



# Auckland Council

# Code of Conduct:

# Elected Members

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# Contents:

|       |                                                  |   |
|-------|--------------------------------------------------|---|
| 1.    | INTERPRETATION.....                              | 1 |
| 2.    | LEGAL BACKGROUND.....                            | 1 |
| 2.1.  | Requirements on members .....                    | 1 |
| 2.2.  | Declaration by a member .....                    | 1 |
| 2.3.  | Code of Conduct.....                             | 1 |
| 2.4.  | Standing Orders .....                            | 2 |
| 2.5.  | Governance principles.....                       | 2 |
| 2.6.  | Summary .....                                    | 2 |
| 3.    | THE AUCKLAND CONTEXT.....                        | 3 |
| 4.    | OBJECTIVE.....                                   | 3 |
| 5.    | KEY PRINCIPLES .....                             | 4 |
| 5.1.  | Introduction.....                                | 4 |
| 5.2.  | Honesty and Integrity.....                       | 4 |
| 5.3.  | Public Interest.....                             | 4 |
| 5.4.  | Declare private interests.....                   | 4 |
| 5.5.  | Impartiality .....                               | 4 |
| 5.6.  | Accountability .....                             | 4 |
| 5.7.  | Openness.....                                    | 4 |
| 5.8.  | Respect .....                                    | 5 |
| 5.9.  | Duty to Uphold the Law .....                     | 5 |
| 5.10. | Stewardship.....                                 | 5 |
| 5.11. | Leadership.....                                  | 5 |
| 6.    | ROLES AND RESPONSIBILITIES .....                 | 5 |
| 6.1.  | The role of the Governing Body.....              | 5 |
| 6.2.  | The role of the Mayor .....                      | 6 |
| 6.3.  | The role of the Deputy Mayor .....               | 6 |
| 6.4.  | The role of Committee Chairpersons.....          | 6 |
| 6.5.  | The role of Deputy Committee Chairpersons .....  | 6 |
| 6.6.  | The role of the Local Boards .....               | 6 |
| 6.7.  | The role of Local Board Chairperson.....         | 7 |
| 6.8.  | The role of Local Board Deputy Chairpersons..... | 7 |
| 6.9.  | The role of the Chief Executive .....            | 7 |

|        |                                                                                    |    |
|--------|------------------------------------------------------------------------------------|----|
| 7.     | <b>RELATIONSHIPS AND BEHAVIOURS</b> .....                                          | 8  |
| 7.1.   | Relationships with Other Members .....                                             | 8  |
| 7.2.   | Relationships with Chief Executive and Staff .....                                 | 8  |
| 7.3.   | Relationships with the Community.....                                              | 9  |
| 7.4.   | Relationships between the Governing Body and Local Boards .....                    | 9  |
| 7.5.   | Contact with the Media .....                                                       | 9  |
| 7.6.   | Confidential Information.....                                                      | 10 |
| 7.7.   | Conflicts of Interest.....                                                         | 11 |
| 7.8.   | Ethics.....                                                                        | 11 |
| 7.9.   | Other Matters of Conduct .....                                                     | 11 |
| 8.     | <b>COMPLIANCE</b> .....                                                            | 12 |
| 8.1.   | Compliance required .....                                                          | 12 |
| 8.2.   | Lodging of Code of Conduct Complaints .....                                        | 12 |
| 8.3.   | Preliminary Steps .....                                                            | 13 |
| 8.4.   | Referral of Complaints.....                                                        | 13 |
| 8.5.   | Conduct Review Independent Panel .....                                             | 13 |
| 8.6.   | Procedures of the Conduct Review Independent Panel .....                           | 13 |
| 8.7.   | Governing Body/Local Board Consideration.....                                      | 13 |
| 8.8.   | Responses to Breaches of the Code.....                                             | 14 |
| 9.     | <b>REVIEW OF THE CODE OF CONDUCT</b> .....                                         | 14 |
| 10.    | <b>APPENDIX 1: CONFLICTS OF INTEREST POLICY FOR THE<br/>AUCKLAND COUNCIL</b> ..... | 15 |
| 10.1.  | Interpretation .....                                                               | 15 |
| 10.2.  | Purpose .....                                                                      | 15 |
| 10.3.  | Application .....                                                                  | 15 |
| 10.4.  | Legal Framework.....                                                               | 15 |
| 10.5.  | Scope of this Policy .....                                                         | 16 |
| 10.6.  | Principles.....                                                                    | 16 |
| 10.7.  | General awareness .....                                                            | 16 |
| 10.8.  | Contracts .....                                                                    | 17 |
| 10.9.  | Financial Interest - Decision-making.....                                          | 17 |
| 10.10. | Non-Financial Interests – Decision-making .....                                    | 18 |
| 10.11. | Register of Members’ Interests.....                                                | 18 |
|        | <b>REGISTER OF MEMBERS’ INTERESTS SCHEDULE OF REQUIREMENTS</b> .....               | 20 |
| 10.12. | Definitions.....                                                                   | 20 |
| 10.13. | Duty to make Annual Return of Interests.....                                       | 20 |

