



# Waikato Regional Council

## Code of Conduct for Elected Members

**June 2018**

### Status

Council at its meeting on 30 October 2003 formally adopted the initial Code of Conduct for Elected Members. (WRC03/89.9.1).

This document (#2237035 – August 2012) incorporating amendments was formally adopted by Council at its meeting on 25 October 2012 (WRC12/251) and is therefore now the current operative Code of Conduct for Elected Members.

This document (#2237035 – February 2014) was formally adopted by Council at its meeting on 27 February 2014 (WRC 14/35) and continues to be the current operative Code of Conduct for Elected Members.

This document was amended to include Council's decision (WRC14/295) on 11 October 2014 to a Gifts Policy including the establishment of an Elected Members' Gifts and Invitations Register in section 3.6.2.

This document was amended pursuant to Council resolution WRC18/251. The new document reference being 12761605.

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# 1 Introduction

Clause 15 of schedule 7 of the Local Government Act 2002 requires Waikato Regional Council (Council) to adopt a Code of Conduct (Code). Once adopted, all elected members (also known as councillors) are required to comply with the Code (clause 15(4) of schedule 7 of the Local Government Act 2002).

The Code is intended to provide guidance to elected members with their relationships and in exercising their functions and duties. It should be read in conjunction with, and does not replace, the obligations set out in Council's Standing Orders and legislative requirements including those contained in the:

- Local Government Act 2002
- Local Authorities (Members' Interests) Act 1968
- Local Government Official Information and Meetings Act 1987
- Secret Commissions Act 1910
- Crimes Act 1961
- Financial Markets Conduct Act 2013.

The Chief Executive will provide an explanation of these Acts at the first meeting after each triennial election. Legislative summaries setting out these obligations with respect to the conduct of elected members is attached in **Appendix 1** to this Code.

This Code applies to elected members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of Council
- the news media
- social media networks
- stakeholders
- the public.

The objectives of the Code are to enhance:

- the effectiveness of Council as an autonomous local authority with statutory responsibility for good local governance of the Waikato region
- the credibility and accountability of Council within its community
- mutual trust, respect and tolerance among the elected members as a group, and between elected members and those people with whom elected members deal in the course of their duties.

This Code of Conduct seeks to achieve its objectives by recording:

- a statement of roles and responsibilities
- general principles of conduct
- specific conduct requirements applying to particular circumstances or matters
- matters relating to compliance and complaints.

Elected members are primarily accountable to the electors of the region through the democratic process. The Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

## 1.1 Principles of good governance

This Code is based on the following general principles of good governance:

**Public interest:** Elected members must serve only the interests of the region as a whole and never improperly confer an advantage or disadvantage on any one person.

**Honesty and integrity:** Elected members must not place themselves in situations where their honesty and integrity are at question, must not behave improperly and must on all occasions avoid the occurrence or appearance of such behaviour.

**Objectivity:** Elected members must make decisions on merit, including decisions on appointments, awarding contracts or recommending individuals for rewards or benefits. Elected members' primary duty is to the interests of the entire region, not the constituency that elected them.

**Accountability:** Elected members are accountable to the public for their actions and the manner in which they carry out their responsibilities. They must co-operate fully and honestly with the openness appropriate to their office.

**Openness:** Elected members must be as open as possible about their actions and those of Council, and must be prepared to explain the reasoning behind their actions and decisions.

**Personal judgement:** Elected members must take account of the views of others, but reach their own conclusions on the issues before them, and act in accordance with those conclusions.

**Respect for others:** Elected members must promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They must respect the impartiality and integrity of Council staff.

**Duty to uphold the law:** Elected members must uphold the law and, on all occasions, act in accordance with the trust the public places in them.

**Stewardship:** Elected members must ensure that Council uses resources prudently and for lawful purposes, and that Council maintains sufficient resources to meet its statutory obligations to both present and future generations.

