

Council Briefing Agenda

Date: Thursday, 5 December, 2019

Time: 9:00 am

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Vince Cocurullo
Cr Nicholas Connop
Cr Ken Couper
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Jayne Golightly
Cr Phil Halse
Cr Greg Innes
Cr Greg Martin
Cr Anna Murphy
Cr Carol Peters
Cr Simon Reid

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

1. Apologies

2. Reports

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2.1 Elected Member Code of Conduct Review 2019

Meeting: Council Briefing
Date of meeting: Thursday 5 December 2019
Reporting officer: Kathryn Candy - Senior Legal Adviser

1 Purpose

This briefing is to review the current Elected Member Code of Conduct, taking into consideration the Local Government New Zealand (LGNZ) Code of Conduct template that was published in October 2019.

2 Background

The Local Government Act 2002 (LGA) states that Council must always have an Elected Member Code of Conduct.

After the 2016 local government elections LGNZ issued an updated Code of Conduct template for all councils to consider when reviewing the code. That template incorporated legislative change, new approaches to good governance and provided better processes for dealing with code of conduct complaints. The focus of the code widened from controlling poor behavior to promoting an inclusive and positive governance culture.

In 2017 staff presented the LGNZ code template to Council via several briefings. On 27 July 2017 Council resolved to not adopt the LGNZ code template and to continue using the 2013 Elected Member Code of Conduct (2013 Code).

In February 2018 Council resolved to review part four of the 2013 Code, which contained the investigation process for code of conduct breaches. On 29 March 2018 Council resolved to change the 2013 Code by adopting the LGNZ code template process for dealing with code of conduct complaints.

The current Elected Member Code of Conduct 2018 (current code) is attached.

3 Discussion

LGNZ has now issued a further update to its code template. The principles of the code have not changed dramatically from the 2016 template. The media section has been refined and it now includes guidelines on the personal use of social media. The major change is the process for dealing with complaints under the code.

As Council did not adopt the former LGNZ code template in its entirety the following is a summary of the changes to that part of the LGNZ template code that it did adopt in 2018 (it is

referred to as Part 4 “Compliance and Review” in the current code). Staff will expand on these changes at the briefing:

- The LGNZ code template limits those who can complain under the code. Only elected members or the Chief Executive may make a complaint. It does not extend to members of the public.
- It has limited the application of the concepts of natural justice from those that are affected parties to those that are **directly** affected by the complaint.
- It has changed the process when a complaint is received. The current code has every complaint being sent to an independent investigator. The LGNZ code template now has complaints being investigated by the Mayor unless the Mayor is a party to the complaint. In that case the matter will be sent directly to an independent investigator. There will still be the option to send it to an independent investigator at the initial stage, upon the recommendation of the Mayor.
- The test for materiality has been refined.
- The penalties for material breaches have been refined – and an additional penalty has been added – “removal as committee chair or deputy chair or from a portfolio”.

Attached is the LGNZ code template.

This briefing will go over the differences between Council's current code and the LGNZ code template 2019. Staff are seeking direction as to whether Council may prefer the LGNZ code template or would rather make specific amendments to the current code.

4 Attachments

1. Elected Member Code of Conduct 2018
2. Local Government New Zealand template Code of Conduct 2019

(Name of City, District, Regional Council)

Code of Conduct

Adopted on the

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1. Introduction

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.

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

2. Scope

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

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

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

3. Values

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

1. **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;
3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials;
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** 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

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

4. Role and responsibilities

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

4.1 Members

The role of the governing body includes:

- Representing the interests of the people of the city, district or region;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan;

¹ See Code of Conduct Guide for examples.

- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 Chief Executive

The role of the Chief Executive includes:

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

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

5. Relationships

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

5.1 Relationships between members

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

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

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

5.2 Relationships with staff

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

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

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

5.3 Relationship with the public

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

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

6. Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council. Any failure by member to comply with the provisions of this section can represent a breach of the Code.