|            |                                                                                                              |           |
|------------|--------------------------------------------------------------------------------------------------------------|-----------|
| 10.14.     | Contents of Return Relating to Members' Position as at Effective Date of Return (30 June).....               | 21        |
| 10.15.     | Relationship Property Settlements and Debts Owed by Certain Family Members do not have to be Disclosed ..... | 22        |
| 10.16.     | Short-Term Debts for Supply of Goods or Services do not have to be Disclosed.....                            | 22        |
| 10.17.     | Actual Value, Amount, or Extent Not Required.....                                                            | 22        |
| 10.18.     | Maintenance of Register.....                                                                                 | 22        |
| <b>11.</b> | <b>APPENDIX 2: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS .....</b>                      | <b>24</b> |
| 11.1.      | Introduction.....                                                                                            | 24        |
| 11.2.      | Local Authority (Members' Interests) Act 1968.....                                                           | 24        |
| 11.3.      | Local Government Office Information and Meetings Act 1987 (LGOIMA) .....                                     | 24        |
| 11.4.      | Secret Commissions Act 1910.....                                                                             | 25        |
| 11.5.      | Crimes Act 1961 .....                                                                                        | 25        |
| 11.6.      | Securities Act 1978.....                                                                                     | 25        |

# 1. Interpretation

In this document:

“Auckland Council” or “the Council” – consists of the governing body (including the Mayor) and local boards. This term is used only when referring to both the governing body and local boards.

The terms “governing body” and “local boards” are used when references are specific to either the governing body or local boards.

The term “elected members” or “members” is used when referring to all elected members of the Council, i.e. to elected members of both the governing body and local boards.

“Governing body members” and “local board members” are used when references are specific to either the governing body or local boards.

“Chief Executive” is the Chief Executive of Auckland Council or his or her nominee.

“New media” refers to on-demand access to content any time, anywhere, on any digital device, as well as interactive user feedback, creative participation (from Wikipedia). It includes social media such as Facebook.

## 2. Legal background

### 2.1. Requirements on members

Clauses 14 to 16 of Schedule 7 of the Local Government Act 2002 require members of a local authority to:

- make a declaration before acting as a member;
- comply with a Code of Conduct;
- abide by Standing Orders.

### 2.2. Declaration by a member

The member declares that he or she will faithfully and impartially, and according to the best of his or her skill and judgment, execute and perform, in the best interests of the Auckland region (or relevant local board area), the powers, authorities and duties vested in, or imposed upon, him or her by any Act.

### 2.3. Code of Conduct

The Local Government Act 2002 requires local authorities to adopt a code of conduct which must set out:

- a) understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including:

- i) behaviour toward one another, staff and the public; and
- ii) disclosure of information , including (but not limited to) the provision of any document, to elected members that—
  - (A) is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and
  - (B) relates to the ability of the local authority to give effect to any provision of this Act; and
- b) an explanation of:
  - i) the Local Government Official Information and Meetings Act 1987; and
  - ii) any other Act or rule of law applicable to members.

Section 30 of the Local Government (Auckland Council) Act 2009 requires each member of each local board to comply with the Code of Conduct adopted by the governing body.

## 2.4. Standing Orders

Standing Orders apply principally to the conduct of meetings (Schedule 7 of the Local Government Act 2002, clause 27). A question concerning the conduct of a member during a meeting should be dealt with at the meeting under the relevant provisions in the Standing Orders. Where it is not possible at a meeting to deal with a matter of conduct under standing orders the conduct may be raised under the Code.

## 2.5. Governance principles

The Local Government Act 2002 (Section 39) defines governance principles relating to local authorities. The following governance principles are relevant to a Code of Conduct:

- a) 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;
- b) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

## 2.6. Summary

The objectives of a Code of Conduct are to set out:

- the conduct of members toward one another, staff and public;
- how information is disclosed;
- legislation that applies to the actions of members;
- the relationship between elected members and management.

### 3. The Auckland Context

This Code has been developed in the context of the specific (and unique) governance arrangements of Auckland.

The Auckland Council is a completely new model of local government for New Zealand, designed to strengthen regional leadership while providing effective local and community democracy.

The Auckland Council has a two tier governance structure (providing governance at regional and local levels) comprising:

- the governing body, consisting of a mayor elected by all Aucklanders and 20 councillors elected on a ward basis;
- 21 local boards, with members elected by local board area.

The governing body and the local boards share the decision-making responsibilities of the Auckland Council:

- the governing body will focus on the big picture and on region-wide strategic decisions;
- local boards will represent their local communities and make decisions on local issues, activities and facilities.

The intent of the relevant Local Government (Auckland Council) Act 2009 provisions is that the governing body and local boards are, with limited exceptions such as local board bylaws, autonomous within their respective areas of decision-making.

This is quite different from the Council/Community Board relationship that applies elsewhere in New Zealand.

Note: The role of the governing body and the roles of the local boards, as directly set out in the legislation or allocated in accordance with the legislation, are outlined in Section 6.0 of the Code. The powers of local boards in relation to regulatory activities will be detailed in delegations to be confirmed by the governing body.