**Leadership:** Elected members are leaders in their community and must at all times provide leadership by example.

These general principles of good governance complement, and must be read in conjunction with, the principles relating to local authorities set out in section 14 and the governance principles set out in section 39 of the Local Government Act 2002.

## 1.2 Review

Once adopted, this Code continues in force until amended by Council. It may be amended at any time but cannot be revoked unless Council replaces it with another Code. Once adopted, amendments to this Code require a resolution supported by 75 percent or more of the elected members of Council present.

Council will promote this Code at the beginning of each triennium. It may be revised at any time during the triennium. The results of that review will be presented to elected members at Council meeting for their consideration and vote.

## 2 Roles and responsibilities

This part of the Code describes the roles and responsibilities of elected members, the additional roles of the Chair and Deputy Chair, and the role of the Chief Executive.

### 2.1 Elected members

Elected members, acting as Council, are responsible for:

- representing the interests of the residents and ratepayers of Council
- the development and adoption of Council policy
- monitoring the performance of Council against its objectives and policies
- prudent stewardship of Council resources
- employment of the Chief Executive.

No individual elected member has authority to act on behalf of Council unless expressly delegated by Council. Elected members must not exceed, or purport that they have the power to exceed, their given authority.

Elected members, as individuals, must comply with:

- the requirements of this Code
- those enactments and other rules of law applicable to the conduct of elected members (a brief summary of a number of significant legislative requirements are set out in **Appendix 1**).

Elected members, as individuals, are responsible for:

- advising of their apologies, leave of absence and other commitments that impact on Council's business; and
- appropriate behaviour in public forums or meetings to maintain Council's public standing.

### 2.2 Chair

The Chair is elected by the elected members of Council at the first meeting following each triennial election. As one of the elected members, the Chair shares the same responsibilities as other elected members of Council. In addition, the Chair is:

- presiding elected member at Council meetings responsible for ensuring the orderly conduct of business (as determined by Standing Orders).
- an advocate for Council's policies, undertaking high level engagement and leadership of discussions with leaders of other councils, Government and organisations. This may involve discussion prior to Council decision making to present decision options so that further information can be obtained. The Chair cannot commit Council to any position that Council has yet to decide on.
- an advocate for the community. This may involve promoting the community and representing its interests through stakeholder engagement activities. Such advocacy is most effective when carried out with the knowledge and support of Council.
- ceremonial head of Council.
- a leader and provider of feedback to other elected members on teamwork and Chairpersonship of committees.
- Justice of the Peace (while the Chair holds office)
- spokesperson as outlined in section 3.4 of this Code (Councillors' contact with the news media).

The Chair must follow the same rules as other elected members with respect to making public statements and committing Council to a particular course of action. If a complaint is made under this Code in relation to the Chair, the Deputy Chair will determine the process. Actions assigned under this Code to the Chair will be undertaken by the Deputy Chair.

## **2.3 Deputy Chair**

The Deputy Chair is elected by the elected members of Council at the first meeting of Council following the triennial election. The Deputy Chair exercises the same roles as other elected members. If the Chair is absent or incapacitated, the Deputy Chair must perform all the responsibilities and duties, and may exercise the powers of the Chair (as summarised above).

## **2.4 Committee chair**

Council may create one or more committees of Council. A committee chair presides over all meetings of the committee, ensuring it acts within Council delegated powers set out in the committee's terms of reference. Committee chairs may be called on to act as official spokespersons on particular issues. They may be removed from office by resolution of Council.

## **2.5 Chief Executive**

The Chief Executive is appointed by Council in accordance with section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing Council's policies and objectives within Council budgetary constraints.

In respect of any complaint made under this Code, the Chief Executive may assist with advice on the process to be followed in accordance with this Code.

## **2.6 Meeting attendance**

Elected members are expected to attend and participate in all Council, standing committee and subcommittee meetings to which they have been appointed, unless they have submitted an apology or obtained leave of absence in advance.

All Councillors are expected to attend all workshops and those hearings that are held as part of the consultation process on Council documents, such as the Annual Plan and Long Term Plan.

