



# **Tauranga City Council**

## **Code of Conduct**

**Adopted on the .....**

# Contents

1. Introduction .....	4
2. Scope .....	4
3. Values .....	4
4. Role and responsibilities .....	5
4.1 Members.....	5
4.2 Chief Executive.....	5
5. Relationships .....	5
5.1 Relationships between members .....	6
5.2 Relationships with staff .....	6
5.3 Relationship with the public.....	6
6. Media and social media .....	6
7. Information.....	7
7.1 Confidential information .....	7
7.2 Information received in capacity as an elected member.....	7
8. Conflicts of Interest .....	7
9. Register of Interests.....	8
9.1 Annual Declaration of Interest.....	8
9.2 Regulatory Register .....	9
9.3 Gift Register.....	9
10. Ethical behaviour.....	10
11. Creating a supportive and inclusive environment.....	10
12. Dress code .....	10
13. Undischarged bankrupt .....	10
14. Breaches of the Code.....	10
14.1 Principles.....	10
14.2 Complaints.....	11
14.2.1 Complaint referred to Mayor.....	11
14.2.2 Complaint referred to Independent Investigator .....	11
14.3 Materiality .....	12
15. Penalties and actions .....	12
15.1 Material breaches .....	12
15.2 Statutory breaches.....	12
16. Review .....	13
Appendix A: Guidelines on the personal use of social media .....	14
Appendix B: Legislation bearing on the role and conduct of elected members .....	15

Appendix C: Register of interests form.....	20
Appendix D: Process where a complaint is referred to an independent investigator.....	22
Appendix E: Complaints Procedure – Flow Diagram.....	25

## 1. Introduction

The Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- Enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the local authority to its communities; and
- Develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in the code.

## 2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members. The Code is designed to deal with the behaviour of members towards:

- Each other;
- The Chief Executive and staff;
- The media; and
- The general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the local authority to give effect to its statutory responsibilities.

The Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

## 3. Values

The Code is designed to give effect to the following values:

1. **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;
3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials;
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.

7. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.<sup>1</sup>

These values complement, and work in conjunction with, the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

## 4. Role and responsibilities

The Code of Conduct is designed to strengthen the good governance of your city, district or region. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

### 4.1 Members

The role of the governing body includes:

- Representing the interests of the people of the city, district or region;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan;
- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

### 4.2 Chief Executive

The role of the Chief Executive includes:

- Implementing the decisions of the Council;
- Ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of the local authority;
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
- Providing leadership for the staff of the Council; and
- Employing, on behalf of the Council, the staff of the local authority, (including negotiation of the terms of employment for those staff).

The Chief Executive is the only person *directly* employed by the Council itself (s.42 LGA 2002). All concerns about the performance of an individual member of staff must, in the first instance, be referred to the Chief Executive.

## 5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

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<sup>1</sup> See Code of Conduct Guide for examples.

## 5.1 Relationships between members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that:

- Maintains public confidence;
- Is open, honest and courteous;
- Is focused on issues rather than personalities;
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.

Please note, nothing in this section of the Code is intended to limit robust debate.

## 5.2 Relationships with staff

An important element of good governance involves the relationship between a Council, its chief executive and its staff. Members will respect arrangements put in place to facilitate this relationship, and:

- Raise any concerns about employees, officers or contracted officials with the Chief Executive;
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor/Chair or the chairperson of the Chief Executive Performance Review Committee (however described);
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer;
- Treat all employees with courtesy and respect and not publicly criticise any employee; and
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees.

Please note, elected members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's annual audit.

## 5.3 Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that Councils have the respect and trust of their citizens. To facilitate trust and respect in their Council members will:

- Ensure their interactions with citizens are fair, honest and respectful;
- Be available to listen and respond openly and honestly to citizens' concerns;
- Represent the views of citizens and organisations accurately, regardless of the member's own opinions of the matters raised; and
- Ensure their interactions with citizens and communities uphold the reputation of the local authority.

## 6. Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role, the media needs access to accurate and timely information about the affairs of Council.

Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

1. In dealing with the media elected members must clarify whether they are communicating a view endorsed by their council or committee or are expressing a personal view.
2. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
  - Comments shall be consistent with the Code;
  - Comments must not purposefully misrepresent the views of the Council or the views of other members;
  - Social media pages controlled by members and used for making observations relevant to their role as an elected member should be open and transparent, except where abusive or inflammatory content is being posted; and
  - Social media posts about other members, council staff or the public must be consistent with section five of this Code. (See **Appendix A** for guidelines on the personal use of social media).
3. The following members can speak on behalf of the Council:
  - The Mayor is the first point of contact for the official view of the Council on any issue. Where the Mayor is absent any matters will be referred to the Deputy Mayor or relevant committee chairperson;
  - The Mayor may refer any matter to the relevant committee chairperson or to the relevant chairperson(s)
  - The chairperson may comment on behalf of the committee in relation to matters where decision making, public consultation or advocacy is a responsibility of the committee;
  - No other member may comment on behalf of the Council without having first obtained the approval of the Mayor, or on behalf of a committee without first having obtained the approval of the committee chairperson.

## 7. Information

Access to information is critical to the trust in which a local authority is held and its overall performance. A failure to comply with the provisions below can represent a breach of the Code.

### 7.1 Confidential information

In the course of their duties members will receive information, whether in reports or through briefings or debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

### 7.2 Information received in capacity as an elected member

Occasionally members will receive information from external parties which is pertinent to the ability of their Council to properly perform its statutory duties. Where this occurs, and the information does not contravene the privacy of natural persons, the member will disclose such information to other members and/or the chief executive as soon as practicable.

## 8. Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or

perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary (financial) interest, other than an interest in common with the general public. This rule also applies where the member's spouse/partner has a pecuniary interest, such as through a contract with the Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

Non-pecuniary conflicts of interest, or the perception of a conflict of interest, may impair (or be seen to impair) a member's ability to act faithfully, impartially and in the best interests of Tauranga City. Non-pecuniary conflicts of interest are to be declared at the beginning of any meeting, or at the first opportunity in a decision-making process.

Non-pecuniary interest is any interest the member may have in an issue that does not involve money. A common term for this is "bias". In order to determine if bias exists or not members need to ask:

*"Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"*

The question is not limited to actual bias but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

Refer to Appendix B for further information and refer also to the [Guidance for members about the Local Authorities \(Members' Interests\) Act 1968](#) from the Office of the Auditor General.

**Please note:** Failure to observe the requirements of LAMIA could potentially invalidate a decision made, or the action taken, by the Council. Failure to observe these requirements could also leave the elected member open to prosecution (see **Appendix B**). In the event of a conviction elected members can be ousted from office.

## 9. Register of Interests

### 9.1 Annual Declaration of Interest

Members shall, at least annually, make a declaration of interest using the form in **Appendix C**. These declarations are recorded in a public Register of Interests maintained



by the Council. The declaration must include information on the nature and extent of any interest, including:

- (a) Any employment, trade or profession carried on by the member or the member's spouse/partner for profit or gain;
- (b) Any company, trust, partnership etc for which the member or their spouse/partner is a director, business partner or trustee;
- (c) A description of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and
- (d) A description of any land owned by the local authority in which the member or their spouse/partner is:
  - A tenant; or
  - The land is tenanted by a firm in which the member or spouse/partner is a business partner; a company of which the member or spouse/partner is a director; or a trust of which the member or spouse/partner is a trustee.
- (e) Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note, where a member's circumstances change they must ensure that their declaration of interest is updated as soon as practicable.

## **9.2 Regulatory Register**

In addition to the declaration of interests as set out in 9.1, members shall complete the Regulatory Register where there is potential for members to be seen to be influencing a council regulatory and/or compliance outcome.

The Regulatory Register requires a declaration of any potential conflict of interest, actual or perceived, where members have a close relationship or involvement with, or are advocating for and on behalf of, an individual, organisation or company affected by a decision of the Council in its regulatory and compliance roles.

The Regulatory Register:

- promotes greater transparency for the public and staff working in the regulatory and compliance areas of Council.
- provides protection for elected members from perceived conflicts of interest.
- provides protection for staff from perceived pressure and interference in regulatory and compliance decisions.

For clarity, the Regulatory Register is not required to be completed where members are making routine inquiries on behalf of their constituents e.g. elected members queries or where members are undertaking discussions and meetings of a general nature with developers or businesses.

## **9.3 Gift Register**

Where a gift to the value of \$100 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available gift register.

## 10. Ethical behaviour

Members will seek to promote the highest standards of ethical conduct. Accordingly members will:

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or their families', personal or business interests;
- Only use the Council's resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- Not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Refer to clause 9.3.