### 4. Objective

The objective of the code is to meet the requirements as summarised in 2.6 of the Code and to enhance:

- the effectiveness of the Auckland Council in meeting its statutory responsibilities for good local government;
- the credibility and accountability of the Council within its community; and
- mutual trust, respect and tolerance between all elected members and between elected members and management.

## 5. Key Principles

### 5.1. Introduction

This Code of Conduct is based on a number of key principles. It defines standards of conduct that meet these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code.

### 5.2. Honesty and Integrity

Members have a duty to act honestly and with integrity at all times.

### 5.3. Public Interest

Members have a duty to make decisions in the public interest. They must not act in order to gain financial or other benefits for themselves, their families, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.

### 5.4. Declare private interests

Members must declare any private interests or personal benefits relating to their public duties and take steps to resolve any conflicts of interest in such a way that protects the public interest. This means fully disclosing actual or potential conflicts of interest; avoiding any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

### 5.5. Impartiality

Members should make decisions on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in appointments and in purchase and sale of council's resources; considering only relevant matters.*

### 5.6. Accountability

Members are accountable to the public for their decisions and actions and should consider issues on their merits, taking into account the views of others. This means co-operating fully and honestly with the scrutiny appropriate to their particular office.

### 5.7. Openness

Members should be as open as possible about their actions and those of the Council and should be prepared to justify their actions. This includes approaching decision-making with an open mind and a willingness to listen to differing points of view. This means giving reasons for decisions; communicating clearly; not being close minded and taking personal ownership of comments made publicly.



## **5.8. Respect**

Members should treat others, including council officers, with respect at all times. This means not using derogatory terms towards others, or about others, including in public-facing new media; not misrepresenting the statements or actions of others (whether they be other individual members, the Governing Body, Local Boards, committees or officers); observing the rights of other people; treating people with courtesy, and recognising the different roles others play in local government decision-making.

## **5.9. Duty to Uphold the Law**

Members should uphold the law and, on all occasions, act in accordance with the trust the public places in them.

## **5.10. Stewardship**

Members should ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.

## **5.11. Leadership**

Members should promote and support these principles by example.

# **6. Roles and Responsibilities**

This part of the Code provides a general description of the roles that elected members and the Chief Executive are expected to perform in the Auckland Council.

## **6.1. The role of the Governing Body**

The governing body will focus on the decisions that have a region-wide strategic impact and is responsible for:

- preparing and adopting the Long Term Council Community Plan (LTCCP), annual plan and annual report;
- making rates and bylaws;
- decision-making on regulatory matters and on region-wide non regulatory matters;
- setting regional strategies, policies and plans, including the spatial plan and the district plan;
- the governance and monitoring performance of council controlled organisations (CCOs);
- consulting with and considering the views of local boards before making a decision which affects the communities in the local board area, or the responsibilities or operations of the local board;
- negotiating a local board agreement with each local board;
- monitoring and reviewing the performance of the organisation.

## 6.2. The role of the Mayor

The Mayor is the head of the governing body of Auckland Council, providing leadership to other elected members and the organisation. In comparison to other New Zealand mayors, the Mayor of Auckland has enhanced responsibilities. These are set out in the Local Government (Auckland Council) Act 2009 and include: promoting a vision for Auckland; providing leadership to achieve the vision; leading the development of council plans, policies and budgets and ensuring effective engagement between Auckland Council and the people of Auckland.

The Mayor of Auckland is also responsible for appointing the Deputy Mayor, establishing the committees of the governing body of Auckland Council and appointing the chairperson of each of those committees. The Mayor chairs meetings of the governing body.

## 6.3. The role of the Deputy Mayor

The Deputy Mayor is appointed by the Mayor. The Deputy Mayor exercises the same roles as other elected members. In addition, if the Mayor is absent or incapacitated, or if the office of Mayor is vacant, then the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers of the Mayor (as summarised above).

## 6.4. The role of Committee Chairpersons

The governing body and local boards may create committees. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the governing body or local board and as set out in the Council's Delegations Manual. Committee chairpersons may be called on to act as an official spokesperson on particular issues.

## 6.5. The role of Deputy Committee Chairpersons

If a deputy committee chairperson is appointed, their role is to act as chair in the absence of the chairperson.

## 6.6. The role of the Local Boards

Local boards have a significant and wide ranging role; they make decisions on local matters, provide local leadership and build strong local communities. Local boards have a strong connection to their communities and play an important role in shaping the place that they have been elected to serve. There are three ways that legislation gives decision-making responsibilities to local boards:

- directly by legislation;
- by allocation from the governing body, in the case of non-regulatory activities; and
- in the case of regulatory activities, by delegation from the governing body.

Local boards are responsible for:

- decisions on non-regulatory local activities as allocated by the Governing Body through the Long Term Plan process, for which local boards are fully autonomous and accountable to their communities;

- adopting local board plans every three years in consultation with their communities and monitoring progress in relation to the Local Board Plan.
- negotiating annual local board agreements with the governing body and monitoring local board agreements;
- identifying community preferences and priorities, representing their communities and building strong local communities;.
- engaging with and advocating on behalf of their communities;
- identifying and communicating the interests and preferences of local people on the content of regional strategies, policies, plans and bylaws to the governing body.
- providing input to CCO plans and initiatives;
- identifying and developing bylaws for the local board area and proposing them to the governing body;
- collaborating with other local boards if their communities will be better served by doing so
- undertaking any additional responsibilities delegated by the governing body or Auckland Transport.
- making delegations to the Chief Executive that relate to the responsibilities of local boards

## **6.7. The role of Local Board Chairperson**

Each local board will appoint a chairperson. Local board chairpersons will chair the board meetings and act as spokespersons for the boards. Local board chairpersons may also carry out local civic functions.