From time to time, working parties will be established by Council or a standing committee to achieve specific outcomes. Councillors are expected to make themselves available to be appointed to an equitable share of these working parties, and to attend all meetings of those to which they are appointed.

## **3 Relationships and behaviours**

This part of this Code sets out Council's agreed standards of behaviour. Some of the matters described reflect legislative requirements, such as the Local Authorities (Members' Interests) Act 1968.

### **3.1 Relationships with other elected members**

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between elected members. With this in mind, elected members must conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct.

Every elected member must act in good faith in relation to other elected members. No elected member may make a complaint for frivolous, partisan or political reasons. Nor should any elected member communicate the existence or details of a complaint made under this Code to the media unless a decision has been made by Council to do so.

### **3.2 Relationships with staff**

The effective performance of Council requires a high level of co-operation and mutual respect between elected members and staff. To ensure co-operation and trust is maintained, elected members must:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss, instruct, or censure an employee
- make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements
- treat all staff (whether employees or contractors) with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct)
- observe any guidelines the Chief Executive puts in place regarding contact with staff
- not do anything which compromises, or could be seen as compromising, the impartiality of a staff member
- avoid publicly criticising any staff member in any way, but especially in ways that reflect on their competence and integrity
- raise concerns about staff only with the Chief Executive, and concerns about the Chief Executive only with the Chair or the Deputy Chair.

Failure to observe these requirements may compromise Council's obligation to act as a good employer, and may expose Council to civil litigation and audit sanctions.

### **3.3 Relationships with the regional community**

Community networking is an important part of an elected member's role. Elected members network to understand community views in relation to a wide range of matters.

The public are entitled to know what an elected member's view is in relation to a matter (if they hold one) before a decision is made. Elected members must clearly indicate that the view they hold is based on information that they know at the time and is subject to debate in formal Council meetings so that they receive further information and hear the views of others before they make their final decision on the matter.

Effective Council decision-making depends on productive relationships between elected members and the community at large and as such, elected members must act in a manner that encourages and values community involvement in local democracy.

Elected members must ensure that individual members of the community are accorded respect in their dealings with Council, and have their concerns listened to and deliberated on in accordance with the requirements of the Act. This includes the quasi-judicial role elected members undertake on hearings.

Elected members must:

- deal with members of the community in a fair, equitable and honest manner
- be available to listen and respond to community concerns, avoiding promising things they cannot deliver
- strive to understand different community points of view
- make decisions that affect the community only after considering all relevant interests, arriving at balanced and sustainable decisions
- encourage partnerships with the community so that mutual strengths can be used to achieve common goals.

## **3.4 Councillors' contact with the news media**

The news media plays an important part in local democracy and requires access to accurate, timely information about Council activities. Elected members can expect to be approached to comment on particular issues, either on behalf of Council, or as an elected member. This part of this Code deals with the rights and duties of elected members when speaking to the media.

Elected members have the right to communicate with the news media, but they must state clearly when they are expressing a majority, collective Council view and when they are expressing a personal, minority opinion.

The following rules apply to contact with the media on Council's behalf:

- The Chair or Chief Executive is the first point of contact for official views on any issue. Where the Chair is absent, matters may be referred to the Deputy Chair or relevant committee chair. An elected member may communicate with the news media in relation to matters that are of local interest or have local implications in their constituency.
- The Chair or Chief Executive may refer any matter to the relevant committee chair for comment.
- No other elected member may comment on behalf of Council without having first obtained the Chair's approval.

Elected members may express a personal view in the media at any time, provided:

- media comments do not state or imply that they represent Council's view
- where an elected member is making a statement contrary to a Council decision or Council policy, they do not state or imply that their statements represent a majority view
- they observe the requirements of this Code including not disclosing confidential information or compromising the impartiality or integrity of staff or fellow elected members



- in presenting a personal view they do not undermine Council's policy
- information provided to elected members in reports, discussion, debate or through questions of officers as part of the decision making process is accurately reflected.

