



Waitomo District Council

Code of Conduct

First adopted	26 November 2019
Last Reviewed	27 October 2020
Review Date	November 2022
Associated documents	N/A
Responsibility	Manager Governance Support

This Code of Conduct was adopted by the

Waitomo District Council

at a meeting held on

27 October 2020

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1 INTRODUCTION

- 1.1 The Code of Conduct (the Code) sets out the standards of behavior 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.
- 1.2 This purpose is given effect through the values, roles, responsibilities and specific behaviors agreed in the code.

2 SCOPE

- 2.1 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, including the members of any local boards as well as the members of any community boards that have agreed to adopt it. 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.
- 2.2 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.
- 2.3 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

- 3.1 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:** 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.¹
- 3.2 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

- 4.1 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:

Members

- 4.2 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.

Chief Executive

- 4.3 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).

¹ See Code of Conduct Guide for examples.

- 4.4 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

- 5.1 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.

Relationships between Members

- 5.2 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.

Relationships with Staff

- 5.3 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.

- 5.4 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.

Relationship with the Public

- 5.5 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

- 6.1 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 member to comply with the provisions of this section can represent a breach of the Code.
- 6.2 In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.
- 6.3 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 and any Council Media Policy;
 - Comments must not purposefully misrepresent the views of Council or other members;
- 6.4 In either case, it is recommended that members liaise with Council's Communications staff (and where appropriate with the Chief Executive) in relation to any proposed commentary or regarding any media issues arising (e.g. prior to a radio or TV interview).

7 ELECTRONIC COMMUNICATIONS AND USING SOCIAL MEDIA (ONLINE CONDUCT)

Electronic Communications

- 7.1 Electronic communications are public information. Emails are archived, easily recovered and may be requested by the public and media under the Local Government Official Information and Meetings Act 1987 (LGOIMA), as are any emails from personal addresses when sent or received as an elected member.
- 7.2 Elected members must use official Council electronic communications when conducting Council business.
- 7.3 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.

Elected Member Use of Social Media

- 7.4 Social media is the term for internet tools used for publishing, sharing and discussion of information. This includes blogs, wikis and social networking sites such Facebook, Twitter or LinkedIn. Social media sites are in the public domain and carry risk.
- 7.5 For this reason, there should be a clear distinction between official accounts (e.g. Council's official Facebook account), campaign accounts and personal accounts. Elected members should distinguish their own private social media accounts by having disclaimers on them and by not using the account for any Council business.

- 7.6 Examples of potential social media platforms are:
- An elected member's official Facebook or other social media pages
 - An elected member's election campaign Facebook or other social media pages
 - An elected member's personal or family Facebook or other social media pages
 - Facebook or other social media pages that are used or associated with the elected member, but which are in false names.
- 7.7 Local government legislation (such as LGOIMA, Privacy Act 1993, Public Records Act 2005) apply to any account where the member is or can be identified as a member, whether intentionally or not. The Code of Conduct applies to a member's online conduct in respect of the first two examples above and **may** also apply to their online conduct in the other two examples, if that online activity can be identified as them **and** reflects adversely on their role as an elected member and leader in the community.
- 7.8 Elected members should not use Council devices to maintain any private account(s) and should not link any private account(s) to official sites, like Council's website.
- 7.9 If an elected member decides to have an official social media account as an elected member, that account and any use of the account is subject to the Code and to any Council Social Media Policy and should be administered by Council. If the elected member chooses not to bring the account under the umbrella of Council, then there are additional requirements they must meet. They are then responsible for administering and managing their official social media account themselves. They must:
- Ensure there are links to Council's Facebook and website (consider limiting posts to 'secondary copies' of documents that are already available on a platform that is more easily retained, such as a website)
 - Ensure compliance with LGOIMA in relation to meeting processes and good decision making and avoiding any risk to Council in relation to any challenges regarding pre-determination and bias (i.e. ensure that discussions and decisions in relation to Council business take place in the appropriate forum e.g. Council meeting)
 - Comply with the confidentiality requirements of the Code
 - Comply with the Public Records Act 2005 and LGOIMA by understanding what constitutes a 'public record' on their Facebook or other social media platforms and how these need to be captured by Council and the process for that, also how access will be provided if requested as part of an information request
 - Ensure that complaints or requests for comment, information or services are referred to Council staff to action
 - Moderate comments on their Facebook or other social media platforms as an elected member
 - Act promptly when faced with inappropriate attack pages (e.g. report them to Facebook)
 - Comply with the Local Electoral Act 2001 and any specific requirements for using social media during an election period
- 7.10 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 and inflammatory content is being posted; and
- 7.11 Social media posts about other members, council staff or the public must be consistent with section five of this Code (See Appendix A for further protocols on the use of social media, which forms part of this section and the Code).