## **6.8. The role of Local Board Deputy Chairpersons**

The Local Board Deputy Chairperson's role is to act as chair in the absence of the chairperson.

## **6.9. The role of the Chief Executive**

The Chief Executive is appointed by the governing body. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the governing body. The responsibilities of the Chief Executive are defined in legislation as:

- implementing the decisions of the governing body and each local board;
- providing advice to the governing body and each local board;
- implementing each local board agreement;
- ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised;

- managing the activities of the local authority effectively and efficiently;
- 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 local authority;
- employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority);
- providing administrative and other facilities to the local boards.

Under section 42 of the Local Government Act 2002 the Chief Executive employs all other staff on behalf of the local authority.

## **7. Relationships and Behaviours**

### **7.1. Relationships with Other Members**

Elected members will 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

### **7.2. Relationships with Chief Executive and Staff**

The effective performance of the Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- recognise that the Chief Executive is the employer (on behalf of the Council) of all council employees, and as such only the Chief Executive or his or her delegated appointees may hire, dismiss or instruct or censure an employee;
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times;
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees);
- observe any guidelines that the Chief Executive puts in place regarding contact with employees;
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee;

- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive Review Committee;
- not seek to improperly influence staff in the normal undertaking of their duties.

Elected members should be aware that failure to observe the requirements of this section of the Code of Conduct may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

### **7.3. Relationships with the Community**

Effective council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure that individual citizens are accorded respect in their dealings with the Council, and have their concerns listened to and deliberated on in accordance with the requirements of the Local Government Act 2002 and other relevant legislation.

Members should act in a manner that encourages and values community involvement in local democracy.

### **7.4. Relationships between the Governing Body and Local Boards**

Individual governing body members and local board members will respect the roles that each undertakes within the shared governance arrangements but will work collaboratively as one Council.

As the Code of Conduct relates to individual elected member's conduct, the formal interaction between the Governing Body and Local Boards does not fall within the scope of this document. These relationships may be covered by specific relationship agreements between the governing body and local boards.

### **7.5. Contact with the Media**

The media plays an important part in local democracy. In order to fulfil this role, the media needs access to accurate, timely information about the affairs of the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. This part of the Code deals with the rights and duties of elected members when speaking to the media on behalf of the Council, or in their own right.

The following rules apply for media contact on behalf of the Council:

- the Mayor is the first point of contact for the official view of the governing body on any issue. Where the Mayor is absent any matters will be referred to the Deputy Mayor or relevant committee chairperson;
- the Mayor may refer any matter to the relevant committee chairperson or to the relevant Local Board Chairperson(s);

- the Local Board Chairperson (or their delegate) may comment on behalf of the local board in relation to local matters where decision-making, public consultation or advocacy is a responsibility of the Local Board;
- no other member may comment on behalf of the governing body without having first obtained the approval of the Mayor, or on behalf of a local board without first having obtained the approval of the Local Board Chairperson.

Elected members are free to express a personal view in the media, at any time. When doing so, they should observe the following:

- media comments must not state or imply that they represent the views of the governing body or local board;
- where an elected member is making a statement that is contrary to a governing body or local board decision or council policy, the member must not state or imply that his or her statements represent a majority view;
- media comments must observe the other requirements of the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of staff or be derogatory in respect of another elected member
- media comments must observe the Key Principles stated in Section 5.

## 7.6. Confidential Information

As a policy principle Members are entitled to have access to all information, for which there is good reason to have such access, to enable members to properly discharge their duties under the “need to know” test.

In the course of their duties members will receive information that they need to treat as confidential. Confidential information includes information that officers have judged there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987. This will often be information that is either commercially sensitive or is personal to a particular individual or organisation. The Chief Executive is responsible for release of this information under the Local Government Official Information and Meetings Act 1987 (LGOIMA). Any confidential material will be clearly identified as being confidential.

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

Elected members should be aware that failure to observe these provisions will impede the performance of the Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Members should also be aware that as elected members they are accountable to the public and that all official information held by themselves whether on Council equipment or their own personal equipment is subject to LGOIMA. Official information, if sought as part of a request, must be made available to the Chief Executive (or nominee) so that it can be assessed in terms of the requirements of the Act for possible release or eligibility to be withheld.

## 7.7. Conflicts of Interest

Attached as **Appendix 1** to this Code is the Council's Conflicts of Interest Policy. It is a requirement of this Code of Conduct that all elected members fully acquaint themselves with, and adhere strictly to, its requirements. These cover two classes of conflict of interest:

- A financial conflict of interest is one where a decision or act of the governing body or local board could reasonably give rise to an expectation of financial gain or loss to an elected member.
- A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in. There are particularly strict provisions (and penalties) relating to tendering processes (refer Conflicts of Interests Policy).
- A non-financial conflict of interest does not have a direct personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

The policy also requires elected members to make full and complete annual declarations of interest.