Any failure by members to comply with the provisions set out in this section represents a breach of the code.

## 11. Creating a supportive and inclusive environment

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment or evaluation of the Council's performance and operating style during the triennium.
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of the city, district or region.

## 12. Dress code

It is expected that members will dress in a manner that does not bring discredit to the Council.

## 13. Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 of the LGA 2002, any member who is an undischarged bankrupt shall notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt.

## 14. Breaches of the Code

Members must comply with the provisions of the code (LGA 2002, schedule 7, cl. 15(4)). Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

### 14.1 Principles

The following principles will guide any processes for investigating and determining whether or not a breach under the Code has occurred:

- (a) That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- (b) That the processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- (c) That the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, that directly 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 confidence that any hearing will be impartial;
  - Have a right to seek appropriate advice and be represented; and
  - Have their privacy respected.

## **14.2 Complaints**

All complaints made under the code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward the complaint to the Mayor or, where the Mayor is a party to the complaint, an independent investigator, drawn from a pool of names or agency agreed in advance.<sup>2</sup>

Please note, only members and the Chief Executive (including the Chief Executive acting on behalf of staff) may make a complaint under the Code.

### **14.2.1 Complaint referred to Mayor**

On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor will, as the situation allows:

- Interview the complainant to assess the full extent of the complaint.
- Interview the member(s) subject to the complaint.
- Assess the complaint to determine materiality.
- Where a complaint is assessed by the Mayor to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.
- Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor will refer the complaint back to the Chief Executive who will forward it to an independent investigator.

If the Mayor chooses they may, instead of undertaking an initial assessment, immediately refer the complaint to an independent investigator, via the Chief Executive.

### **14.2.2 Complaint referred to Independent Investigator**

On receipt of a complaint from a member which concerns the Mayor, or from the Mayor after initial consideration, the Chief Executive will forward that complaint to an independent investigator. The independent investigator will conduct a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or the Code of Conduct Committee (if established with delegated

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<sup>2</sup> On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for this purpose of undertaking a preliminary assessment.

authority to deal with complaints) for assessing and ruling on complaints. The process, following receipt of a complaint, will follow the steps outlined in **Appendix D**.

Refer also to **Appendix E** – Complaints Procedure Flow Diagram.

### 14.3 Materiality

An alleged breach under the Code is material if, in the opinion of the Mayor or independent investigator, it would bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.

An alleged breach under this Code is non-material if, in the opinion of the Mayor or independent investigator, any adverse effects are minor and no investigation or referral is warranted.

## 15. Penalties and actions

Where a complaint is determined to be material and referred to the Council or the Code of Conduct Committee established to consider complaints, the nature of any penalty or action will depend on the seriousness of the breach.

### 15.1 Material breaches

In the case of material breaches of the Code, the Council, or the Code of Conduct Committee established to consider complaints, may require one of the following:

1. A letter of censure to the member;
2. A request (made either privately or publicly) for an apology;
3. Removal of certain Council-funded privileges (such as attendance at conferences);
4. Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
5. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
7. A vote of no confidence in the member;
8. Suspension from committees or other bodies to which the member has been appointed; or
9. Invitation to the member to consider resigning from the Council.

The Council or Code of Conduct Committee (with delegated authority) may decide that instead of a penalty, one or more of the following may be required:

- 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.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

### 15.2 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under LAMIA);
- Breaches which result in the Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s.44 LGA 2002 which may result in the member having to make good the loss or damage); or
- Breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

## **16. Review**

Once adopted, the Code continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code. Amendments to the Code require a resolution supported by 75 per cent of the members of the Council present at the Council meeting at which the amendment is considered.

Councils are encouraged to formally review their existing Code and either amend or re-adopt it as soon as practicable after the beginning of each triennium in order to ensure that all members have the opportunity to provide their views on the Code's provisions.

## Appendix A: Guidelines on the personal use of social media

There's a big difference in speaking "on behalf of Council" and speaking "about" the Council. While your rights to free speech are respected, please remember that citizens and colleagues have access to what you post. The following principles are designed to help you when engaging in **personal or unofficial online** communications that may also refer to your Council.