1. In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.
2. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
 - Comments shall be consistent with the Code;
 - Comments must not purposefully misrepresent the views of the Council or the views of other members;
 - Social media pages controlled by members and used for making observations relevant to their role as an elected members should be open and transparent, except where abusive or inflammatory content is being posted; and
 - Social media posts about other members, council staff or the public must be consistent with section five of this Code. (See **Appendix A** for guidelines on the personal use of social media).

7. Information

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

7.1 Confidential information

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

7.2 Information received in capacity as an elected member

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

8. Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

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

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance 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.

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

9. Register of Interests

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).

Please note, where a member's circumstances change they must ensure that the Register of Interests is updated as soon as practicable.

10. Ethical behaviour

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

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or 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.

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

11. Creating a supportive and inclusive environment

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

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment or evaluation of the Council's performance and operating style during the triennium.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.

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

12. Breaches of the Code

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

12.1 Principles

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.

12.2 Complaints

All complaints made under the code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward the complaint to the Mayor/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.

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

Complaint referred to Mayor/Chair

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.

- 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

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

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**.

12.3 Materiality

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.

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.

13. Penalties and actions

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.

13.1 Material breaches

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);

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.

4. Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
5. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
7. A vote of no confidence in the member;
8. Suspension from committees or other bodies to which the member has been appointed; or
9. Invitation to the member to consider resigning from the Council.

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.

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.

13.2 Statutory breaches

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

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

14. Review

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

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

Appendix A: Guidelines on the personal use of social media⁵

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

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

⁵ Based on the Ruapehu District Council Code of Conduct.

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.

Code of Conduct

Elected Members

Amended March 2018

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Part 1 Introduction

Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code.

This code of conduct provides guidance on the standards of behaviour that are expected from the mayor and elected members of Whangarei District Council. The code applies to elected members in their dealings with:

- each other
- the chief executive
- all staff employed by the chief executive on behalf of Council
- the media
- the general public.

The objective of the code is to enhance:

- the effectiveness of Council as the autonomous local authority with statutory responsibilities for the good local government of the Whangarei District
- the credibility and accountability of Council within its community
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

This code of conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities (recorded in Part 2 of the code)
- agreed general principles of conduct (recorded in Part 3 of the code)
- specific codes of conduct applying to particular circumstances or matters (also recorded in Part 3 of the code).

Elected members are primarily accountable to the electors of the District through the democratic process. However members must note that the auditor-general may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

The code of conduct that follows is based on the following general principles of good governance:

- **Public interest**
Members should serve only the interests of the District as a whole and should never improperly confer an advantage or disadvantage on any one person.
- **Honesty and integrity**
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity**
Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that once elected, their primary duty is to the interests of the entire District, not the ward that elected them.
- **Accountability**
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.

- **Openness**

Members should be as open as possible about their actions and those of Council, and should be prepared to justify their actions.

- **Personal judgment**

Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.

- **Respect for others**

Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of Council staff.

- **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.

- **Stewardship**

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

- **Leadership**

Members should promote and support these proposals by example, and should always endeavour to act in the best interests of the community.

Part 2 Roles and responsibilities of elected members

Elected members, acting as Council, are responsible for:

- development and adoption of Council policy
- monitoring the performance of Council against its stated objectives and policies
- prudent stewardship of Council resources
- employment of the chief executive
- representing the interests of the residents and ratepayers of the Whangarei District. (On election, the members' first responsibility is to the District as a whole).

Unless otherwise provided in the Local Government Act 2002 or in standing orders, Council can act only by majority decisions at meetings and each member has one vote (unless where Council has resolved to give the Chairperson a casting vote). Any individual member (including the mayor) has no authority to act on behalf of Council unless Council has expressly delegated such authority.

Part 3 Relationships and behaviours

This part of the code sets out Council's agreed standards of behaviour. Some of the matters described in this part of the code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968. The majority of the code is material that Council has decided to include of its own initiative.

Relationships with other members

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. With this in mind 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 and language.

Relationships with staff

The effective performance of 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 Council) of all Council employees, and as such only the chief executive may hire, dismiss or instruct or censure an employee
- make themselves aware of the obligations that 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.

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

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 Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Act.

