts from the Interview, totalling approximately five and a half minutes.
- 5.14 Mayor Clark makes the following specific comments during the interview:
- “Look, if you had some rap music come in that every second word was n\*\*\*\*\*, would that be okay? Certainly not to me”.
- [...]
- “We’ve got a gang in town that calls themselves the South City N\*\*\*\*\* and I hate that terminology. It’s offensive to people”.
- 5.15 In an apparent effort to justify his use of the N-word, Mayor Clark raises a point about the use of the word “queer” to refer to homosexual people. At one point he asks Mr Williams whether he is gay, which is followed by the exchange below:
- Mayor Clark:* “You’ve tended to be leaning towards minority groups”
- Guy Williams:* “I’m not leaning towards”
- Mayor Clark:* “Well alright, bent over towards...”
- 5.16 As is addressed further below, we consider Mayor Clark’s comments in this exchange to be offensive and homophobic in nature. At another point in the interview, Mayor Clark uses the homophobic slur “f\*\*\*\*\*”.
- 5.17 Mr Williams suggests that Mayor Clark is ignorant and that he needs to learn and improve. This leads to the following exchange:
- Mayor Clark:* “Don’t feel I have to do that”
- Guy Williams:* “You need to because we need to learn and move forward as a society”

<sup>28</sup> <https://www.threenow.co.nz/shows/new-zealand-today/season-4-ep-7/S2065-249/M83446-946>

*Mayor Clark:* “No, the only way our society moves forward is to take those people you describe out of...”

*Guy Williams:* “Those people?”

*Mayor Clark:* “Well I can’t use the N-word because you...”

- 5.18 At one point in the interview, Mayor Clark repeatedly and provocatively encourages Mr Williams to use the N-word. He does so under the guise that he might agree not to use the N-word again if Mr Williams publicly says the word in full. We consider this to have been an offensive, persistent, deliberately provocative and gratuitous exchange initiated and continued by Mayor Clark.
- 5.19 Mr Williams states in the episode that he did use the N-word in his exchange with Mayor Clark, though he edited this footage out of the episode as he was embarrassed, regretted saying the word, and does not consider that he should ever use the N-word regardless of context.
- 5.20 Mayor Clark is then shown committing to Mr Williams that he will not use the N-word again. Mayor Clark follows this up by saying *“but interesting, for the benefit of wrapping up an interview, you were prepared to sell your soul”*.
- 5.21 During a concluding sequence of the episode, Mr Williams describes that Mayor Clark *“was down an internet rabbit hole, spouting numerous obviously debunked racist conspiracy theories during our interview”*. At this point of the episode Mayor Clark is seen, without audio or context, showing the camera and Mr Williams a copy of the book titled *“Twisting the Treaty – A Tribal Grab for Wealth and Power”*. The episode does not include any comments made by either Mayor Clark or Mr Williams in relation to the book.
- 5.22 Without specific examples directly from Mayor Clark, we do not place any weight on references to debunked racist conspiracy theories. However, and even without fuller context, we consider it particularly problematic that Mayor Clark has chosen to feature in the Interview a book which characterises Treaty of Waitangi claims as a “Tribal Grab for Wealth and Power”. This aspect is addressed further below in considering whether the Code has been breached.

#### *Aftermath to the Interview*

- 5.23 After Mayor Clark’s comments at the Arts Foundation event were first made public in March 2023, there was extensive and largely negative media coverage.<sup>29</sup> We consider that Mayor Clark’s comments in March 2023 and the subsequent coverage of them likely caused significant reputational damage to the Council, the office of the Mayor, and the city of Invercargill.
- 5.24 The airing of the New Zealand Today episode in March 2024 had the effect of reviving and amplifying the negative media coverage.<sup>30</sup> We consider that Mayor Clark’s participation in the Interview is likely to have significantly exacerbated the reputational damage caused by his earlier comments.
- 5.25 On 17 April 2024, Stuff published an online article entitled “Nobby Clark apologises to those offended by interview”.<sup>31</sup> We understand that this article appeared in print on the front page of the Southland Times on or around the same date.
- 5.26 The article attributes the following comments to Mayor Clark:

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<sup>29</sup> Appendix E.

<sup>30</sup> Appendix E.

<sup>31</sup> <https://www.stuff.co.nz/nz-news/350247898/nobby-clark-apologises-those-offended-interview>

- (a) “With hindsight, had I known how the Guy Williams TV show was going to be cut and pasted, I wouldn’t have been involved.’
  - (b) “But I didn’t know that at the time.”
  - (c) “Most [of the feedback from the Invercargill community] was quite positive, but some were offended by it”.
  - (d) “So I guess it’s appropriate for me to apologise to anybody who felt offended.”
- 5.27 We do not consider that this apology mitigates Mayor Clark’s conduct to any significant degree nor that it would materially reduce the reputational damage caused. Notably:
- (a) The apology was preceded by an explanation designed to minimise the problematic conduct.
  - (b) Mayor Clark maintained that the Interview was received positively by the majority of the community and implies that those offended are in the minority.
  - (c) The apology is expressed in insincere terms and is directed toward those offended rather than any acknowledged misconduct. Mayor Clark did not, and has not to our knowledge, expressed any degree of remorse or contrition for his conduct.

## **6. Points raised by Mayor Clark**

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- 6.1 Although Mayor Clark has stated that he does not wish to participate in the investigation, he has provided comments in writing as to the reasons for this position.<sup>32</sup> Some of the points raised relate to the substance of the Complaint and some relate to process. We address below the key points raised by Mr Clark.

### *Failure to address the Complaint by other means*

- 6.2 Mayor Clark states that neither complainant sought to discuss their concerns with him directly before making media comments. He expected such an approach on a collegial basis. Mayor Clark also states that the complainants did not seek a Councillor only meeting to address their concerns.
- 6.3 Mayor Clark refers to the cost of a formal process and investigation under the Code. His position appears to be that other less formal and costly processes should have been chosen to address the Complainants’ concerns.
- 6.4 Whilst it is correct to note that a different approach could have been taken, we do not agree that making a complaint under the Code was in any way inappropriate or disproportionate.
- 6.5 The preliminary assessment has already found that the Complaint reaches the materiality threshold, a finding with which we agree. The allegations made in the Complaint are of a gravity which warrant the formal process stipulated in the Code. The very public nature of Mayor Clark’s conduct is also a relevant factor which favours the use of a formal and transparent process.
- 6.6 On a related point, Mayor Clark states his belief that both of the complainants “*have other unresolved issues with me that need to be explored independent of this investigation*”. The implication is that there is an ulterior motive for the Complaint.

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<sup>32</sup> Appendix C.

- 6.7 The question of any other issues between the complainants and Mayor Clark is beyond the scope of this Report. It is sufficient to state, as we already have, that the gravity of the Complaint justifies its consideration under the formal process stipulated by the Code.

### *Apology*

- 6.8 Mayor Clark refers to his public apology, featured on the front page of the Southland Times. The apparent suggestion is that this apology obviates the need for a formal process under the Code.
- 6.9 We have addressed this point above.<sup>33</sup> We do not consider that the apology mitigates Mayor Clark’s conduct to any significant degree nor that it has materially reduced the reputational damage caused. We remain of the view that, notwithstanding the apology, a formal process under the Code is warranted.