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
2. **You are responsible for your actions.** Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense and clarify whether you are speaking personally or on behalf of the Council.
3. **Be an "advocate" for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.
4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.
5. **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
6. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.
7. **Elected Members' social media pages should be open and transparent.** When commenting on matters related to the local authority no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

## Appendix B: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at [www.legislation.govt.nz/](http://www.legislation.govt.nz/)

### The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

The two specific rules in the LAMIA are that members cannot:

- (a) Enter into contracts with their local authority worth more than \$25,000 (including GST) in a financial year unless the Auditor-General approves the contracts (referred to as the contracting rule). Breach of this rule results in automatic disqualification from office; and
- (b) Participate in matters before the Council in which they have a pecuniary interest, other than an interest in common with the public (referred to as the participation rule). Breach of this rule is a criminal offence and conviction results in automatic disqualification from office

A pecuniary interest is one that involves money. This could be direct or indirect.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse/partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- A person, or spouse/partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their spouse/partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected member's family trust and the Council

## **Determining whether a pecuniary interest exists**

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

*“...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.”* (OAG, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor/Chair or other person, to determine if they should discuss or vote on an issue, but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention need to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

Further guidance is provided in the booklet “Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968” which has been provided to elected members. It is important that you pay attention to the contents of this booklet as this is one of the few areas of the Council's business where staff do not set out to provide pro-active advice and members are personally liable for compliance with the provisions of this Act.

## **The contracting rule**

A member is disqualified from office if he or she is “concerned or interested” in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

## **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. Non-pecuniary interest is any interest the member may have in an



issue that does not involve money. A common term for this is “bias”. In order to determine if bias exists or not members need to ask:

*“Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”*

The question is not limited to actual bias but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members’ statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a “closed mind”); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

[The Guidance on Member’s Interest](#) provided by Office of the Auditor General provides advice and information on this issue. If a member thinks they may have an “interest” in any matter before the Council or a Committee then discuss the issue with your lawyer (at no cost to the Council), the Mayor, the Committee Chair or the Chief Executive before the meeting. While this will not relieve you of your obligations under the LAMIA it will provide you with some independent guidance. The Council has adopted the recommendation of the Office of the Auditor General and has asked all elected members to make a written declaration of their personal and financial interests that may at times conflict with their role as an elected member. This information will be kept in a "Register of Interests" and this is made available for public inspection upon request. Members are responsible for keeping their written declarations up to date at all times. Members will be reminded on an annual basis to update their declaration.

## **Local Government Official Information and Meetings Act 1987**

The Local Government Official Information and Meetings Act 1987 (LGOIMA) sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another Councillor is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Standing Orders for more detail.

Under LGOIMA the authority to make decisions on whether information should be released is delegated to the Chief Executive. Information contained in the open section of any agenda is already in the public domain. Any information marked “public excluded” or “confidential” should not be released or discussed outside the meeting concerned. If, as an elected member, you are asked to provide that information to a third party you should refer the request to either the Chief Executive or to the General Manager responsible for the report. Should an elected member release confidential information and should the Council suffer any loss as a result, the member may become personally liable for the Council’s loss if it can be shown that the member was not acting in good faith.

### **Secret Commissions Act 1910**

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

Prosecutions made for offences under this Act require the approval of the Attorney-General who has the power to decide whether any such prosecution shall be dealt with as an indictable offence or as one punishable on summary conviction. An indictable offence penalty for individuals includes up to two years imprisonment or a fine of up to \$1,000.00. A conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002. For a summary offence the penalties include a period of up to 3 months imprisonment or a fine of up to \$100.00.

### **Crimes Act 1961**

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- Use information gained in the course of their duties for their, or another person’s, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

Elected members are deemed to be “officials” for the purposes of this Act and are subject to the penalties if found to be in breach of them. A conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002 (which disqualifies a Member who is convicted of an offence punishable by a term of imprisonment of two years or more).

### **Financial Markets Conduct Act 2013**

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

## **The Local Government Act 2002**

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles, and details the personal liability of members.

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

- (a) Money belonging to, or administered by, a local authority has been unlawfully expended; or
- (b) An asset has been unlawfully sold or otherwise disposed of by the local authority; or
- (c) A liability has been unlawfully incurred by the local authority; or
- (d) A local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- (a) Without the member's knowledge;
- (b) With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- (c) Contrary to the manner in which the member voted on the issue; and
- (d) In circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (s47 LGA 2002).

