



Elected Members' Conflicts of Interest Guidelines

Introduction

“Impartiality and transparency are essential to maintaining the integrity of the public sector”¹

Conflicts of interest sometimes cannot be avoided, and can arise without anyone being at fault. They are a fact of life. But they need to be managed carefully.²

All elected members are required to maintain a clear separation between their personal interests and duties, and their role as an elected member of council. The public must have confidence that elected members are acting impartially in their decision making and use of publically funded resources.

Waikato Regional Council (council) is committed to addressing elected members’ conflicts of interest. Council will adhere to the steps identified by the Auditor-General in relation to managing members’ conflicts of interests:

1. Recognising that there is a conflict of interest
2. Disclosing the conflict of interest
3. Managing the risks associated with the conflict of interest.³

Recognising that there is a conflict of interest

Identifying conflicts of interest is the responsibility of the elected member concerned.

There are many different types of conflicts, from financial conflicts to a conflict in roles or duty. A conflict of interest occurs where an elected member’s *“duties or responsibilities to a public entity could be affected by some other interest or duty that the member may have”⁴*

Financial conflicts of interest

If an elected member has a financial interest they must consider the requirements if the Local Authorities (Members’ Interests) Act 1968 which states that elected members cannot:

- Have interests in contracts with the local authority that are worth more than \$25,000 in a year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office; or
- Participate in matters before their local authority in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence and conviction results in automatic disqualification from office.⁵

Non-financial conflicts of interest

The question to be asked in determining if a non-financial conflict of interest exists is:

¹ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 10

² Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 10

³ Controller and Auditor-General, (2016), *Reflections from our audits: Governance and Accountability*, Wellington, page 27

⁴ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 13

⁵ Local Government New Zealand (2013), *Elected Members’ Governance Handbook*, Wellington, page 58

“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?”⁶

Examples of non-financial conflict of interest include:

- Holding another public office;
- Being an employee, advisor, director, or partner of another business or organisation;
- Pursuing a business opportunity;
- Being a member of a club, society or association;
- Having a professional or legal obligation to someone else (such as being a trustee);
- Owning a beneficial interest in a trust;
- Owning or occupying a piece of land;
- Owning shares or some other investment or asset;
- Having received a gift, hospitality or other benefit from someone;
- Owning a debt to someone;
- Holding or expressing strong political or personal views that may indicate prejudice or predetermination for or against a person or issue; or
- Being a relative or close friend of someone who has one of these interests, or who could otherwise be personally affected by a decision of council.⁷

The assessment of whether a non-financial conflict of interest exists is not limited to actual bias, but relates to the appearance or possibility of bias. It is not enough that elected members are honest and fair; they should also be clearly seen to be so.⁸

Whether or not the elected member concerned believes that they are unbiased is irrelevant.⁹ In a situation where an elected member refuses to acknowledge or accept that they might have a conflict of interest, the Chairperson has an important role in managing the situation.¹⁰

Disclosing the conflict of interest

Disclosing conflicts of interest is the responsibility of the elected member concerned. It is better to err on the side of openness and take a precautionary approach. All disclosures of conflicts of interests by elected members are recorded in the Register of Interests maintained by the Democracy Services Team

Initial Disclosure

Elected members shall make a declaration of interests at the start of each triennium within six (6) weeks of the triennial meeting.

Ongoing Disclosure

⁶ Local Government New Zealand (2013), *Elected Members' Governance Handbook*, Wellington, page 59

⁷ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 18

⁸ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 10

⁹ Local Government New Zealand (2013), *Elected Members' Governance Handbook*, Wellington, page 59

¹⁰ Controller and Auditor-General, (2016), *Reflections from our audits: Governance and Accountability*, Wellington, page 30

Conflicts can arise at any time, and elected members need to remain alert to this possibility.¹¹ It is the responsibility of the elected member concerned to make a disclosure as soon as practicable after becoming aware of any interest that has not previously been declared.

Governance Meetings

Elected members have the opportunity at the opening of each governance meeting to declare any interests pertaining to items on the agenda for that meeting. It is the responsibility of the elected member concerned to disclose the interest before that matter is discussed.

Once a conflict of interest is declared the Chair of the meeting will decide on the appropriate action in order to mitigate any risk associated with the conflict of interest.

Managing the risks associated with the conflict of interest

Managing the risks associated with the conflict of interest is the responsibility of council. Council will consider carefully what needs to be done to manage the risks associated with a conflict on a case by case basis.

There is a broad range of options for managing for mitigating a conflict, including:

- Taking no action, transparency is enough;
- Asking whether all the affected parties will agree to the person's involvement;
- Seeking a formal exemption to allow participation (if such a legal power applies);
- Imposing additional oversight or review over the person;
- Withdrawing from discussing or voting on a particular item of business at a meeting;
- Exclusion from a committee or working group dealing with the issue;
- Re-assigning certain tasks or duties to another person;
- Agreement or direction not to do something;
- Withholding confidential information, or placing restrictions on access to information;
- Transferring the person (temporarily or permanently to another position or project);
- Relinquishing the private interest; or
- Resignation or dismissal from one or other position or entity.¹²

Several factors are relevant in determining the appropriate option, including:

- The type or size of the other interest;
- The nature or significance of the particular decision or activity (e.g. is it of great public significance or value; involve the allocation of grants or contracts; highly confidential information; or directly affect the legal rights, interests, and obligations of an individual or small group of individuals)
- The extent to which the elected member's other interest could specifically affect or be affected by the decision or activity; or
- The nature or extent of the elected Member's current or intended involvement in the decision or activity.¹³

The Chairperson has the final decision, with recourse to legal advice.

¹¹ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 27

¹² Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 31

¹³ Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington, page 30

Complaints

Anyone may make a complaint alleging a conflict of interest. All complaints must be made in writing, clearly stating the nature of the suspected breach together with any corroborating material.

Complaints should be addressed to the Waikato Regional Council Chairperson.

Other Sources of Guidance

- Local Government New Zealand (2013), *Elected Members' Governance Handbook*
- Controller and Auditor-General, (2010), *Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968*
- Controller and Auditor-General, (2007), *Managing conflicts of interest: Guidance for public entities*