## 7.8. Ethics

The Auckland Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any policy of the Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests;
- not use Council resources for personal business;
- not solicit, demand, or request any gift, reward or benefit by virtue of their position.

## 7.9. Other Matters of Conduct

### 7.9.1. Dress Code

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

### 7.9.2. Meeting attendance

The Remuneration Authority deems councillor positions to be close to full time and local board chairperson positions to be moving close to full-time. Elected members are expected to fulfil their obligations as members of the governing body or local board by preparing for meetings, attending and taking part in discussion in meetings of which they are a member. It is recognised that despite best endeavours there are occasionally times when other commitments prevent attendance. Nevertheless, persistent non-attendance at meetings by

a member can be raised by the Mayor, a local board chairperson or a committee chairperson as a breach of the Code of Conduct.

### **7.9.3. Pre-election period**

During the three months prior to polling date for local authority elections, Council resources should not be used in any way that could be deemed to give any sitting member an electoral advantage.

During this period elected members will:

- not use Council stationery, email, postage or fax/phone facilities or any other Council resource explicitly for campaign purposes;
- not attempt to make any use of Council communications that could be construed as giving that member an unfair electoral advantage by raising their profile.
- Abide by any council policies adopted by the Governing Body relating to conduct during the pre-election period

Note: Complaints in regard to any matter relating to the conduct of the elections are to be made through the Electoral Officer. If any complaint involves the use of Council resources the Electoral Officer will bring the complaint to the attention of the Chief Executive.

### **7.9.4. Bankruptcy**

Elected members who are declared bankrupt shall notify the Chief Executive as soon as practicable after being declared bankrupt.

## **8. Compliance**

### **8.1. Compliance required**

Elected members must comply with the provisions of this Code of Conduct. Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of these Acts are freely available to elected members. Short explanations of the obligations that each of these Acts has with respect to conduct of elected members are attached as **Appendix 2** to this Code.

### **8.2. Lodging of Code of Conduct Complaints**

All complaints must be addressed to the Chief Executive<sup>1</sup>. Any allegation of a breach of the Code must relate to Section 7 of the Code, be in writing, make a specific allegation of a breach of the Code and provide corroborating evidence.

Complaints alleging a breach of the Code of Conduct may be made by any elected member or by the Chief Executive acting on behalf of staff or on behalf of a complaint from a CCO conveyed through that CCOs chief executive.

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<sup>1</sup> Or his or her nominee (refer 1 "Interpretation")



The Chief Executive may determine whether a complaint from a member of the public concerning an elected member constitutes a ~~question of~~ breach of the Code of Conduct. In making this determination, the Chief Executive may consult a convenor of the Independent Conduct Review Panel. The Chief Executive may determine jointly with a convenor of the Independent Review Panel to dismiss or terminate a complaint from a member of the public on grounds which may include that the complaint is frivolous, vexatious or has been adequately resolved.

### **8.3. Preliminary Steps**

The Chief Executive may request from the complainant further information/ evidence in support of the complaint and, if considered appropriate, may also request a preliminary statement in response from the elected member against whom the complaint is lodged.

### **8.4. Referral of Complaints**

A complaint concerning a member of the Governing Body or a local board will be lodged with the Chief Executive who will advise the complainant in regard to options available for resolving the complaint. Where the facts are clear and the breach is a first offence, an initial option may be a letter to the member from the Chief Executive advising that a complaint has been received.

The member should inform the Chief Executive of the action they have taken or propose to take in response to the complaint. The Chief Executive or the member shall inform the complainant of the action taken in response. Where alternative options do not, or are not capable of, resolving the complaint, the complaint will be referred to a convenor of the Conduct Review Independent Panel who will assign the complaint to a panel member or convenor. The panel member or convenor will endeavour to resolve issues by mediating between the parties or refer the matter to the Conduct Review Independent Panel for full investigation and recommendation to the Governing Body or local board as the case may be.

### **8.5. Conduct Review Independent Panel**

The governing body shall constitute a Conduct Review Independent Panel. The members of the Panel will be selected from a list of persons with appropriate skills and knowledge, to be recommended by the Chief Executive. The Independent Panel is not a Committee of the governing body and its sole function is to investigate those matters referred to it and to make recommendations on those matters to the governing body/local board. Up to three members on the list will be deemed to be 'convenors' who will be the Council's primary contact in relation to convening a panel when required. 'Convening' a panel includes chairing that panel. A convenor may appoint other convenors to a panel.

### **8.6. Procedures of the Conduct Review Independent Panel**

The Independent Panel will establish and notify standard procedures, fair to both complainants and respondents, which it will apply to the investigation and consideration of all complaints referred to it.

### **8.7. Governing Body/Local Board Consideration**

In considering the Panel's recommendation, the matter shall be considered with neither the complainant nor the respondent being entitled to participate in that item.