### **3.4.1 Meeting decisions**

Every elected member who has the right to speak can lawfully express his or her opinion at any Council or committee meeting within the limits imposed by Standing Orders. These meetings are open to the media and their comments may be reported.

Once a matter has been determined at a Council meeting, it becomes Council's position until it is changed by a subsequent Council decision. All elected members and staff must respect that position.

The Chair may make statements that accurately report Council decisions.

Committee chairs may make statements that accurately report their committee's decisions, or factual statements about Council or committee decisions.

Elected members have the right to voice their own opinion to the news media on Council and committee decisions provided they clearly state when they are expressing a majority, collective Council view and when they are expressing a personal, minority opinion.

### **3.4.2 Electronic communications and using social media**

Electronic communications are public information. Emails are archived, easily recovered and may be requested by the public and media under the provisions of the Local Government Official Information and Meetings Act 1987 (as are emails from personal addresses when sent or received as an elected member).

Elected members must not send, or attempt to send electronic communication:

- to others that may be viewed as harassment (unwelcome or unreciprocated behaviour) or that includes potentially offensive or discriminatory material
- that may bring Council into disrepute such as sending derogatory remarks about people or organisations.

Social media is the term for internet based tools used for publishing, sharing and discussion of information. This includes blogs, wikis and social networking sites such as Facebook, Twitter or LinkedIn. All communication through social media platforms is in the public domain. Whether talking to the media, speaking in public or using social media, the protocols outlined below apply.

- Show respect and avoid offensive or abusive language
- Make it clear when expressing a personal opinion
- Do not disclose confidential information or impugn the integrity or impartiality of fellow elected members or staff
- Do not undermine Council policy or bring Council into disrepute.

Elected members who have a concern about any communication they receive, or are aware of, should raise the matter with the:

- Chair if it relates to a communication from an elected member
- Chief Executive if it relates to a communication from a staff member.

## 3.5 Information

### 3.5.1 Confidential information

In the course of their duties elected members will receive information that is confidential. This will generally be Council information that is either commercially sensitive or is personal to a particular individual or organisation.

Elected members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the elected member.

Business conducted where the public is excluded remains confidential and must not be disclosed to the public until either Council decides by resolution to make it public or the Chief Executive determines that there is no longer good reason to withhold it under the Local Government Official Information and Meetings Act 1987 or the Privacy Act 1993.

Failure to observe these provisions may affect Council's performance, by inhibiting information flows and undermining public confidence in Council. It may also expose Council to prosecution under the Privacy Act 1993 and civil litigation, and may expose individual elected members to responsibility for loss under the Local Government Official Information and Meetings Act 1987.

## 3.6 Conflicts of interest

Elected members must maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Elected members must ensure that they are aware of the legislative requirements of the Local Authority (Members' Interest) Act 1968, which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

Conflicts of interest include:

- a pecuniary interest in a matter before Council giving rise to a presumption that there is a conflict with the elected member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss. These matters are regulated, in part, by the Local Authorities (Members' Interests) Act 1968. The provisions of that Act are summarised in **Appendix 1**.
- a non-pecuniary interest which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.

Elected members must:

- ensure that the public has confidence that decisions are made by elected members who have an open mind to the issues Council is dealing with
- avoid actual or perceived bias or predetermination.

At times Council will deal with matters where the community is divided on what decision they want Council to make. The community may lobby Council collectively and each elected member on what they would like Council to decide on an issue. Elected members must:

- be seen to be open to receiving information on the issues, but able to identify situations where the public are making accusations that they are biased in relation to a matter where they are, in fact, not biased
- take a precautionary approach to all actual or perceived conflicts of interest
- ensure that where a ruling from the Office of the Auditor General is sought under the Local Authorities (Members' Interests) Act 1968, the application for exemption is made on a timely basis.

Where a conflict of interest is established, elected members must take no part in the discussion of the matter or the decision (voting). In a case of doubt an elected member should withdraw. Elected members withdrawing should (in protection of their own and the Council's interests) ensure that their actions are minuted.