### *Misleading editing*

- 6.10 Mayor Clark states that the Interview was edited “to give a distorted view”. The same point is advanced by Mayor Clark in various media interviews.
- 6.11 We have not had access to the unedited footage of what was reportedly an interview lasting somewhere in the region of 90-120 minutes. Subject to that constraint, we have carefully reviewed the edited version of the Interview (lasting approximately five and a half minutes) to ascertain:
- (a) Whether any misleading editing may have occurred.
  - (b) Whether any omitted context may place a materially different light on the comments made.
- 6.12 As to (a), we did not discern any indication of deliberately misleading or “doctored” editing. It is clear that the most provocative comments from the longer interview have been featured, as would be expected with any television programme of this nature. However, there were extended stretches of the Interview played without any apparent interruption in the dialogue. We do not consider there is any evidence that the Interview has been unfairly “doctored”.
- 6.13 As to (b), we cannot conceive of any context which would justify or alter the tone and substance of the comments featured. It is important to note that during the featured portions of the Interview, Mayor Clark expresses his hatred of the N-word and acknowledges that it is offensive. There may well have been other similar comments during the Interview which have not been featured.
- 6.14 Regardless, we consider that the featured comments by Mayor Clark speak for themselves. We do not consider that any surrounding comments would materially affect the question of whether the featured comments and behaviour amount to a breach of the Code.

## **7. Points raised by the complainants**

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### *Complaint*

- 7.1 The Complaint<sup>34</sup> highlights the following aspects of the Interview:
- (a) Mayor Clark’s repeated use of the N-word during the Interview.
  - (b) The lack of remorse shown by Mayor Clark for his actions.

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<sup>33</sup> Paragraphs 5.25 to 5.27.

<sup>34</sup> Appendix A.

- (c) Mayor Clark “flaunting” a copy of the book “Twisting the Treaty” towards the camera. Associating a book related to the Treaty of Waitangi with an interview concerning the use of the N-word was described as “sickening”.
  - (d) Forcing Mr Williams to say the N-word out loud.
- 7.2 The complainants describe the Mayor’s conduct during the Interview as “reprehensible”. They argue that it constitutes a breach of the following clauses of the Code:
- (a) Clause 6.4 – “Respect for others” – The complainants characterise Mayor Clark’s behaviour in the Interview as offensive and discriminatory and thereby in breach of this clause.
  - (b) Clause 8.3 – “Relationship with the Public” – The complainants allege that Mayor Clark’s behaviour in the Interview undermined the reputation of the Council or other elected members.
  - (c) Clause 9.3 – “Contact with the media on an elected member’s own behalf” – The complainants allege that Mayor Clark’s behaviour in the Interview was offensive and has reflected adversely on the Council and elected members.
  - (d) Clause 7.2 – “Mayor” – The complainants allege that Mayor Clark has failed to live up to the standards that his leadership role requires.
- 7.3 In concluding their Complaint the complainants refer to considerable feedback they have received from the community voicing strong displeasure in the Mayor’s behaviour and that it cannot be ignored. They refer to having made the Complaint to discharge the responsibility placed on elected members to act when necessary and state their belief that failing to lodge the Complaint would be, in effect, to condone Mayor Clark’s behaviour.

*Further input from Councillor Bond*

- 7.4 As is noted above, Councillor Bond provided further written feedback for the purpose of our investigation.<sup>35</sup> Councillor Pottinger did not provide written feedback but confirmed in a telephone conversation that he agreed with Councillor Bond’s comments.
- 7.5 Councillor Bond’s written feedback addresses the following points:
- (a) A request made by Mayor Clark that the Complaint be withdrawn based on his public apology. Councillor Bond did not consider that the apology acknowledged the breaches of the Code and that it was improperly focussed on “*anyone who felt offended*”. The complainants offered to withdraw the Complaint if Mayor Clark admitted to Council that he had breached the Code and apologised to Council and the community. The Mayor declined to do so.
  - (b) Media comments by Mayor Clark’s wife which indicate she had been provided private details of the Complaint and the process being taken under the Code which she then disclosed publicly. Councillor Bond also alleges that Mayor Clark’s wife has publicly attacked her credibility (and that of Councillor Pottinger) and that this amounts to a breach of clause 6.4 of the Code.<sup>36</sup>
  - (c) Media comments by Mayor Clark which Councillor Bond characterised as “*thinly veiled threats*” against her and Councillor Pottinger. The alleged threats arise from Mayor Clark’s comments that he could lodge his own complaint under the Code against Council colleagues who had disparaged him publicly. Reliance was also placed on Mayor Clark’s comments about the burden to ratepayers of funding the Code process

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<sup>35</sup> Appendix D.

<sup>36</sup> We note that, given she is not an elected member, Mayor Clark’s wife is not subject to the Code. For the reasons noted at paragraph 7.6, we have not addressed the question of whether Mayor Clark bears any potential responsibility under the Code for his wife’s public statements.

and associated investigation. These implied threats were said to be in breach of clause 6.4 of the Code.

- 7.6 We have elected not to address points (b) and (c) further in our investigation. The original Complaint focuses on Mayor Clark’s language and other conduct in the Interview and we do not consider it appropriate to expand the Complaint and investigation at this stage to consider further potential breaches arising from subsequent media comments of a different nature. Among other reasons, we note that these additional aspects were not the subject of the preliminary assessment, which in our view is a prerequisite to their inclusion in the full independent investigation.

## 8. Code of Conduct

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### *Relevant provisions of the Code*

- 8.1 In its introduction, the Code refers to the “*important and privileged role*” that elected members have in representing the people of Invercargill. The Code is stated to represent 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*”.
- 8.2 Clause 4 addresses the application of the Code. It states:

... 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.

### *Alleged breaches of the Code*

- 8.3 The Complaint alleges that Mayor Clark breached four clauses of the Code.
- 8.4 First, the Complaint refers to clause 6.4 which provides that 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:
- (a) Treating people, including other Elected Members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
  - (b) Not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour.
  - (c) Not insulting, intimidating, being malicious, degrading, or offensive to the public or other Elected Members
- 8.5 Second, the Complaint refers to clause 8.3 which provides that Elected Members will do the following to maintain productive relationships with the public:
- (a) Interact with members of the public in a fair, respectful, equitable and honest manner.
  - (b) Be available to listen and respond openly and honestly to community concerns.
  - (c) Consider all points of view or interests when participating in debate and making decisions.
  - (d) Treat members of the public in a courteous manner.
  - (e) Act in a way that upholds the reputation of Council and values community involvement in local democracy.

- (f) Ensure their behaviour, in the mind of the public, does not undermine the reputation of Council or other Elected Members.
- 8.6 Clause 8 specifically provides that any failure by an Elected Member to meet the standards set out in clause 8 represents a breach of the Code.
- 8.7 Third, the Complaint refers to clause 9.3 which states:
- 9.3.1 Elected Members are free to express a personal view in the media, at any time, providing the following rules are observed:
- i. Media Comments must not state or imply that they represent the view of Council;
  - ii. Where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the Elected Member must not state or imply that their statements represent a majority view;
  - iii. Media comments must observe the other requirements of the Code, e.g. not disclose confidential information; compromise the impartiality or integrity of staff; or avoids aggressive, offensive or abusive comments which reflect adversely on Elected Members or Council;
  - iv. Media comments must not be misleading and should be accurate within the bounds of reasonableness.
- 8.8 Clause 9.1 states that any failure by an Elected Member to meet the standards set out in the media protocols in clause 9 represents a breach of the Code.
- 8.9 Finally, the Complaint refers to clause 7.2 which states:
- The Mayor is elected by the city as a whole and as one of the Elected Members shares the same responsibilities as other members of Council. According to section 41A of the LGA, the role of a Mayor is to provide leadership to other members of Council and to the people of Invercargill.
- 8.10 Section 41A of the LGA states that the role of a Mayor is to provide leadership to the other members of the territorial authority and the people in the district of the territorial authority.<sup>37</sup>
- 8.11 The standard in clause 7.2 is closely aligned with that in clause 7.1, which provides that all Elected Members, including the Mayor, must be committed to always achieving the highest standards of conduct and behaviour and carrying out their role to the best of their skill and judgment.