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

Contact with the media

In dealings with the media, elected members must clarify whether or not they are communicating a Council or a committee view, or are expressing a personal view.

Confidential information

In the course of their duties members will occasionally receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

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

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

Conflicts of interest

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). 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.

The Local Authorities (Members' Interests) Act 1968 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 prior approval has been obtained.

Additionally, elected members are prohibited from participating 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. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

Members shall annually make a general declaration of interest as soon as practicable after becoming aware of any such interests. These declarations are recorded in a register of interests maintained by Council. The declaration must notify Council of the nature and extent of any interest, including:

- any employment, trade or profession carried on by the member or the member's spouse for profit or gain
- any company, trust, partnership etc for which the member or their spouse is a director, partner, trustee or beneficiary
- the address of any land in which the member has a beneficial interest and which is in the Whangarei District
- the address of any land where the landlord is Whangarei District Council and:
 - the member or their spouse is a tenant, or
 - the land is tenanted by a firm in which the member or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary
- 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 as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should immediately seek guidance from the chief executive.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member 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 the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be disqualified from office.

Standing orders

Elected members must adhere to any standing orders adopted by Council under the Local Government Act 2002. These standing orders are subject to the same legal requirements as a code of conduct with regard to their adoption and amendment.

Ethics

Whangarei District 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 lawful policy of 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 (including campaigning)
- not solicit, demand, or request any gift, reward or benefit by virtue of their position
- notify the chief executive if any gifts are accepted
- where a gift to the value of \$500 or more is offered to a member, immediately disclose this to the chief executive for inclusion in the publicly available register of interests.

Disqualification of members from office

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years' imprisonment, or if they cease to be or lose their status as an elector or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

Whangarei District Council requires elected members who are declared bankrupt to notify the chief executive as soon as practicable after being declared bankrupt.

Part 4 Compliance and review

Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 7, s. 15(4)). Any member, member of the public 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

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

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles 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 this Code. This requires, conditional on the nature of an alleged breach, that 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 a right to seek appropriate advice and be represented; and
 - have their privacy respected.

Complaints

All complaints made under this Code must be made in writing and forwarded to the chief executive. On receipt of a complaint the chief executive must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation¹.

Members, the chief executive and members of the public may make a complaint under this Code.

Investigation, advice and decision

The process, following receipt of a complaint, will follow the steps outlined in Appendix Two.

Materiality

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the council into disrepute or, if not addressed; reflect adversely on another member of the council.

¹ On behalf of the Council, the Chief Executive will, shortly after the start of a triennium or as needed, prepare a list of investigators. The Chief Executive may prepare a list specifically for the council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators, such as Equip.

Penalties and actions

Where a complaint is determined to be material and referred to a meeting of full Council the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of this code, Council 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. a vote of no confidence in the member;
4. removal of certain council-funded privileges (such as attendance at conferences);
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 so that they are confined to the chief executive only;
7. suspension from committees or other bodies; or
8. an invitation for the member to consider resigning from the council.

Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

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

Statutory breaches

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

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the Local Authority (Members' Interests) Act 1968);
- 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).

Review

Once adopted, a Code of Conduct 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. Once adopted, amendments to the Code require a resolution supported by 75 per cent of the members of the council present at a council meeting where the amendment is considered.

Council may formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be considered by the council in regard to potential changes for improving the Code.

Appendix One – Relevant Legislation

Legislation bearing on the role and conduct of elected members

This is a summary of the legislation requirements that has some bearing on the duties and conduct of elected members. Copies of these statutes can be found in Council's library or in the office of the chief executive.

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 a 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' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

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. Of particular importance for the roles and conduct of elected members is the fact that the chair 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
- use offensive language about Council, other councillors, any employee of Council or any member of the public.

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 2 years, or fines up to \$1000. A conviction therefore would trigger the ouster provisions of the Local Government Act 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
- use information gained in the course of their duties for their, or another persons' monetary gain or advantage.

These offences are punishable by a term of imprisonment of up to seven years. Elected members convicted of these offences will also be automatically ousted from office.

Financial Markets Conduct Act 2013

The 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.