- 7.12 A higher standard of conduct is expected of elected members and this is part of a role in public office. Online conduct which does not comply with the Code is a breach of the Code. This includes behaving in a way which contradicts the local government principles and values outlined in the Code, such as transparency, meaningful community engagement, social inclusion, and ethical and legal behaviour. This could include replying to comments in a way which doesn't show respect or misrepresents Council or a member's actions or activity.
- 7.13 If there is any complaint regarding a breach of the Code under section 7, the process set out Section 13 in relation to Breaches of the Code will be followed.

8 INFORMATION

- 8.1 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.

Confidential Information

- 8.2 In the course of their duties members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to an 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. Information provided at and discussions in Council workshop sessions will be regarded as confidential unless any of that information is already held in the public domain or is agreed for public release at the workshop. Care should still be exercised when sharing information related to decisions that are yet to be made.

Information received in capacity as an Elected Member

- 8.3 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.

9 CONFLICTS OF INTEREST

- 9.1 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).
- 9.2 Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary 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.
- 9.3 If a member is in any doubt as to whether 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 as to 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.
- 9.4 **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.

10 REGISTER OF INTERESTS

- 10.1 Members shall, at least annually, make a declaration of interest. 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 members' 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).
- 10.2 Please note, where a member's circumstances change, they must ensure that the Register of Interests is updated as soon as practicable.

11 ETHICAL BEHAVIOUR

- 11.1 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 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. Where a gift to the value of \$50 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.
- 11.2 Any failure by members to comply with the provisions set out in this section represents a breach of the code.

12 CREATING A SUPPORTIVE AND INCLUSIVE ENVIRONMENT

- 12.1 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.²
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the city, district or region.

13 BREACHES OF THE CODE

13.1 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.

Principles

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

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- That the processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- That the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, 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.

Complaints

13.3 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/Chair or, where the Mayor/Chair is a party to the complaint, an independent investigator, drawn from a pool of names or agency agreed in advance.

13.4 Please note, only members and the Chief Executive may make a complaint under the code.

Complaint referred to Mayor/Chair

13.5 On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor/Chair 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.

² A self-assessment template is provided in the Guidance to the code.

- Where a complaint is assessed by the Mayor/Chair 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/Chair will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor/Chair, to the Council or an adjudicative body established by the Council to assess and rule on complaints made under the Code.³

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

Complaint referred to Independent Investigator

13.7 On receipt of a complaint from a member which concerns the Mayor/Chair, or from the Mayor/Chair after initial consideration, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or an adjudicative body for assessing and ruling on complaints.⁴ The process, following receipt of a complaint, will follow the steps outlined in **Appendix C**.

Materiality

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

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

14 PENALTIES AND ACTIONS

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

Material Breaches

14.2 In the case of material breaches of the Code, the Council, or the adjudicative body with delegated authority, 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;

³ Advice on establishing adjudication bodies can be found in the Guide to the Code of Conduct.

⁴ On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor or Chairperson, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his or her council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators, such as EquiP.

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.
- 14.3 A Council or adjudicative body 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.
- 14.4 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.

Statutory Breaches

- 14.5 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).

15 REVIEW

- 15.1 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.
- 15.2 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: Protocols on the use of social media

There is 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 protocols are designed to help you when engaging in **online** communications that may also refer to your Council.

Conduct

Members are reminded that in respect of social media, they are governed by the Code of conduct for elected members and relevant law.

Managing the Account

Members are personally responsible for the content they publish on any form of social media. Publishing or allowing to be published (in the form of a comment) an untrue statement about a person which is damaging to their reputation may incur a libel action.