### *Materiality*

- 8.12 Materiality is defined under clause 2 of the Code as follows:

**Materiality** - The following may be taken into account when assessing materiality:

- 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.

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<sup>37</sup> Local Government Act 2002, s 41A(1).

- 8.13 Whilst materiality has been considered as part of the preliminary assessment, we consider it necessary and proper to review the relevant factors and make a finding on materiality as part of the full investigation. We do so below.

## 9. Specific findings on breaches of the Code

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### *Nature and seriousness of Mayor Clark's conduct*

- 9.1 Before turning to the specific clauses of the Code, it is appropriate to state the particular aspects of Mayor Clark's conduct which we regard as most problematic and as requiring consideration under the Code.
- 9.2 The Complaint centres on Mayor Clark's language and other conduct in the Interview. His other comments preceding and post-dating the Interview and its airing provide relevant context, but we have not addressed the question of whether those comments may be in breach of the Code. Our investigation and the findings below focus on the Interview.
- 9.3 We consider that the following aspects of the Interview are of most seriousness and warrant consideration under the Code:
- (a) Mayor Clark's repeated use of the N-word.<sup>38</sup> This word has been aptly described as "derogatory, degrading, dehumanizing and ... one of the most offensive words in history".<sup>39</sup> The same description further states that the "the stigma of the word embodies and invokes painful memories and inhumane ill-will; and countless individuals ... have lost their lives due to the beliefs perpetuated by the use of this word". Harvard University Professor Randall Kennedy has described the word as "the atomic bomb of racial slurs", referring also to its use to demean other cultures beyond those of African or African American descent.<sup>40</sup>
  - (b) Mayor Clark's insistence that Guy Williams use the N-word.<sup>41</sup> As noted above, we consider that this was an offensive, persistent, deliberately provocative and gratuitous exchange initiated and continued by Mayor Clark.
  - (c) Mayor Clark's homophobic implications and use of the homophobic slur "f\*\*\*\*\*".<sup>42</sup> This word is widely and properly regarded as an extremely offensive term for a homosexual man.<sup>43</sup>
  - (d) Mayor Clark choosing to feature the book titled "Twisting the Treaty – A Tribal Grab for Wealth and Power" in an Interview otherwise focused on his use of the N-word. This had the extremely regrettable effect of linking a common New Zealand racial stereotype to the stigma and racial prejudice inherent in a discussion about the N-word. Again, whatever the context, we consider that choosing to feature this book was a gratuitous step by Mayor Clark.
- 9.4 It is also important to step back and consider the featured portions of the Interview as a whole. The overall impression given was of a Mayor who is deliberately and gratuitously provocative, who is willing to use racial and homophobic slurs and implications recklessly, and who does so with little to no regard for how offensive such language and behaviour is likely to be to members of the public at large and minority communities in particular.

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<sup>38</sup> See paragraphs 5.14 and 5.17 above.

<sup>39</sup> [https://naacp.org/resources/naacp-official-position-use-word-  
-and-n-word](https://naacp.org/resources/naacp-official-position-use-word-and-n-word)

<sup>40</sup> <https://www.pbs.org/newshour/show/n-word-became-atomic-bomb-racial-slurs>

<sup>41</sup> See paragraphs 5.18 to 5.20 above.

<sup>42</sup> See paragraphs 5.15 to 5.16 above.

<sup>43</sup> <https://dictionary.cambridge.org/dictionary/english/>

- 9.5 Mayor Clark might well argue that his language and conduct in the Interview was not motivated by ill will or prejudice toward any particular racial or minority group and that he was not using the words in question as slurs or with the intention of demeaning anyone or any group. Mayor Clark might well argue that his underlying purpose was to make a point regarding freedom of expression or some other related topic. Mayor Clark asserted in the Interview that he hates the N-word and considers it to be offensive.
- 9.6 Whatever Mayor Clark's subjective intention or purpose may have been, we find that his language and other conduct in the Interview was objectively offensive, demeaning and discriminatory. Further, we find that Mayor Clark was, at the very least, reckless as to the effect of his conduct. In other words, Mayor Clark must have been and was in fact aware that his language and other conduct would be regarded as offensive, demeaning and discriminatory by members of the public, but he chose to conduct himself in this manner regardless.

#### *Specific breaches of the Code*

- 9.7 We have reviewed the Code as a whole to determine whether the conduct in question should be considered as potentially in breach of any other clauses beyond those identified in the Complaint. We consider that the four specific clauses identified in the Complaint are the most pertinent clauses in addressing Mayor Clark's relevant conduct and that there are no other clauses which should be considered.
- 9.8 Accordingly, we address below the four specific clauses of the Code raised in the Complaint.

#### *Clause 6.4*

- 9.9 For the reasons stated above, we find that Mayor Clark's language and other conduct in the Interview breached clause 6.4 of the Code in the following respects:
- (a) Mayor Clark engaged in offensive and discriminatory behaviour.
  - (b) Mayor Clark's language and other conduct can be properly characterised as insulting, degrading and offensive to the public.
  - (c) Mayor Clark failed to treat all people, regardless of their race and sexual orientation, with respect and courtesy.

#### *Clause 8.3*

- 9.10 For the reasons stated above, we find that Mayor Clark's language and other conduct in the Interview breached clause 8.3 of the Code in the following respects:
- (a) Mayor Clark failed to interact with the public in a respectful manner.
  - (b) Mayor Clark failed to treat members of the public in a courteous manner.
  - (c) Mayor Clark failed to act in a way that upholds the reputation of the Council.
  - (d) Mayor Clark failed to ensure that his behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

#### *Clause 9.3*

- 9.11 For the reasons stated above, we find that Mayor Clark's language and other conduct in the Interview breached clause 9.3 of the Code in the following respects:
- (a) Mayor Clark made offensive comments which reflect adversely on Elected Members or Council.

### Clause 7.2

9.12 For the reasons stated above, we find that Mayor Clark’s language and other conduct in the Interview breached clause 7.2 of the Code in the following respects:

- (a) Mayor Clark failed to meet an appropriate standard of leadership for other members of Council and for the people of Invercargill.

### Materiality

9.13 Although our investigation and findings relating to breaches of the Code focus on the Interview, a more expanded scope is appropriate in considering materiality. The definition in clause 2 of the Code indicates that, in addition to the nature and seriousness of the specific breaches established, the wider pattern of a person’s conduct may well be relevant in assessing materiality.

9.14 In our view, and by reference to the definition in clause 2 of the Code, the following factors are relevant in considering the question of materiality:

- (a) *There is an ongoing pattern of breaches* – Mayor Clark first used the N-word publicly at the Arts Foundation event in March 2023. He then reportedly repeated the word multiple times in two separate media interviews (1News and Newshub). Mayor Clark’s language and other conduct during the interview represent a continuation of this pattern of offensive behaviour.
- (b) *The conduct was not stopped on request* – As above, following the Arts Foundation event in March 2023, Mayor Clark received feedback from Council staff as well as the general public as to his offensive language. He did not apologise in any manner until after the Interview aired, and went on to repeatedly use the N-word in other media interviews, culminating in the offensive language and conduct in the interview.
- (c) *The conduct caused serious harm or brought the Council into disrepute* – Mayor Clark’s participation in the Interview has resulted in extensive negative media attention and public reporting. We consider that Mayor Clark’s participation in the Interview is likely to have significantly exacerbated the reputational damage caused by his earlier comments.
- (d) *Even if the conduct occurred on only one occasion, it represents a major departure from expected standards* – Considering the Interview in isolation from the preceding pattern of behaviour leads to the same conclusion regarding materiality. We find that the Interview, considered alone, represents a major departure from expected standards. The racial and homophobic slurs used and the associated conduct fall significantly short of the standard of behaviour, decorum and tolerance that should rightly be expected of a Mayor or other elected member.