## 8.8. Responses to Breaches of the Code

To avoid doubt, a breach of the Code of Conduct does not constitute an offence under the Local Government Act 2002. The exact nature of the action the governing body/local board may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.

Where there are statutory provisions:

- breaches relating to members' interests may render members liable for prosecution by the Auditor-General under the Local Authority (Members' Interests) Act 1968;
- breaches which result in the Council suffering financial loss or damage may be reported on by the Auditor-General under the Local Government Act 2002, which may result in the member having to make good the loss or damage;
- breaches relating to the commission of a criminal offence may leave the elected member liable for criminal prosecution.

In these cases the governing body or local board may refer an issue to the relevant body, any member of the public may make a complaint to that body, or the Auditor-General or Police may take action of their own initiative.

Where there are no statutory provisions, the governing body or local board may take the following action:

- censure;
- removal of the elected member from representative type bodies;
- dismissal of the elected member from a position as Chair or Deputy Chair of a committee.

A decision to apply one or more of these actions requires a resolution to that effect.

## 9. REVIEW OF THE CODE OF CONDUCT

Once adopted, the Code of Conduct continues in force until amended by the Governing Body. The Code can be amended at any time but cannot be revoked unless the Governing Body replaces it with another code. Once adopted, amendments to the Code of Conduct require a resolution supported by 75 per cent or more of the members of the Governing Body present.

# 10. APPENDIX 1: CONFLICTS OF INTEREST POLICY FOR THE AUCKLAND COUNCIL

## 10.1. Interpretation

In this Policy:

“Auckland Council” or “the Council” – consists of the governing body (including the Mayor) and local boards. This term is used only when referring to both the governing body and local boards.

The terms “governing body” and “local boards” are used when references are specific to either the governing body or local boards.

The term “elected members” or “members” is used when referring to all elected members of the Council, i.e. to elected members of both the governing body and local boards.

“Governing body members” and “local board members” are used when references are specific to either the governing body or local boards.

“Chief Executive” means the Chief Executive of the Auckland Council and any staff members to whom he or she has formally delegated responsibility for handling conflict of interest situations and advising elected members on these issues. Information on which staff members are authorised to give advice is to be conveyed to all elected members and included in this policy.

“OAG” is the abbreviation used for the Office of the Controller and Auditor – General.

“Registrar” is the staff member designated by the Chief Executive as having the responsibility for maintaining and updating the Register of Members’ Interests.

## 10.2. Purpose

At the heart of any democratic process are expectations of fair play and equity. A crucial element of this is the expectation that decision makers will not be influenced by their personal and individual interests, particularly financial self-interest, but will endeavour to make decisions they consider to be in the best interest of their country, city or district. The purpose of this policy is to ensure good practice is followed and, in conflict of interest situations, that public trust in the Council is not damaged.

## 10.3. Application

The policy applies to all elected members. In order to support the processes provided for in the policy, it also places some requirements on the Chief Executive.

## 10.4. Legal Framework

Pecuniary (financial) conflicts of interest are regulated, in part, by the Local Authorities (Members’ Interests) Act 1968. Also applicable to all types of conflicts of interest is a body of common law rules/precedents.

The Office of the Auditor General has published guidelines on financial and non-financial conflicts of interest.<sup>2</sup>

## 10.5. Scope of this Policy

This policy covers two classes of conflict of interest:

A financial conflict of interest is one where a decision or act of the governing body or local board could reasonably give rise to an expectation of financial gain or loss to an elected member.

A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in.

A non-financial conflict of interest does not have a direct personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

The common factor in what may seem very different types of issues is the concept of bias and the question to be asked is:

“Is there a real danger of bias on the part of a 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?”<sup>3</sup>

The question is not limited to actual bias, but relates to the appearance or possibility of bias. This is in line with the principle that justice should not only be done, but should be seen to be done.

## 10.6. Principles

The Auckland Council is committed to addressing conflict of interest issues in an effective and transparent way.

Declarations of conflict of interest are a key individual responsibility of all elected members.

The Chief Executive is responsible for ensuring that elected members are fully briefed on their responsibilities and that there are appropriate processes in place to facilitate compliance.

## 10.7. General awareness

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as a member of the governing body, a committee or sub-committee, or of a local board. Members therefore need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest. Guidelines prepared by the Office of the Controller and Auditor-General (OAG) provide a key for understanding the complex issues involved.

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<sup>2</sup> “Guidance for members of local authorities about the local authorities (Members' Interests) Act 1968” (2010)

<sup>3</sup> Auditor General guidelines (above).

## 10.8. Contracts

Elected members and all staff involved in contract processes must take extreme care in any situations where an elected member has an existing interest in or wishes to tender for a contract. The Local Authorities (Members' Interests) Act provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year (unless there is an exemption granted by the Controller and Auditor-General).

Elected members and staff also need to be aware that the above provisions may apply in the case of interest through a spouse or partner, or interest through a company (refer OAG Guidelines).

Elected members shall:

- declare any interests in contracts in the Council's Register of Members Interests (see section 11 below)
- discuss any proposed interest in contracts (of whatever value) in advance with the Chief Executive and/or the OAG and follow the advice that they are given
- not participate in decision-making relating to any contract in which they have an interest
- not accept any gifts (including hospitality, entertainment) from tendering parties where the governing body/local board will be part of the decision-making process.