# Appendix C: Register of interests form

<b>Member name:</b>
<b>Spouse/partner name:</b>
<b>Part A: Member's declared employment, trade or profession and any company, trust or partnership for which the member is a director, business partner or trustee</b>
<b>Part B: Spouse/partner declared employment, trade or profession and any company, trust or partnership for which the member is a director, business partner or trustee</b>
<b>Part C: Address of any land in which a beneficial interest is held within the Council boundaries by the member and their spouse/partner</b>

Part D: Address of any land owned by the Council that is tenanted by the member or their spouse/partner, or to a firm or organisation in which the member or their spouse/partner is a director or trustee

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Part E: Non-pecuniary interests e.g. Patron of an organisation, Membership of a Community/Sporting Committee

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Part F: Any other matters to declare that the public might reasonably regard as likely to influence the members actions

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I declare that the above disclosures are a true and complete record of my interests and the interests of my spouse/partner in accordance with section 9 of the Code of Conduct.

Signature:

Date:

## Appendix D: Process where a complaint is referred to an independent investigator

### Step 1: Chief Executive receives complaint

On receipt of a complaint under the Code, whether from a member (because the complaint involves the Mayor) or from the Mayor after an initial assessment, the Chief Executive will refer the complaint to an investigator selected from a list agreed at the start of the triennium. The Chief Executive will also:

- Inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- Inform the respondent that a complaint has been made against them, the name of the investigator and remind them of the process for dealing with complaints as set out in the Code.

### Step 2: Investigator makes preliminary assessment

On receipt of a complaint the investigator will assess whether:

1. The complaint is trivial or frivolous and should be dismissed;
2. The complaint is outside the scope of the Code and should be re-directed to another agency or institutional process;
3. The complaint is minor or non-material; or
4. The complaint is material and a full assessment is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties, which are then forwarded to the Council's Chief Executive.

### Step 3: Actions where a complaint is found to be trivial or frivolous

If the subject of a complaint is found to be trivial or frivolous the investigator will inform the Chief Executive. On receiving the investigator's preliminary assessment the Chief Executive will inform the complainant, respondent and other members (if there are no grounds for confidentiality) of the investigator's decision.

### Step 4: Actions where a complaint involves a potential legislative breach

In cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, the investigator will inform the Chief Executive. On receiving the investigator's preliminary assessment the Chief Executive will forward the complaint to the relevant agency and inform the complainant, the respondent and members.

### Step 5: Actions where a complaint is found to be non-material

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, the investigator will inform the Chief Executive. On receiving the investigator's preliminary assessment the Chief Executive may choose to implement any recommendations from the investigator to either

- (a) dismiss the complaint with no further action taken
- (b) uphold the complaint but rule that, as it is minor and non-material, no action is required
- (c) uphold the complaint, noting it is minor and non-material, and make a non-binding recommendation with a course of action appropriate to the breach, such as:
  - That the respondent is referred to the Mayor for guidance; and/or
  - That the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-binding on the respondent and the Council.

### **Step 6: Actions where a complaint is found to be material**

If the subject of a complaint is found to be material, the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then undertake an investigation appropriate to the scale of the breach and prepare a report for the Council on the seriousness of the breach. In preparing that report, the investigator may:

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

The Chief Executive will send a copy of the investigator's findings to the complainant and the respondent(s) inviting them to reply in writing as to whether or not they agree to the findings and whether they wish to make a written submission for consideration by the Council or Committee with delegated responsibility to consider complaints and determine penalties.

On receipt of the investigator's report, the Chief Executive will prepare a report, including the investigator's full report and any submissions from affected parties, for the relevant Council body charged with assessing and ruling on material complaints, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed.

### **Step 7: Process for considering the investigator's report**

The investigator's report will be considered by the Council or adjudicative body established for considering reports on Code of Conduct complaints, or any other body that the Council may resolve, noting that the process will meet the principles set out in section 15.1 of the Code.

The Council, or adjudicative body, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the relevant body may ask the investigator to provide a briefing on their findings and invite the complainant and/or respondent to speak to any submissions that they might have made.

Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

The Council, or adjudicative body, will decide whether a material breach of the Code has occurred and what, if any, penalty or action should occur in response to the breach. The form

of penalty that might be applied will depend on the nature of the breach and may include actions set out in clause 16.1 of the Code.

The report, including recommendations from the adjudicative body, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.

The respondent and complainant will be informed in writing of the decision.



# Appendix E: Complaints Procedure – Flow Diagram