Appendix Two – Process for the determination and investigation of complaints

Step 1: Chief executive receives complaint

On receipt of a complaint under this Code the chief executive will refer the complaint to an independent investigator selected from the agreed pool. The chief executive may refer the complaint to an independent investigator outside of the pool if circumstances require it, such as to manage conflicts or to seek specific expertise. 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 refer them to 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 frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; and
4. the complaint is material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine the appropriate course of action. The investigator has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

On receiving the investigator's preliminary assessment, the chief executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform 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 both the complainant and respondent of the action.

Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material the investigator will inform the chief executive and recommend a course of action, if any, appropriate to the breach, such as;

- that the respondent seek guidance from the Chairperson or Mayor;
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to 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, 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 affected parties;
- 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 a meeting of full Council, which will 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 full report prepared by the investigator.

Step 5: Process for considering the investigator's report

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full council, excluding the complainant, respondent and any other 'interested' members.

The Council will consider the chief executive's report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report the Council will give the member against whom the complaint has been made an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in Part Four of this Code.

2.2 Appointments to Outside Organisations

Meeting:	Council Briefing
Date of meeting:	5 December 2019
Reporting officer:	Tracey Schiebli (Manager Democracy and Assurance) Joanne Tasker (Council Controlled Organisations Coordinator) Emily Thompson (Audit and Risk Analyst)

1 Purpose

To provide a briefing on the appointment of elected members to outside organisations for the new term.

2 Executive summary

At the beginning of each new term, Council decide on the appointment of elected members to outside organisations.

Council has a policy that covers outside appointments however this is limited to appointment to Council Organisations. The policy covers both appointment of elected members and community members to Council Organisations. The policy is overdue for review, and needs updating so it covers all appointments made by Council to outside organisations and differentiates between elected member and community member appointments.

Review of the policy will also consider advice from the Office of the Auditor General (OAG) on what needs to be considered before making appointments to outside organisations, the skills required of directors, and remuneration of directors.

The October 2019 amendment to the LGA now requires Council to consider whether knowledge of tikanga Maori may be relevant to the governance of the organisation, when deciding on appointments to council controlled organisations.

A draft policy will be worked through with Council in the New Year.

At the December meeting Council will be asked to approve elected member appointments to those outside organisations where it is deemed necessary.

There are other appointments that have been made historically that need to be reviewed to determine how they contribute to Council's objectives. These will come back to Council for consideration in the New Year.

A framework will be developed to support all future appointments to outside organisations that includes the:

- reason for the appointment
- term of the appointment, including clarity on transition following a local government election
- role, responsibilities, and delegated authority of the appointments

A list of the organisations where Council has historically appointed elected members is included as **appendix one**. The list excludes internal working groups of Council where elected members might be involved.

3 Background

There are many legal entities and community groups in the Whangarei District which provide for Council representatives to either be formally appointed to the governing body of the entity or be part of the community group.

At the beginning of each triennium Council reviews these appointments. Appointments can be divided into the following categories:

(a) Statutory or formal committees

Where council representation is required by law or formalised by WDC. Appointees are required to report on the activities of the committee to the relevant council standing committee and liaise with the committee chair and general manager to ensure alignment with council policies and procedures.

(b) Significant council funding – Council organisations

Where council representation is referenced in the founding document of the organisation. These organisations deliver significant service to the community and receive significant funding from Council. Separate to the elected member representation, the CEO may decide to identify a staff liaison officer. Appointees are required to make sure operational matters are managed through the staff liaison officer who should attend meetings.

(c) Liability / council asset or lease – Council organisations

Where council representation is referenced in the founding document of the organisation. These organisations operate facilities that deliver a service to the community where council may contribute significant funding and have a financial liability. Separate to the elected member representation, the CEO may decide to identify a staff liaison officer. Appointees are required to make sure operational matters are managed through the staff liaison officer who should attend meetings.

(d) Other – Council organisations

Where council representation is referenced in the founding document of the organisation, but there is no significant council funding, liability, council asset or lease.