9.15 We find that the four breaches established were clearly material in nature. Indeed, given all of the relevant circumstances and the reputational damage likely to have been caused to the Council and to the city of Invercargill, we consider that the breaches are apt to be characterised as serious.

## 10. Penalties and actions

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### *Penalties and actions available*

- 10.1 Where a complaint is determined to be a material breach of the Code, a series of penalties or actions are available. Any penalty imposed or action taken will depend on and be commensurate to the seriousness of the breach.<sup>44</sup>
- 10.2 Clause 16.1 of the Code provides that where a material breach of the Code has been confirmed, Council may consider the following penalties and actions:
- (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 (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.
- 10.3 Clause 16.1 also states that Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:
- (a) To attend a relevant training course.
  - (b) To work with a mentor for a period of time.
  - (c) To participate in voluntary mediation (if the complaint involves a conflict between two members).
  - (d) To tender an apology.

### *Recommendation*

- 10.4 Given Mayor Clark's attitude and approach to the Investigation and his continuing failure to adequately acknowledge the relevant breaches, we do not consider that any of the options described at paragraph 10.3 above would be appropriate (short of a significant change in Mayor Clark's attitude and approach). We consider that penalties should be imposed and/or other actions taken.
- 10.5 As a minimum, we recommend the following penalties / actions:
- (a) A letter of censure to Mayor Clark. A censure is necessary and appropriate to denounce the relevant conduct.
  - (b) A request that Mayor Clark publicly apologise. We do not consider that the public apology already made by Mayor Clark adequately acknowledges the seriousness of the breaches or the harm caused.

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<sup>44</sup> Clause 16.

- 10.6 We also recommend that Council seriously consider the further penalties / actions detailed below. We consider that these penalties / actions are warranted and would represent an appropriate exercise of Council's discretion:
- (a) Taking steps to restrict Mayor Clark's duties, particularly the public-facing aspects of his role or those involving media comment. Such a restriction could be for a specified period or until such time as Mayor Clark undertakes targeted education or training.
  - (b) A vote of no confidence in Mayor Clark.
  - (c) An invitation to Mayor Clark to consider resigning as Mayor.
- 10.7 These options are particularly relevant if Council is satisfied that Mayor Clark is at risk of repeating similar behaviour in the future. The pattern of conduct described combined with the failure to acknowledge wrongdoing may well lead to such a conclusion.

## 11. Next steps

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- 11.1 Clauses 15.2.18 to 15.2.28 of the Code set out the process to be followed after receipt of this Report. To summarise:
- (a) The Chief Executive or the Independent Chair of the Risk and Assurance Committee (**Chair**) will prepare a report for Council.<sup>45</sup> The report will consider these findings and determine whether a penalty should be imposed or another form of action taken. It will include this full Report.<sup>46</sup>
  - (b) No members of Council with an interest in the complaint may take part in the hearing and decision-making process, unless invited by Council to speak to their submissions.<sup>47</sup>
  - (c) Council or the CCC will consider the report from the Chief Executive or the Independent Chair of the Risk and Assurance Committee in an open meeting, except where the alleged breaches concern matters that justify the exclusion of the public in which case it will be a public excluded meeting.<sup>48</sup> We do not consider there is any reason to depart from the assumption of a public meeting in this case.
  - (d) On receipt of the report from the Chief Executive or the Chair and in the context of the meeting noted, Council will:<sup>49</sup>
    - (i) If necessary, ask us to provide a briefing on the investigation findings.
    - (ii) Invite Councillor Pottinger, Councillor Bond and Mayor Clark to speak to any submissions that might have been made.
    - (iii) Decide whether a material breach of the Code has occurred and what, if any penalty or action should occur in response to the breach.
  - (e) Council will then inform Councillor Pottinger, Councillor Bond and Mayor Clark of their decision in writing.<sup>50</sup>

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<sup>45</sup> The role which would otherwise be played by Council can be delegated to the Code of Conduct Committee, including to avoid bias – clause 15.2.19. We consider that Council can adjudicate the Complaint without bias provided the complainants are not part of the decision-making process and that there are sufficient Councillors remaining.

<sup>46</sup> Clause 15.2.18.

<sup>47</sup> Clause 15.2.21.

<sup>48</sup> Clause 15.2.25.

<sup>49</sup> Clause 15.2.22.

<sup>50</sup> Clause 15.2.23.

- (f) A right to appeal is not included in the Code as all Elected Members are able to make use of the process set out in Standing Orders for revoking Council decisions. Council decisions are also subject to judicial review.<sup>51</sup>

**Dated:** 6 July 2024



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Joshua Shaw  
Partner, Wynn Williams

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<sup>51</sup> Clause 15.2.26.

## APPENDIX A

3 April, 2024

The Chief Executive  
Invercargill City Council  
101 Esk St  
Invercargill  
9810  
Attention : Michael Day

Dear Michael ,

In accordance with Invercargill City Council's Code of Conduct, we wish to submit to you in this letter a complaint against Mayor Clark for his behaviour in the recently aired NZ Today television program. This program (season 4, episode 7) was broadcast on national television channel 3 on March 21, 2024.

It is our belief that Mayor Clark, through his language and actions, has breached Council's Code of Conduct on three counts and that the breaches can be considered material under section 2 of the Code's definition of Materiality. We specifically refer to bullet point 3, which states,

"The conduct caused serious harm, for example, reputation harm, or brought Council into disrepute."

The program's main content was an interview with Mayor Clark, which took place in the Council's Mayoral lounge. The topic of the interview was the Mayor's use of the "N" word at a public function last year. During the interview the Mayor repeatedly used the "N" word and showed no remorse for his actions. During the interview, on one occasion, Mayor Clark also flaunted a copy of the book "Twisting the Treaty" towards the camera. The reason we mention this is that to associate a book related to the Treaty of Waitangi, within an interview concerning the use of the "N" word we believe is sickening.

In concluding the interview Mayor Clark took it upon himself to force the interviewer into saying out loud the "N" word, under the condition that if he did say it, the Mayor himself would then refrain from using the word. We believe the

Mayor's conduct in this interview was reprehensible and has breached the following sections of the Code.

Section 6.4 : Respect for others.

Bullet point (4) Not engaging in aggressive, offensive, abusive, harassing, bullying or discriminatory behaviour.....”

(We believe his behaviour was offensive and discriminatory)

Section 8.3. : Relationship with the public.

Bullet point (6) Ensure their behaviour, in the mind of the public, does not undermine the reputation of council or other elected members.

(We believe his behaviour did undermine the reputation of council and other elected members)

Section 9.3 : Contact with the media on an elected members own behalf.

9.3.1 Bullet point. (iii). “Avoid aggressive, offensive or abusive comments which reflect adversely on Elected members or Council.”

(We believe this encounter with the media was offensive and has reflected adversely on Elected members and Council)

Further more, section 7.2 of the Code, refers to the role of the mayor and highlights section 41A of the LGA2002, which says...”The role of the mayor is to provide leadership to other members of the council and the people of Invercargill.”

(We believe that the Mayor has failed to live up to the standards that this leadership role requires.)

The day after the interview the media reported the comments of the current acting Race Relations Commissioner, Saunoamaali'i Karanina Sumeo, who said in regards to the NZ Today episode..

“Leaders in elected offices have a special responsibility to speak and lead our communities in inclusive and respectful ways and should never use discriminatory, demeaning or racist language”.

In lodging this complaint we have given great thought to both the process involved and the ramifications that may eventuate from this action. The code states that complaints can only be made by either elected members or the Chief Executive. We have received considerable feedback from the community that is voicing strong displeasure in the Mayor's behaviour and that cannot be ignored. This places great responsibility on elected members to act when necessary and we truly believe that if we chose not to lodge this complaint, then we would be, in effect, condoning the Mayor's behaviour.