The issue of conflicts of interest is a difficult one for elected members. Issues may arise on short notice. Matters which seem straightforward at the outset may become less clear as a matter progresses. Vigilance by elected members is required. While the decision to disqualify is ultimately a matter for the elected member alone, they are encouraged to seek guidance and assistance from their colleagues or the Chief Executive on the process to determine whether an interest is apparent.

The above requirements apply to situations where elected members are participating as part of Council. They do not apply to situations where elected members attend in a private capacity. In such cases the elected member may wish to report to Council on items of interest or general value.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could invalidate a Council decision or action. Failure to observe these requirements could leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968.

Directors of Council Organisations, Council Controlled Organisations and Council Controlled Trading Organisations (COs, CCOs and CCTOs) must follow these provisions relating to conflicts of interest. See the Policy on Appointment and Remuneration of Directors of Council Organisations.

### **3.6.1 Register of interests**

Elected members must make a declaration of interests following each triennial election within six weeks after the triennial meeting and at any time after that as soon as practicable after becoming aware of any interests. These declarations are recorded in a register of interests. The declaration must notify Council of the nature and extent of any interest as follows:

- Part A – Matters in which an elected member has a financial or pecuniary interest (as per the Local Authorities (Members' Interests) Act 1968) including:
  - any employment, trade or profession carried on by the elected member or their spouse for profit or gain
  - any company, trust, partnership or other entity for which the elected member or their spouse is a director, partner, trustee or beneficiary
  - the address of any land in the Waikato region in which the elected member has a beneficial interest
  - the address of any land where the landlord is Council and:
    - the elected member or their spouse is a tenant, or
    - the land is tenanted by a firm in which the elected member or spouse is a partner, or a company of which the elected member or spouse is a director, or a trust of which the elected member or spouse is a trustee or beneficiary.
- Part B – All other external interests such as memberships, representations, businesses or shareholdings that have the potential to give rise to an actual or perceived conflict of interest.

Part B is useful when considering hearing committee membership for specific cases. For example an elected member may be a member of a group or organisation:

- making a submission
- affected by a Council recommendation or decision.

### **3.6.2 Gifts policy**

Council seeks to promote the highest standards of ethical conduct amongst its members. Acceptance of gifts, hospitality or other personal benefits could be construed by the community as a bribe or perceived as an attempt to influence the recipient. To ensure that elected members meet and are seen to be meeting their ethical obligations, the following principles apply to the receipt of gifts:

1. Elected members may:
  - 1.1 accept any gifts, hospitality or benefits that have an estimated value of less than \$100 (including GST) but only on the condition that acceptance cannot be perceived as a means of influencing a Council decision making process
  - 1.2 take part in working meals and social occasions, in an appropriate manner
  - 1.3 accept hospitality received as part of discharging the functions of an elected member.
2. Elected members must not:
  - 2.1 solicit, demand or request, by any means, gifts, hospitality or benefits by virtue of their position
  - 2.2 accept any gifts, hospitality or benefits that have an estimated value of more than \$100 (including GST), without recording the acceptance in the Council's publicly available Gifts and Invitations Register
  - 2.3 accept any offer of money under any circumstance
  - 2.4 in any way, abuse the advantages of their position for personal gain.

Gifts that fall outside the policy above are either to be refused, or where they can be, accepted and given to Council. The Chair and Deputy Chair of Council may jointly authorise that gifts be accepted where they fall outside this policy and where it is reasonable in their view to do so.

### **3.6.3 Undischarged bankrupt**

If a newly elected member is an undischarged bankrupt they must notify the Chief Executive prior to the first meeting of Council following the triennial election of members. If an elected member is adjudicated bankrupt during the course of their term, they must also notify the Chief Executive. These elected members must provide the Chief Executive with a brief explanatory statement of the circumstances surrounding their adjudication and the likely outcome of the bankruptcy.