(e) Organisations where council has an interest

Where the organisation does not fit within the definition of a council organisation. Elected members could be appointed based on:

- the terms of reference of the committee (as committee members)
- the result of an external process (for example, Local Government New Zealand)
- it is a Council group (Council Advisory Groups)

(f) Working parties, reference groups, and community groups

Where organisations do not provide an official power to Council to appoint a representative but Council has historically made appointments (in some cases). Elected members act as liaison between Council and the organisations, and the appointees are often connected to the ward in which the organisation operates.

All appointments to outside organisations have historically been made through a formal resolution of Council.

4 Discussion

4.1 Council's current policy for council organisations

Council has a policy which covers appointments to council organisations. The policy covers both appointment of elected members, and community representatives to council organisations. It covers all council organisations, including council-controlled organisations.

The policy was adopted on 9 August 2003 and is overdue for review.

Council organisations are defined under the Local Government Act 2002 (LGA). They are an organisation where one or more local authorities hold or control voting rights or have the right to appoint one or more of the directors to the board of directors. This includes all council-controlled organisations and council-controlled trading organisations.

Section 57 of the LGA requires Council to adopt a policy outlining an objective and transparent process for the identification and consideration of the skills, knowledge, and experience required of directors of COs (including CCOs and CCTOs), the appointment of directors, and the remuneration of directors.

Council's policy is being reviewed as part of the council-controlled organisation work programme. Council's current policy is essentially a procedure for identifying the skills required, and a process to appoint to council organisations. The process is oriented toward appointment of community members, with a formal advertisement process. It also allows other individuals to be appointed without any process.

However, the current policy is silent on:

- In what circumstances (if any) elected members should be appointed to council organisations
- In what circumstances (if any) elected members should be appointed to outside organisations that are not council organisations
- The role description, including mandate, delegations and responsibilities for reporting back to council
- Any requirement for knowledge of tikanga Maori.

A review of policies, and policy statements, across New Zealand Councils reveals a wide variety of approaches to appointment of elected members to council organisations.

4.2 Guidance from Office of the Controller and Auditor General (OAG) on appointment to council controlled organisations

In 2015 the Office of the Controller and Auditor-General (OAG) released a report on the governance and accountability of council-controlled organisations. The report noted that there is an inherent conflict between an elected member's obligations to council and their community, and their obligations to the CCO.

As a result, it was recommended that appointing elected members should be an exception to the usual practice. The report further noted that where an elected member is appointed, the appointment process should be objective and transparent, and the elected member should have the requisite skills, knowledge, and experience to contribute as a director, in accordance with the requirements of the LGA.

The OAG went on to say that there should be no need for an elected member to be appointed to provide additional monitoring and oversight as CCOs are intended to operate at arm's length, and other methods are available to help Council set clear expectations and ensure strategic alignment.

The report also urged caution on the appointment of council staff as CCO directors. It noted there is potential for a manager's role as advisor to council to conflict with his or her obligations to the CCO as a director.

4.3 Developing a policy position for all appointments to outside organisations

As already noted, Council's policy is out of date and limited in its application to council organisations.

There is benefit in clarifying council's policy position for appointment to outside organisations in relation to:

- Appointment to council organisations, including elected members and members of the community, and
- Appointment of elected members to outside organisations that are not council organisations.

The advantages of a policy position include:

- Criteria to determine whether an elected member should be appointed following a request from that organisation or group. Currently organisations can resolve to include an elected member without discussing this with Council. In the event this occurs Council is not obliged to make an appointment.
- Clarity on expectations, mandate, delegations and reporting requirements of the elected member as appointee
- Clarity of expectations for the organisation seeking the elected member appointment.

Development and implementation of a policy position would need to consider the current requirements under the outside organisation's trust deed, or other founding document. If material changes are made to current policy and/or practice, transition arrangements would need to be agreed.

For organisations where there is no requirement under a founding document, Council need to decide whether there are benefits in formally appointing elected members.

Best practice across the council sector is that elected member appointments to outside organisations should only be made where;

- There is a very clearly established reason, ie, that the Council has a close funding or functional relationship.
- The role, functions and expectations for the appointee have been clearly defined.