Regards

Cr Ria Bond 

Cr Ian Pottinger 

## APPENDIX B



22 April 2024

Michael Day  
Chief Executive  
Invercargill City Council  
[michael.day@icc.govt.nz](mailto:michael.day@icc.govt.nz)

Level 12  
Otago House  
477 Moray Place  
Dunedin 9016

Private Bag 1959  
Dunedin 9054  
New Zealand

[al.nz](http://al.nz)

Dear Michael

### **Preliminary Assessment of Code of Conduct Complaint – Mayor Clark**

- 1 Anderson Lloyd have been appointed by the Invercargill City Council (**Council**) to carry out an independent preliminary assessment of a complaint made under the Council's Code of Conduct for Elected Members (**Code**). This is not a full investigation under the Code.
- 2 A complaint was made to you as Chief Executive by letter dated 3 April 2024. This complaint was made by Councillors Bond and Pottinger.
- 3 This complaint was made regarding the language used by Mayor Clark in an interview on the NZ Today television program that was broadcast on channel 3 on 21 March 2024. Specifically the complaint refers to Mayor Clark's use of the "N" word multiple times during the course of the interview, and making an association between his use of this word and the Treaty of Waitangi by holding a copy of a book titled "Twisting the Treaty – A Tribal Grab for Wealth and Power" at one point in the interview.
- 4 The nature of the complaint is that Mayor Clark breached the following sections of the Code:
  - (a) Clause 6.4 Respect for others;
  - (b) Clause 7.2 Mayor;
  - (c) Clause 8.3 Relationship with the public; and
  - (d) Clause 9.3 Contact with the media on an elected members own behalf.

### **Recommendation**

- 5 In reaching our recommendation we have considered the complaint made by Councillors Bond and Pottinger, the interview of Mayor Clark that was broadcast on NZ Today on 21 March 2024, comments provided by Mayor Clark to us on 17 April 2024 in response to our request for comment and the Invercargill City Council Code of Conduct adopted in November 2022.
- 6 We have concluded that this matter meets the preliminary requirements for a valid complaint and therefore we recommend that you appoint an independent investigator under clause 15.2.8 of the Code to investigate the complaint.

[Auckland](#) • [Christchurch](#) • [Dunedin](#) • [Queenstown](#)

2500237 | 8756595v2

## **Process and Reasons**

### *Natural justice*

- 7 Clause 15.1 of the Code requires that the approach to investigate and assess a complaint under the Code will be "proportionate to the apparent seriousness of the alleged breach" and that "concepts of natural justice and fairness will apply in the determination of any complaints" made under the Code.
- 8 To observe the principles of natural justice we requested in our letter of 16 April 2024 that Mayor Clark provide any comments that he wished us to consider as part of the preliminary assessment under clause 15.2.6 of the Code.
- 9 Mayor Clark provided his comments via email dated 17 April 2024 and we have considered those comments as part of the preliminary assessment.

### *Preliminary Assessment Considerations*

- 10 Under clause 15.2.6 of the Code we, as preliminary assessor, are required 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; and
  - (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.
- 11 We have considered items (a)-(c) above and determined that the complaint is not frivolous or without substance, that it is not outside the scope of the Code, and has not previously been assessed and actions completed in accordance with the Code.

### *Materiality*

- 12 Items (d) and (e) listed in paragraph 10 above relate to questions of materiality. Clause 2 of the Code sets out that the following aspects of the alleged conduct may be taken into account when assessing materiality:
  - 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; and
  - Even though the conduct occurred on only one or two occasions, it represents a major departure from expected standards.
- 13 We have assessed the materiality of the allegation taking into account the factors listed in the bullet points above. If the complaint is upheld following an investigation the complaint could be material under bullet points three and five.

- 14 We therefore consider that the complaint falls within the aspects of the Code that require a full investigation and recommended that you as Chief Executive appoint an investigator under clause 15.2.8 of the Code for this purpose.

Yours faithfully  
**Anderson Lloyd**



**Michael Garbett**  
Partner  
d +64 3 467 7173  
m +64 27 668 9752  
e michael.garbett@al.nz

## APPENDIX C

### Joshua Shaw

---

**From:** Nobby Clark & Karen Carter <karennobs@yahoo.com>  
**Sent:** Wednesday, 29 May 2024 11:08 AM  
**To:** Laura O'Dwyer  
**Subject:** ICC Code of Conduct

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Laura

I am not participating in this Code of Conduct investigation, the reasons being:

1. Neither complainant sought to discuss their concerns with me directly, which I expect as collegial behaviour, before making making print media and Radio NZ comments.
2. Neither complainant sought as an alternative, the option of seeking a Councilor Only meeting where they could address their concerns with their colleagues present.
3. Following the complainants stating they have received numerous concerns about the NZ Today show, I have subsequently publically apologised for any unease caused by my participation (that apology featured on the front page of the Southland Times). The show was taped in the middle of last year, was cut and pasted to give a distorted view of the one hour / 45 minute interview, that when aired recently was less than 15 minutes.
4. Both complainants, when approached by the ICC Chief Executive, felt that public apology did not satisfy their needs as a resolution - they sought a further apology which I declined.
5. Both complainants are aware of the costs of a full investigation, at a time when council is declining requests for financial support in an attempt to keep rates as low as possible, given the high cost of living impacts on ratepayers.  
As an example - I was keen to support the local Rescue Helicopter fundraising by \$5,000 - \$10,000 from the Mayoral fund, but that was deemed to be not a priority given our cuts elsewhere.
6. Both complainants are aware of the range of resolutions open to the investigation under the code.
7. I believe that both complainants have other unresolved issues with me that need to be explored independent of this investigation.

I am happy for you to record my views in your report.

Regards  
Nobby Clark  
Mayor  
Invercargill City Council

*Nobby Clark/Karen Carter*  
[karennobs@yahoo.com](mailto:karennobs@yahoo.com)

## APPENDIX D

Councillor Ria Bond

218 Mary Street

Richmond

Invercargill

10th June 2024

Dear Laura

***Code of Conduct complaint concerning the conduct of Mayor Nobby Clarke dated 3 April 2024.***

Thank you for the opportunity to provide comment under clause 15 of the Act.

I refer to the conversations and subsequently the emails between our CE Michael Day, Cr Ian Pottinger and myself in response to the verbal request by Mayor Clark to resolve the Code of Conduct (the complaint) against the mayor. The request is based around Mayor Clark's apology contained within the 17/04/2024 Stuff article written by Michael Fallow. (Titled: Nobby Clark apologises to those offended by interview)

Both Cr Pottenger and myself concluded at the time that unfortunately, the apology in the Stuff article that was referred to, is as it is worded, an apology to those who felt offended and does not go anywhere near acknowledging the breaches raised in the Code of Conduct complaint. These breaches carry greater significance and seriousness beyond "anyone who felt offended".

In this email we also brought to his attention the New Zealand Herald article featured in the Otago Daily Times on 22/03/2024, titled "Invercargill Mayor Nobby Clark unapologetic for racial, sexuality slurs", this quotes the mayor as saying, "he claimed he had signed a non disclosure agreement with the show", "which gave them a licence to say what they want". This statement would seem contrary to a subsequent quote by the mayor (Stuff article, 17/04/2024 by Michael Fallow), "with hindsight, had I had known how the Guy Williams TV show was going to be cut and pasted, I wouldn't have been involved". "But I did not know that at the time".

Both Cr Pottenger and I considered the above request through our CE, and for us to withdraw the complaint, we required the Mayor to admit to Council he breached the Code of Conduct, as specified in our complaint and apologise to council and the community for that breach.