## **3.7 Standing Orders**

Elected members must adhere to the Standing Orders adopted by Council. At a formal Council, committee or sub-committee meeting elected members may use the provisions of Standing Orders to raise a point of order to draw attention to and obtain a ruling on issues at the meeting that this Code covers (for example disrespectful, offensive or malicious language).

Matters of behaviour in relation to meeting conduct may be the subject of a complaint under this Code.

## **3.8 Ethics**

Council promotes the highest standards of ethical conduct amongst its elected members. Elected members must:

- claim only for legitimate expenses laid down by a determination of the Remuneration Authority and any policy of Council developed in accordance with that determination (Refer to Councillors' Allowances and Reimbursements Policy)
- only use Council resources (including facilities, staff, equipment and supplies) effectively and economically in the course of their duties, and within other guidelines, and not in connection with any election campaign or other personal business
- not influence, or attempt to influence, any member of Council staff to take actions that may benefit the member, their family or business interests.

## **3.9 Disqualification of elected members from office**

Under schedule 7 of the Local Government Act 2002, elected members are automatically disqualified from office if:

- they are convicted of a criminal offence punishable by two or more years imprisonment; or
- if they cease to be or lose their status as an elector (see section 80 Electoral Act 1993); or
- for certain breaches of the Local Authorities (Members' Interests) Act 1968.

# 4 Compliance

Compliance with this Code is mandatory for all elected members (clause 15(4) of schedule 7 of the Local Government Act 2002).

## 4.1 Complaints

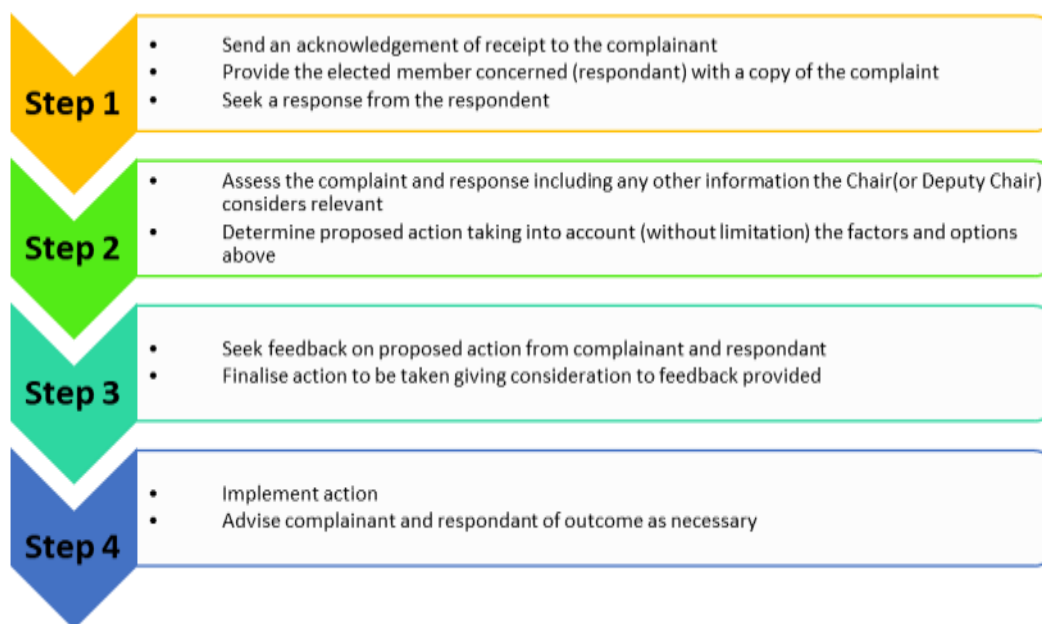
Complaints under this Code may only be made by elected members of Council. Where such a complaint is received, Council must respond in a manner that accords with the principals of natural justice. This means that Council must act in a manner that is fair to the parties involved. The process that is to be followed and outcome will be determined by the Chair (or the Deputy Chair in the Chair's absence) taking into account the nature of the complaint, but will meet the following requirements unless exceptional circumstances demand otherwise:

- The complaint must be:
  - taken seriously and acted on promptly to achieve a resolution as a priority
  - treated with the level of privacy and confidentiality appropriate in the circumstances
  - provided to the elected member who is alleged to have breached this Code (respondent).
- Enquiries must be made to establish the facts:
  - The respondent must be given the opportunity to respond.
  - All enquiries must be relevant to the complaint and its resolution.