Social media sites are in the public domain and it is important to ensure members are confident of the nature of the information they publish. Once published, content is almost impossible to control and may be manipulated without their consent, used in different contexts, or further distributed. Members should:

- Ensure that comments do not reflect adversely on the reputation of Council and/or local government more generally
- Ensure that members do not directly and unnecessarily criticise other councillors or council employees in order to undermine their position
- Ensure that members do not attempt to unduly influence other councillors, council staff or contractors or undermine public confidence in the processes of Council
- Be aware to the possibility that personal comments about public issues may compromise their capacity to perform their duties in an independent and unbiased manner.
- Ensure that their comments do not indicate that they have come to a conclusive view on a matter coming before Council, prior to fully considering the proposal and related issues
- Make use of stringent privacy settings if members don't want their social media to be accessed by the press or public. Read the terms of service of any social media site accessed and make sure they understand their confidentiality/privacy settings.
- Do not disclose anyone's personal details such as home addresses and telephone numbers.
- Do not use the Council's logo, or any other council related material on a personal account or website.

Maintaining Confidentiality

Members should not post information discussed in any public excluded session or share any information members have access to which is not publicly available, such as commercially sensitive information. Members should not post anything that members would not present in a public forum.

Maintaining Privacy

Members should not post private or confidential information about fellow elected members, council employees or constituents. Members should not discuss situations involving named, pictured or otherwise identifiable individuals without their permission.

Members should be aware of their safety when placing information on the internet and not publish information which could leave them vulnerable.

Anyone receiving threats, abuse or harassment via their use of social media should report it to the police.

Referring Customer Service questions to the Council's Official Channels

When a member receives a service request about Council's operations (roads, parks and gardens, libraries etc.) they should refer the requester to Council staff. Council staff monitor and respond to questions using Council's official social media channels. Rather than duplicating the service provided by staff, members can acknowledge the request and refer people to the Council's official customer service channels on Facebook, Twitter, website, or by phone or email.

Should a member come across negative or critical posts about the Council or its activities they should refer the posts to the Council's communications staff before responding.

Adhering 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 members may be referring to the Council or its activities, including the disclosure of any information online.

Taking responsibility for Actions

Anything a member posts that can potentially damage the Council's image will ultimately be the member's responsibility. Members are encouraged to participate in social media but in doing so, must exercise sound judgement and common sense.

Separating Political (Council) and Personal Lives.

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 their opinion is at odds with what Council is doing, can bring them into conflict with the Code should it not be clear that they are their personal views.

Keeping Social Media Pages 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.

Authorisations

When a member re-posts something written by someone else, they should first ensure they have the proper permissions to do so. Then clearly state the material, letter, response, etc. has been authored by someone else. They should not use the copyrights, trademarks, publicity rights, or other rights of others without the necessary permissions of the rightholder(s).

Refrain from cutting and pasting emails from staff or constituents into posts without clear context and permissions. These messages are written for a specific audience for a specific purpose that is probably different from a member's own.

Responses and Monitoring

Should a member decide to engage in social media, they should know that monitoring and responding in a timely way are crucial. Social media participants expect timely responses to requests and expect coparticipants to monitor social media properties frequently and regularly.

Like Council staff, members have an obligation to ensure their posts are accurate and not misleading, and that they do not reveal confidential information.

Exercise Caution

Once information is published online, it becomes part of a permanent record.

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.

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.

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 members' 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 needs to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

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. These rules apply to non-pecuniary conflicts of interest, including common law rules about 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).

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 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.

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.

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.

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.⁸⁹⁰

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: Process where a complaint is referred to an independent investigator

The following process is a guide only and Councils are encouraged to adapt this to their own specific circumstances.

Step 1: Chief Executive receives complaint

On receipt of a complaint under the Code, whether from a member (because the complaint involves the Mayor/Chair) or from the Mayor/Chair 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. On receiving the investigator's preliminary assessment, the Chief Executive will:

1. Where an investigator determines that a complaint is trivial or frivolous, inform the complainant, respondent and other members (if there are no grounds for confidentiality) of the investigator's decision.
2. In cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the Chief Executive who will then inform the complainant, the respondent and members.

Step 3: Actions where a breach 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 and, if they choose, recommend a course of action appropriate to the breach, such as:

- That the respondent is referred to the Mayor/Chair for guidance; and/or
- That the respondent attend 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 4: Actions where a breach 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 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.

On receipt of the investigator's report, the Chief Executive will prepare a report 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. The Chief Executive's report will include the investigator's full report.

Step 5: 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 12.1 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 will give the respondent an opportunity to appear and speak in their own defense. 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 form of penalty that might be applied will depend on the nature of the breach and may include actions set out in clause 13.1 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.