We also deemed it fair and reasonable that Mayor Clark be given five working days to comply with our terms to resolve the Code of Conduct complaint. Should the mayor choose not to accept this offer, then the complaint process will continue. The Mayor subsequently removed his involvement in the Code of Conduct complaint against him.

Just recently it was brought to my attention that 'Mrs Mayor' has been subjected to information and discussion about the private affairs of the business of council relating to this code of conduct complaint and choose to discuss publicly discuss the current code of conduct under investigation that refers to both Cr Pottinger and my credibility as councillors.

I draw this to your attention as it is worded on the What's on Invers weekly show of Mike & About, which took place on 21st April 2024 of the Mayors wife in the mayoral office.

The opening Article states as said as worded "Today, we have Mrs Mayor back for a chat about various topics, and we gain more insight into the real Mayor Nobby, not the man the mainstream media and a couple of councillors try to portray."

[https://l.facebook.com/l.php?u=https%3A%2F%2Fwhatsoninvers.nz%2F90-seconds-with-mrs-mayor-the-real-mayor-nobby%2F&h=AT2e9MnQcosx2iEhb-LTTh8lBdifvKeAZKdJlV5K2\\_5s1KsE0ziVNnrvFYl2xR-ppNUBIRsWxmG-cb2ZkF0RbpOw3XSHnm1mf8FkxItsS60UgAaZ3GICNR82xxZVbEo\\_PO&s=1](https://l.facebook.com/l.php?u=https%3A%2F%2Fwhatsoninvers.nz%2F90-seconds-with-mrs-mayor-the-real-mayor-nobby%2F&h=AT2e9MnQcosx2iEhb-LTTh8lBdifvKeAZKdJlV5K2_5s1KsE0ziVNnrvFYl2xR-ppNUBIRsWxmG-cb2ZkF0RbpOw3XSHnm1mf8FkxItsS60UgAaZ3GICNR82xxZVbEo_PO&s=1)

I draw to your attention again another email between myself, Pottinger and CE Michael Day outlining concerns over subsequent articles covering the Code of Conduct complaint and the behaviour from the Mayor, specifically the article that featured in the Southland Tribute on 15 April 2024, written by Logan Savory, titled as “Two councillors lodge complaint against Invercargill Mayor”.

I noted two areas of the article that cause concerns for me as these indicate thinly veiled threats of intimidation as Cr Pottinger has alluded to in his email, with the Mayor using the Code of Conduct as an intimidation tool to influence councillors not to lodge a Code of Conduct.

These comments are as it is worded, “Clarke felt he could have lodged his own Code of Conduct complaint on the back of what some council colleagues had said about him publicly in the media, however he opted not to because he felt there were more important issues at play for the council. He also did not believe ratepayers needed the added cost of such an investigation.”

With respect, both Cr and I have offered an alternative to resolve the Code of Conduct complaint with the Mayor who subsequently in an email to you yesterday at 12:48pm not only withdrew himself from a code of conduct complaint but then proceeded to claim in order for a code for conduct to be lodged under the LGNZ Act 2002 he was to be afforded natural justice. I refer to the ICC Code of Conduct page 14 and 15, section Principals, specifically sections 15.1, 15.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4. Given the gravity of lodging the Code of Conduct against Mayor Clarke full and all considerations were adhered to under the Code of Conduct process, to ensure there were no mistakes.

Cr Pottinger raised with our CE the issue of the Mayor using the Code of Conduct complaint cost against the complainants.

Pottinger noted as I did that this came up in the first media interview with the mayor about the complaint being lodged and again today in the mayor’s reply email regarding an apology.

Cr Pottinger believed seriously that the reference to “rate payer’s cost” is intimidatory to both Ria and myself in our involvement in laying this complaint. We have not entered this process without great consideration and as highlighted in our Council’s “Governance” web page, the Code of Conduct sits alongside Council’s Governance Statement and Standing Orders. These are the rule books of Council.

In all the matters I have brought to your attention I absolutely believe The Code of Conduct states in section 6.4 : point 9 “Not intimidating” “To the public or other elected members” that both Cr Pottinger and I have been subjected to threatening behaviour not just by the Mayor but now also our credibility has been publicly attacked by the Mayors Wife which I believe breeches section 6.4 of the code of conduct.

Yours sincerely

Cr Ria Bond

# APPENDIX E

## Media Coverage

### March 2023

[Bleak: Invercargill's mayor just used the n-word | The Spinoff](#)

[Behind the scenes at council after the mayor uses the n-word | The Spinoff](#)

[Nobby Clark on being called out for using the n-word | The Platform](#)

[Meng Foon should pull his head in | The Platform](#)

[Mayor defends use of 'n-word' in speech \(newstalkzb.co.nz\)](#)

[Nobby Clark - those weren't my words | Stuff](#)

[Nobby Clark swatted away Invercargill council apology advice | Stuff](#)

[Virginia Fallon: Nobby, the N-Word and men behaving sadly | Stuff](#)

[Invercargill's mayor just used the n-word | Stuff](#)

[Nobby Clark called out for use of 'n-word' | Otago Daily Times Online News \(odt.co.nz\)](#)

[Controversy kept off council's agenda | Otago Daily Times Online News \(odt.co.nz\)](#)

[Creative NZ denies commending mayor | Otago Daily Times Online News \(odt.co.nz\)](#)

[Invercargill mayor Nobby Clark says 'n-word' again, rationalises earlier use - NZ Herald](#)

[Invercargill mayor Nobby Clark called out for use of 'n-word' in speech - NZ Herald](#)

[Editorial: Language a moving feast, but the N-word's a no, Nobby - NZ Herald](#)

[Invercargill mayor unapologetic for saying n-word, says it again \(1news.co.nz\)](#)

['Totally inappropriate' - MPs condemn Invercargill mayor's n-word use \(1news.co.nz\)](#)

[Invercargill mayor criticised for using n-word in speech \(1news.co.nz\)](#)

[Invercargill mayor Nobby Clark defends saying N-word, repeats it 8 times in Newshub interview | Newshub](#)

[Let's just agree to shelve the 'n-word' for good \(substack.com\)](#)

[Mayor: Reaction to Minister's 'white male' comments 'farcical' \(substack.com\)](#)

[Mysterious social media account takes aim at mayor, Invercargill \(substack.com\)](#)

[The 'backdrop' to the art and mayoral tension \(substack.com\)](#)

[Invercargill Mayor won't apologize after dropping the 'N' word during public event | Newshub \(youtube.com\)](#)

[Invercargill mayor called out for saying the n-word \(again\) #newzealan... | TikTok](#)

#### **April 2023**

[Six-month report: How's the Invercargill City Council shaping up? \(substack.com\)](#)

#### **June 2023**

[Nobby Clark must ban use of 'Nobby Clark' | The Spinoff](#)

[Mayor Nobby Clark called out for creating 'massive racial divide' with his anti-Māori comments | RNZ News](#)

[Free Speech Fridays #34 - Maurice Williamson & Nobby Clark | The Platform](#)

[Invercargill mayor Nobby Clark called out for creating 'massive racial divide' with his anti-Māori comments | Stuff](#)

[Invercargill Mayor Nobby Clark throws weight behind Stop Co-Governance Tour, police say claims people arming themselves untrue - NZ Herald](#)

#### **March 2024**

[Season 4 Ep 7 | New Zealand Today | COMEDY | Three | ThreeNow](#)

['Disgraceful': Anger within Invercargill Council over mayor's latest use of N-word | The Spinoff](#)

[Invercargill councillors weigh in on Mayor's 'train wreck' interview | RNZ News](#)

[Invercargill mayor unapologetic for racial, sexuality slurs \(newstalkzb.co.nz\)](#)

[Ria Bond: Invercargill City Councillor on Nobby Clark's racist and sexist comments \(newstalkzb.co.nz\)](#)