Where possible, complaints must be resolved as informally and privately as possible taking into account Council's responsibility to ensure that:

- the principles of risk management are considered in its response;
- the response is proportional to the issues raised in the complaint; and
- issues are resolved at the lowest possible level.

The Chair may refer the complaint to the appropriate authority if the complaint concerns a breach of law. Where possible the following process will apply, except if the Chair determines there are circumstances requiring a different process be followed.



Having considered the complaint, the Chair will determine what action is required which may include, without limitation, the following options:

- dismissal of an elected member from a position as a chair or deputy chair
- an invitation for the elected member to consider resigning from Council
- censure
- removal of the elected member from committees or other bodies to which they have been appointed
- a vote of no confidence in the elected member
- removal of certain Council-funded privileges (such as cell phones, or attendance at conferences)
- restricted entry to Council offices such as no access to staff areas
- all dealings with Council staff via Chief Executive only
- suspension (rather than removal) from committees or other bodies
- education
- mentoring
- a request or requirement for an apology.

# Appendix 1 – Legislation bearing on the role and conduct of elected members

This is a summary of a number of significant legislative requirements that have a bearing on the duties and conduct of elected members. Copies of all relevant legislation can be found on [www.legislation.govt.nz](http://www.legislation.govt.nz).

## Local Government Act 2002 ('LGA')

### Purpose of local government

Section 10 of the LGA sets out the purpose of local government as follows:

- to enable democratic local decision-making and action by, and on behalf of, communities
- to meet the current and future needs of communities for **good-quality** local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

**Good quality** is defined as infrastructure, services, and performance that are:

- efficient
- effective
- appropriate for present and anticipated future circumstances.

### Governance principles

In performing its role Council must act in accordance with nine broad principles set out in section 14(1) of the LGA as follows:

- Conduct its business in an open, transparent, and democratically accountable manner
- give effect to its identified priorities and desired outcomes in an efficient and effective manner
- Make itself aware of, and have regard to, the views of all its communities
- When making a decision, take account of the diversity of the community and the various community's interests; the interests of future as well as current communities and the likely impact of any decision on those interests
- Provide opportunities for Māori to contribute to its decision making process
- Collaborate and cooperate with other local authorities
- Undertake commercial transactions in accordance with sound business practices and assess periodically the expected returns from investing in or undertaking a commercial activity against the inherent risks
- Ensure prudent stewardship and efficient and effective use of its resources in the interests of the region
- Take a sustainable development approach that takes into account the social, economic and cultural interests of people and communities and the need to maintain and enhance the quality of the environment and the reasonably foreseeable needs of future generations.

If any of the principles conflict, Council must resolve that conflict in an open, transparent and democratically accountable manner. These principles assist in determining the governance structure as they are indicative of the spirit and intent of the LGA and govern the way in which Council undertakes decision making. A Council that is seen to act in conflict with these principles may be subject to judicial review. In deciding on a governance structure, section 39 must also be considered. Section 39 defines the following governance principles:

- A local authority should:
  - ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community



- ensure that the governance structures and processes are effective, open and transparent
- ensure that, so far as is practicable, responsibility and processes for decision making in relation to regulatory responsibilities is separated from responsibility and processes for decision making for non-regulatory responsibilities
- be a good employer
- ensure that the relationship between elected members and management is effective and understood.