## 10.9. Financial Interest - Decision-making

Elected members must not participate in any Council discussion or vote on any matter in which they have a financial interest. If they are in doubt as to whether they have a financial conflict of interest, prior to the meeting they should refer to the Local Authorities (Members Interest) Act, the Guidelines of the OAG and/or seek advice from the Chief Executive or the OAG.

Elected members also need to be aware that the above requirement will normally apply in the case of interest through a spouse or partner and in some cases to interest through a company (refer OAG Guidelines).

Members must always avoid accepting any gifts (including hospitality, entertainment) from parties to any regulatory process that the Council will be hearing and/or making decisions on.

Members must declare their interests at meetings where matters in which they have a conflict of interest arise. Members must leave the meeting table while the matter is being discussed or voted on. Depending on the particular issue, members may consider it good practice to leave the meeting room itself. Declarations of interest will be recorded in the minutes of the meeting and where applicable in the Register of Members' Interest.

Reminders to members to declare any conflict of interest will be included as a standard item on agendas.

## 10.10. Non-Financial Interests – Decision-making

- (a) Non-financial interests involving relatives, friends, tribal affiliations, membership of other organisations (e.g. community, regional or national organisations, clubs, churches etc).

Members should evaluate the Guidelines of the OAG and/or seek advice from the Chief Executive or OAG before determining whether or not they should declare an interest and stand aside from decision-making. There is no simple binding rule that covers all such cases – they must be evaluated on their individual merits.

- (b) Predetermination

A member must not deliberate on a public consultation process where that member has made a personal submission.

A member must not participate in a hearing or decision-making process under the Resource Management Act 1991, or in any other hearing or decisions that have a regulatory effect, if that member's statements or conduct indicate that he or she has predetermined the matter before hearing all relevant information.

On other matters where there are potential issues of predetermination, the member should refer to the Guidelines of the OAG and/or seek advice from the Chief Executive or the OAG before deciding whether or not to participate in decision-making.

## 10.11. Register of Members' Interests

Elected members must make full and complete annual declarations of interests in each year as at 30 June. Declarations must be transmitted to the Registrar by the last day of July each year. Members must also advise as soon as practicable during the year if any new interests arise. These declarations are recorded in a Register of Interests maintained by the Council. The annual declaration must notify the Council of the nature and extent of any interest, including:

- (1) Company directorships and controlling interests.
- (2) Interests (such as shares and bonds) in companies and business entities.
- (3) Any employment.
- (4) Beneficial interests in trusts.
- (5) Membership of community organisations, for example clubs, environmental protection organisations, churches or charitable bodies.
- (6) Appointments (except those made by the Council) e.g. to a University Council or Government agency.
- (7) Interests in land, whether as owner or tenant.
- (8) Debtors.
- (9) Creditors.
- (10) Travel costs paid by third parties.

(11) Gifts received (including hospitality) over \$300.

(12) Discharged debts over \$300 paid for by other parties.

The above are defined in the Register of Members' Interests Schedule of Requirements. (Note: in some cases the declarations also involve declarations of family interests – refer to the Schedule).

The Register of Members' Interests (or a fair and accurate summary of its contents) is to be available for public inspection. A summary will be published on the Council's website.

Appendix to Conflict of Interest Policy:

## REGISTER OF MEMBERS' INTERESTS SCHEDULE OF REQUIREMENTS

### 10.12. Definitions

For the purposes of the return and registration of interests, unless the context otherwise requires:

**business entity** means any body or organisation, whether incorporated or unincorporated, that carries on any profession, trade, manufacture or undertaking for pecuniary profit, and includes a business activity carried on by a sole proprietor.

**company** means:

- (a) a company registered under Part 2 of the Companies Act 1993 a body corporate that is incorporated outside New Zealand.

**effective date of the return** means the date at which the return is effective as required by clause 3.

**employed:**

- (a) means employed under a contract of service, but
- (b) does not include holding the position of a member of the governing body or one of the local boards or any internal Council political appointment (e.g. Committee Chairperson).

**Registrar:**

- (a) means the person appointed by the Chief Executive to act as Registrar;
- (b) includes every person who has been authorised by the Registrar to act on his or her behalf.

**voting right** means a currently exercisable right to cast a vote at meetings of the owners or proprietors of a business entity.

Note: Every amount specified in this Schedule is inclusive of goods and services tax (if any).

### 10.13. Duty to make Annual Return of Interests

Every member must make an annual return of interests in each year as at 30 June. In the case of members elected to the governing body or a local board for the first time during the preceeding 12 months, the disclosure is not required to include information that relates to the period before their election (e.g. payments received for services provided prior to being elected). The annual return must be transmitted by the member to the Registrar by the last day of July in each year.