[Invercargill Mayor Nobby Clark's bizarre interview with Guy Williams on New Zealand Today | Stuff](#)

[Free speech goes both ways | Stuff](#)

[Councillors weigh in on mayor's 'train wreck' interview | Otago Daily Times Online News \(odt.co.nz\)](#)

[Councillors 'disgusted' by mayor's use of slur | Otago Daily Times Online News \(odt.co.nz\)](#)

[Mayor Clark unapologetic for using slurs | Otago Daily Times Online News \(odt.co.nz\)](#)

[Invercargill Mayor Nobby Clark unapologetic for racial, sexuality slurs - NZ Herald](#)

[Invercargill councillors weigh in on Mayor Nobby Clark's 'train wreck' interview with Guy Williams - NZ Herald](#)

[Acting Race Relations Commissioner slams Invercargill Mayor Nobby Clark over N-word usage | Newshub](#)

[Mayor expects to be 'stitched up' in TV interview \(substack.com\)](#)

[Invercargill councillors weigh in on Mayor's 'train wreck' interview \(substack.com\)](#)

[Invercargill Mayor stirs up controversy over use of N-word during Guy Williams interview | Newshub \(youtube.com\)](#)

[Invercargill councillors weigh in on Mayor's 'train wreck' interview \(southlandapp.nz\)](#)

#### **April 2024**

[Invercargill Mayor Nobby Clark faces code of conduct investigation over use of racial slur | RNZ News](#)

[Complainants tight-lipped over Invercargill mayor's apology | RNZ News](#)

[Around the motu: Tess Brunton in Dunedin | RNZ](#)

[Around the motu: Che Baker in Invercargill | RNZ](#)

[Invercargill Mayor Nobby Clark being investigated over use of racial slur | Stuff](#)

[Letters: About Invercargill's 'racist' mayor | Stuff](#)

[Nobby Clark apologises to those offended by interview | Stuff](#)

[Complainants tight-lipped over Invercargill mayor's apology | Stuff](#)

[Nobby Clark facing code of conduct complaint | Otago Daily Times Online News \(odt.co.nz\)](#)

[Nobby Clark apologises 'to anyone who felt offended' | Otago Daily Times Online News \(odt.co.nz\)](#)

[Complainants tight-lipped over Nobby Clark apology | Otago Daily Times Online News \(odt.co.nz\)](#)

[Councillors tight-lipped over apology | Otago Daily Times Online News \(odt.co.nz\)](#)

[Invercargill Mayor Nobby Clark subject to code of conduct complaint - NZ Herald](#)

[Invercargill Mayor faces investigation over use of n-word \(1news.co.nz\)](#)

[Complainants tight-lipped over Invercargill mayor's apology \(1news.co.nz\)](#)

[Invercargill Mayor Nobby Clark faces investigation over use of racial slur on Guy Williams' show | Newshub](#)

[Invercargill mayor refuses to take part in investigation \(substack.com\)](#)

[Two councillors lodge complaint against Invercargill Mayor \(substack.com\)](#)

[Pottinger, Bond behind mayoral complaint - by Logan Savory \(substack.com\)](#)

[Invercargill mayor subject to conduct complaint \(southlandapp.nz\)](#)

[Complainants tight-lipped over Invercargill mayor's apology \(southlandapp.nz\)](#)

#### **May 2024**

[Nobby Clark's interview conduct 'offensive' and 'sickening' – complaint | Stuff](#)

[Nobby Clark won't take part in code of conduct investigation | Stuff](#)

[Letters: Gore should join Southland District Council | Stuff](#)

[Details of councillors conduct complaint towards Mayor revealed \(substack.com\)](#)

# APPENDIX F



## Index

1. Dramatis Personae
2. Chronology
3. Background
4. Observations

### **Invercargill City Council Code of Conduct**

5. Invercargill City Council Code of Conduct – adopted 1 November 2022

### **Bond and Pottinger**

6. Complaint under the Invercargill City Council Code of Conduct from Crs Bond and Pottinger dated 3 April 2024

### **Correspondence**

7. Letter to Mayor Clark dated 5 April 2024
8. Letter to Cr Bond and Pottinger dated 5 April 2024
9. Letter to Mayor Clark dated 24 April 2024
10. Letter to Bond and Pottinger dated 24 April 2024

### **Preliminary Determination**

11. Preliminary Assessment dated 22 April 2024

### **Other Documents**

12. [Nobby Clark - those weren't my words | Stuff](#)
13. [Nobby Clark swatted away Invercargill council apology advice | Stuff](#)
14. [Mayor expects to be 'stitched up' in TV interview \(substack.com\)](#)
15. [Season 4 Ep 7 | New Zealand Today | COMEDY | Three | ThreeNow](#)

### **Addendum**

**Dramatis Personae**

|           |                                       |
|-----------|---------------------------------------|
| Bond      | Councillor Ria Bond                   |
| Clark     | Mayor Clark – elected 14 October 2022 |
| Pottinger | Councillor Ian Pottinger              |
| Williams  | TV Presenter New Zealand Today        |

**Chronology**

March 2023

Art Council Event

Mid 2023

Interview by Williams of Clark recorded

21 March 2024

Interview by Williams with Clark aired

### **Background**

Invercargill City Council (ICC) is a territorial authority subject to the provisions of the Local Government Act (the Act).

The Act requires in Schedule 7 Part 15(1) that the ICC must adopt a code of conduct for members. It further provides in Part 15(4) that members must comply with the code of conduct. Further members are required by Schedule 7 Part 14(3) to execute a declaration that confirms that they will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of ICC, the powers, authorities, and duties vested in, or imposed upon, me as *mayor or member* of the ICC by virtue of the Local Government Act 2002, the [Local Government Official Information and Meetings Act 1987](#), or any other Act.

Clark was elected as the Mayor of ICC (a member) in October 2022 and signed the relevant declaration on 1 November 2022. In accordance with the Act the ICC adopted its Code of Conduct (Code) on 1 November 2022.

Section 41A of the Act provides that the Mayor is to provide leadership to the people in the district of ICC. The Code, Part 4, is stated to apply to Elected Members at all times in their official capacity as Elected Members, and as representatives of Invercargill City Council and the wider community. The Code further states that (W)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.

On 3 April 2024 ICC received a complaint letter from Crs Bond and Pottinger (the Complaint). The Complaint alleges that Clark in participating in the interview breached the Code. The Complaint alleges conduct by Clark in the interview which they believe breaches the ICC code, in particular sections 6.4 Respect for Other, 8.3 Relationship with the Public and 9.3 Contact with the media.

Clark, Bond and Pottinger were informed of receipt of the complaint and its referral to preliminary review in accordance with the Code. On 22 April 2024 a preliminary assessment of the complaint was completed in accordance with Part 15.2.5 and 15.2.6 of the Code. Clark, Bond and Pottinger were subsequently informed of the outcome of the preliminary review and the decision to refer the Complaint and the decision to refer the Complaint for independent investigation.

Please contact me if you require any further information.

Andrew Cameron  
Chief Risk Officer

### **Observations**

The Code sets out the general requirements of the independent investigation. In particular the investigator must:

- Consult with the complainant, respondent and any affected parties;
- Undertake a hearing with relevant parties;
- Refer to any relevant documents or information.

One threshold issue for to be determined as part of the investigation is whether a connection can be made between Clark's behaviour and his official capacity as Mayor.

Part 15.2.17 of the Code sets out the requirement to undertake an investigation appropriate to the scale of the alleged breach. This includes potentially recommendations to resolve the breach and/or appropriate penalties. Part 16 sets out the penalties that may be considered in the event that a member is found to have breached the Code.