### **Decision making responsibility**

Every decision made by Council, including a decision not to take any action, must be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA. Specifically, Council must during the decision making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision
- assess the options in terms of their advantages and disadvantages
- identify those options which involve a significant decision in relation to land or a body of water, so as to take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter
- determine the matter's significance in relation to Council's policies relating to significance and engagement
- identify whether the proposed decision would be significantly inconsistent with any existing policy or plan
- establish and maintain processes to provide opportunities for Māori to contribute to the decision making process
- consider ways in which the Council may foster the development of Māori capacity to contribute to the decision making process
- provide relevant information to Māori
- undertake consultation in accordance with the principles set out in section 82.

### **Significance and engagement**

A higher standard of compliance with the decision making process is required when Council is making a significant decision. The definition of "significance" is defined in the LGA and Council policy. This includes the degree to which different options are identified and assessed and the extent to which community views are considered, including whether consultation is required. The more significant a matter, the greater the level, and detail, of analysis is required.

The requirement set out in section 78 of the LGA to give consideration to the views of persons likely to be affected by a decision, does not by itself, require Council to undertake a consultation process, provided the Council has sought to make itself aware of the views of those interested or affected. The Council may, for example, have gathered information through a process, formal or informal, which has provided information it needs to take community views into account. Council policy provides guidance on when consultation will, and will not be, undertaken.

### **Personal liability of members**

Elected members may be personally accountable for losses incurred by Council where, following a report from the Auditor-General under sections 44-47 of the LGA, it is found that one of the following applies:

- Money belonging to, or administered by Council has been unlawfully expended
- An asset has been unlawfully sold or otherwise disposed of by Council

- A liability has been unlawfully incurred by Council
- Council 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:

- Without the member's knowledge
- With the member's knowledge but against the member's protest made at or before the time when the loss occurred
- contrary to the manner in which the member voted on the issue
- 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.

Section 47 of the LGA sets out circumstances in which a member may be personally liable for the costs of proceedings commenced by the Attorney-General.

## **Local Authorities (Members' Interests) Act 1968 ('LAMIA')**

The LAMIA regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member. It provides that an elected member is disqualified from office if they are concerned or interested in contracts under which payments made by or on behalf of Council exceed \$25,000 in any financial year.

Elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the public. The same rules apply where the member's spouse contracts with Council or has a pecuniary interest. Elected members must declare their interests at Council and Committee meetings where matters in which they have a pecuniary interest arise.

Elected members may contact the Office of the Auditor-General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow them to participate or vote. The latter must be completed prior to the discussion or vote. The Chief Executive must seek approval from the Office of the Auditor-General for contractual payments to elected members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements may invalidate a Council decision or action and leave elected members open to prosecution under LAMIA. In the event of a conviction, members may be ousted from office.

## **Local Government Official Information and Meetings Act 1987 ('LGOIMA')**

The purpose of the LGOIMA is to provide for the availability to the public of official information held by Council, and to promote the open and public transaction of business in Council meetings.

The general principle is that information held by Council is made available unless there are good reasons for withholding it. The principal grounds for withholding information are set out in sections 6 and 7 of the LGOIMA.

The LGOIMA sets out a number of statutory procedures and requirements for Council meetings. Meetings must be publicly notified, and open to the public unless there are good reasons otherwise. The Chair has responsibility for maintaining order in meetings. However, all elected members are personally responsible for maintaining acceptable standards of address and debate in accordance with Standing Orders.

## **Secret Commissions Act 1910 ('SCA')**

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. It is also unlawful for an elected member (or officer) to present Council with false receipts.

If convicted of an offence under the SCA, a person may be imprisoned for up to seven years. Elected members convicted of an offence will be removed from office.

## **Crimes Act 1961**

It is a crime for an elected member 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. It is also a crime for an elected member to use information acquired in his or her official capacity for monetary gain or advantage. These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted will be removed from office.

## **Financial Markets Conduct Act 2013 ('FMCA')**

The FMCA regulates the offer, issue and re-sale of financial products including shares, debt securities and derivatives. Council is unable to issue shares, but can issue debt securities and derivatives, and may from time to time sell financial products. If Council does issue financial products or, in certain cases, sells financial products that it holds, members may be personally liable for breaches of the offer and other provisions of the FMCA.