## 10.14. Contents of Return Relating to Members' Position as at Effective Date of Return (30 June)

Every return of interests must contain the following information as at the effective date of the return:

- (a) the name of each company of which the member or spouse or partner singly or between them own, whether directly or through a nominee, 10% or more of the issued capital of the company; and
- (b) the name of each company of which the member or spouse or partner is a member of the company, and either of them is the managing director or the general manager (by whatever names they are called) of the company; and
- (c) if the member is employed, the name of each employer of the member and a description of the main business activities of each of those employers; and
- (d) the name of each trust of which the member is aware, or ought reasonably be aware, that he or she is a beneficiary or a trustee; and
- (e) the name of each community organisation (for example clubs, environmental protection organisations, churches or charitable bodies) to which the member belongs and whether the member is a member of the organisation's governing body or equivalent, such as executive or management committee; and
- (f) appointments (except those made by the governing body or a local board) e.g. to a University Council or Government agency; and
- (g) the location of each property in which the member has a pecuniary interest, unless the member has no beneficial interest in the property; and
- (h) the name of each debtor of the member who owes more than \$50,000 to the member and a description, but not the amount, of each of the debts that are owed to the member by those debtors; and
- (i) the name of each creditor of the member to whom the member owes more than \$50,000 and a description, but not the amount, of each of the debts that are owed by the member to those creditors; and

(The following items (j) to (l) require declarations covering the 12 month period to 30 June; however, see Clause 2 of this Schedule for modified requirement for recently elected members.)

- (j) contributions to travel costs made by third parties to a member and the value of the contribution; and
- (k) a description of each gift received by the member that has a value in New Zealand of more than \$300 and the name of the donor of each of those gifts (if known or reasonably ascertainable by the member).

(For the purposes of this subclause, **gift** -

- (i) includes hospitality (e.g. meals, corporate box) and donations in cash or kind other than donations made to cover expenses in an electoral campaign;

- (ii) excludes gifts received from family members (that is, any of the following: the member's spouse or domestic partner or any parent, child, step-child, foster-child or grandchild of the member); and
- (l) a description of all personal debts of more than \$300 that were owing by the member that were discharged or paid (in whole or in part) by any other person and the names of each of those persons.

Notes:

- For the purposes of subclause (b), a member does not have a pecuniary interest in a company or business entity (entity A) merely because the member has a pecuniary interest in another company or business entity that has a pecuniary interest in entity A.
- The description of a debt under subclauses (h) and (i) must include disclosure of the rate of interest payable in relation to the debt.

### **10.15. Relationship Property Settlements and Debts Owed by Certain Family Members do not have to be Disclosed**

A member does not have to disclose:

- (a) a relationship property settlement, whether the member is a debtor or creditor in respect of the settlement; or
- (b) the name of any debtor of the member and a description of the debt owed by that debtor if the debtor is the member's spouse or domestic partner or any parent, child, step-child, foster-child or grandchild of the member.

### **10.16. Short-Term Debts for Supply of Goods or Services do not have to be Disclosed**

A member does not have to disclose the name of any debtor or creditor of the member and a description of the debt owed by that debtor or to that creditor if the debt is for the supply of goods or services and payment is required:

- (a) within 90 days after the supply of the goods or services; or
- (b) because the supply of the goods or services is continuous and periodic invoices are rendered for the goods or services, within 90 days after the date of an invoice rendered for those goods or services.

### **10.17. Actual Value, Amount, or Extent Not Required**

Nothing in this Schedule (except 3 (j)) requires the disclosure of the actual value, amount, or extent of any asset, payment, interest, gift, contribution or debt.

### **10.18. Maintenance of Register**

A Register of Members' Interests is to be maintained and updated on an ongoing basis, comprising all returns transmitted by elected members under this schedule. Additional interests declared during the course of the year will be added to the Register as they occur.

The Registrar to be appointed by the Chief Executive is responsible for:

- (a) compiling and maintaining the register;
- (b) providing advice and guidance to members in connection with their obligations under this Schedule. The Register (or a fair and accurate summary of its contents) is to be available for public inspection by any party.

# 11. APPENDIX 2: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

## 11.1. Introduction

Section 2 of the Code of Conduct summarises relevant aspects of the Local Government Act 2002.

The following is a summary of other legislative requirements that relate to conduct of elected members.

## 11.2. Local Authority (Members' Interests) Act 1968

This Act regulates situations where a member's personal interests impinge, or could be seen as impinging, on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office for guidance as to whether that member has 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. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authority (Members' Interest) Act 1968. In the event of a conviction elected members can be ousted from office.

## 11.3. Local Government Office Information and Meetings Act 1987 (LGOIMA)

This Act requires councils to make official information available to the public unless there are reasons in terms of the Act that override that principle. It provides for:

- access to information by the public on information held by the Council
- transparency and accountability in decision-making through providing for public admission to meetings of local authorities (unless there is good reason to restrict public access for a particular agenda item or items)

- protection of official information held by local authorities and the deliberations of local authorities where it is in the public interest and/or personal privacy needs to be preserved
- establishment of procedures for the achievement of these purposes.

#### **11.4. 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 the Council.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years or fined up to \$1,000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

#### **11.5. Crimes Act 1961**

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

- accept or solicit for themselves (or anyone else)
- use information gained in the course of their duties for their, or another person's monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

#### **11.6. Securities Act 1978**

The Securities Act 1978 essentially places elected members in the same position as company directors whenever the 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.