The Code in Part 8 provides that failure to meet the standards of behaviours set out in that Part amount to a breach of the Code. The Code also provides a definition of materiality to assist with that determination and any potential sanction arising from the investigation.

**Response to Wynn Williams Code of Conduct investigation**

I wish to make the following observations:

- I accept that the interview with Guy Williams was not good and brought discredit to the council and the wider city.
- Code of Conduct - Section 16 Penalties. The code prescribes what penalties are available to elected members by way of penalties. Please note that the list does not include restricting public speaking duties “front facing duties” as suggested by the investigator.
- I fully accept that my behaviour in this TV interview brings both the mayoral role and Council into disrepute. I have undertaken many external presentations over the last 4 years and while most are well received, I am not perfect and I accept that this type of interview can not occur again.
- I apologise to my colleagues for the impact on them and the Invercargill public.

Nobby Clark

Mayor

22 July 2024

Submission by Councillor Ian Pottinger.

As a complainant I have been given the opportunity to submit a statement in relation to today's meeting subject, "Code of Conduct".

The investigator's report summarises the Code of Conduct complaint lodged by myself and Cr Bond and finds that the code was breached by the Mayor multiple times and that the breaches were material.

I welcome the findings of the report as it gives complete justification and support to the decision Cr Bond and I made to lodge the complaint against the Mayor's behaviour in the "N" word television interview.

A really important point for Council is that this meeting may never have needed to be held. I refer to an offer given to the Mayor on April 18, by email and via the Chief Executive, allowing a five day window in which to properly apologise for his behaviour and the breaches committed. We advised the Mayor, that if he did so, we would withdraw the complaint. (Please refer to the investigator's report which dismisses the sincerity of the apology originally offered by the Mayor in the Southland Times, April 17)

The Mayor subsequently refused the offer to properly apologise and as a result of that, this committee is now here to discuss the investigator's report, which I must say is a comprehensive and concise document and in my opinion, a literary masterpiece.

Cr Bond and I have completed our role in these proceedings and it is now up to this committee to carry out section 16.1 (Penalties and Actions – material Breaches) of the Council's Code, which is their duty under the Act.

Cr Ian Pottinger

Independent Investigation into Code of Conduct Complaint against Mayor Nobby Clark.

Wednesday 24 July 2024

Written submission by Cr Ria Bond

The ICC Chief Executive has given me the opportunity as one of the complainants to make a submission statement for today's meeting - Code of Conduct Investigation Councillors Bond and Pottinger.

Report to the Chief Executive of Invercargill City Council. Independent Investigation into code of conduct complaints against Mayor Nobby Clark.

It would be remiss of me to not specifically address an item on today's council agenda and bring this item to the attention of Councillors and members of the public watching the councils live stream today.

Page 2 of our agenda in Diligence Boards under the heading recommendations bullet point number 2 'recommends that council notes the perceived conflict by councillors'.

With that item clearly set out in today's agenda I expect and trust that the remaining four Elected Members under the Mayor Clark's 'Lets Go Invercargill Ticket' team have disclosed their perceived conflict of interest prior to this meeting on receiving the agenda, or if not, they will do so immediately at today's meeting to disclose this perceived conflict of interest. Declaring this perceived conflict from councillors upholds the integrity, transparency and fairness that today's meeting agenda will be upheld with the respect and fairness it deserves.

As stated in our Code of Conduct complaint, Councillor Pottinger and myself in lodging the code of conduct complaint against Mayor Clarke had taken a very considered and measured approach to the process we needed to follow and the ramifications that may eventuate from the independent investigation findings. I stand by the approach taken by myself and Cr Pottinger. I would do this again if any Elected Member showed such behaviour and conduct that is seriously lacking and not fitting of elected members, that bring our city into disrepute and breach our Code of Conduct.

The strong displeasure from members of our communities of Invercargill, Bluff, Southland and throughout New Zealand, left us with no doubt that serious breaches of our Code of Conduct had been breached by Mayor Clark. I'm thankful to the many out of town local government members who gave encouragement and support for Cr Pottinger and I including members of our communities for lodging the complaint against the Mayor for his behaviour and conduct.

It is a privilege for elected members to be trusted by our peers, our community, and businesses to be elected to our city as their representatives. We each took an oath and commitment to uphold our city's reputation, to maintain high standards of behaviour, which it's important for the credibility of civic leaders and our city's reputation. The Mayors behaviour and conduct failed in upholding that oath. The continued failure of conduct and behaviour is not fitting of a civic leader.

Damningly the Race Relations Commissioner Saunoamaali'i Karanina Sumeo commented on the New Zealand Today episode where the Mayor repeatedly used the 'N' word said "Leaders in elected offices have a special responsibility to speak and lead our communities in inclusive and respectful ways and should never use discriminatory, demeaning or racist language"

The independent investigation report factual findings inside the Executive summary has proven beyond any doubt that Mayor Clark on multiple occasions has breached our Code of Conduct in his role as Mayor and these breaches are material.

I refer to page 1 of the factual report, specifically the executive summary 2.1. Which sets out the multiple instances during the Interview, specifically, Mayor Clark's language and other conduct in the interview where on four clauses of the Code of Conduct had been breached. These breaches are material breaches.

The factual findings in the evidence of the report also found multiple occasions during the New Zealand Today interview that Mayor Clark used language and otherwise conducted himself in a manner that was disrespectful, discourteous, insulting, offensive, degrading and /or discriminatory.

Clauses (a)6.4 - Respect for others

(B)8.3 - Relationship with the Public

(C)9.3 - Contact with the media on an elected members own behalf

(D)7.2 - Mayor

The factual report findings outline succinctly how these are material breaches in detail.

I refer to page 8 of the factual report, under the heading of Aftermath to the Interview, point 5.26 (a) "with hindsight, had I known how the Guy Williams TV show was going to be cut and pasted, I wouldn't have been involved.

The factual report findings show this was not the case. The Mayor signed a non disclosure agreement to give the producers of the show full permission to do what they liked. There is no hiding that fact inside of the report and what I had submitted to the investigator.

Today the Elected members sitting around the table have a responsibility to make decisions from the evidence that has been provided by the independent investigator, however ultimately, it is up each individual elected member in determining what today's outcome for the Mayor's future with our city will be, no matter how hard that will be for each of the Councillor's.

The severity of the Mayor's behaviour cannot be minimised with a minimal approach taken, effectively giving the Mayor a slap on the hand and told to go away and be a good Mayor as some may wish for, nor can we ask for another apology where the real risk is this is not sincere or genuine, giving our city lip service. We have been there with Mayor Clarke.

The cost to this city for this Code of Conduct fundamentally sit with the Mayor, as his total lack of remorse for his actions has been hideous. The cost to this city has been his decision, the behaviour and conduct the Mayor has displayed is his own conduct and behaviour, not this councils. The only person putting up smoking Mirrors to this Code of Conduct complaint to make look like a distraction to actual the underlining issues is the Mayor himself.

My final point in my written statement is that Councillor Pottinger and I trust that each councillor sitting around that meeting table today has the responsibility to make decisions that have been provided by the Independent Investigator now has the evidence of each material breach. Our role as elected members for lodging the Code of Conduct against the Mayor is completed, now it is your role as elected members to uphold your credibility and that of our city, including our council by determining what steps council will now take today with the report findings. In my opinion the factual evidence inside this report is unarguable on all fronts. There are no more excuses. By applying soft

actions/penalty for this multiple material breaches from the Mayor, members are leaving behind the legacy this behaviour is acceptable in Local Government.

Will you consider the multiple material breaches serious enough to endorse and support further actions / penalties that are outlined on page 1 section 2 under the heading of Executive summary 2.3 of the report? I support points (a to c) to be serious consequences, however that decision is for the remaining present members to make.

CR Ria Bond.