This does not preclude elected members from participating in working parties and reference groups to support the business of Council. This does not require a formal resolution of Council.

4.4 Remuneration of directors on council organisations

Section 57 of the LGA requires Council's policy for appointment of directors to COs to include a position on remuneration of directors.

Council currently does not provide remuneration to council appointed CO or CCO directors, as this is deemed to be the responsibility of the organisation to whom the appointment is made.

Options for remuneration will be socialised with elected members prior to bringing the policy back in the New Year.

Elected Member Appointments	Number	Role	Mandate
Outside Organisations			
(a) Statutory or formal committees			
Northland Civil Defence Emergency Management Group	1	Report back and liaison	Statutory
NRC Regional Transport Committee	1	Report back and liaison	Statutory
NRLLP Advisory Committee	2	Report back and liaison	Company structure
Creative Communities Assessment Committee	1	Report back and liaison	Committee TOR - reports to Community Development Committee
(b) Significant council funding - Council organisations			
Creative Northland (CO)	1	Trustee	Founding document - 1 EM representative
Whangarei Art Museum Trust (CCO)	1	Trustee	Founding document - 1 EM representative
Whangarei Museum and Heritage Trust - Kiwi North (CO)	2	Trustee	Founding document - 2 representatives (do not have to be EM)
Whangarei Quarry Gardens Trust (CO)	1	Trustee	Founding document - 1 EM representative
(c) Liability Council Asset/Lease - Council Organisations			
Sport Northland (CO)	1	Trustee	Founding document - 1 EM representative
Northland Events Centre Trust (exempted CCO)	1	Trustee	Founding document - 2 - 4 representatives (do not have to be EM)
Whangarei Waste Limited (exempted CCO)	1	Director	Founding document - 2 directors (do not have to be EM)
(d) Other Council organisations			
Springs Flat Contractors Ltd (CCO)	1	Director	Founding document - 1 representative (do not have to be EM)
Bream Head Conservation Trust (CO)	1	Trustee	Founding document - 1 EM representative
Mangakahia Sports Ground Society Inc (CO)	1	Trustee	Founding document - 1 EM representative from that ward
Northland Athletics and Gymnastics Stadium Trust (CO)	1	Trustee	Founding document - 1 EM representative
Northland Craft Trust - Quarry Arts Centre (CO)	1	Trustee	Founding document - 1 EM representative
Ngunguru Retirement Village Trust (CO)	2	Ex officio member of board	Founding document - 2 EM coastal representatives as ex officio of board
Saorsa Retirement Village - Waipu (CO)	1	Trustee	Founding document - 1 EM representative
Stonehaven Village Trust - Maungakaramēa (CO)	2	Trustee	Founding document - 2 EM representatives
The Mission to Seafarers - Marsden Point (CO)	1	Ex officio member of board	Founding document - Mayor or appointee as ex officio of board
Tutukaka Marina Management Trust (CO)	1	Trustee	Founding document - 1 EM representative
Whangarei Harbour Marina Management Trust (CO)	1	Trustee	Founding document - 2 representatives (do not have to be EM)
(e) Organisations where Council has an interest			
Local Government NZ - Zone 1	1	Liaison	LGNZ process
Local Government NZ - Metropolitan	1	Liaison	LGNZ process
Disability Advisory Group	No limit	Liaison	Council group
Positive Ageing Advisory Group	No limit	Liaison	Council group
Youth Advisory Group	No limit	Liaison	Council group
Whangarei Aquatic Centre Advisory Committee	2	Committee member	Committee TOR - 2 EM representatives
Kensington Stadium Advisory Committee	2	Committee member	Committee TOR - 2 EM representatives
Onerahi Community Association Inc	1	Committee member	Committee TOR - 1 EM representative
Northland Road Safety Trust	1	Trustee	No requirement or power for WDC to appoint
Tai Tokerau Emergency Housing Trust	1	Trustee	No requirement or power for WDC to appoint
Volunteering Northland	1	Trustee	No requirement or power for WDC to appoint
The Blue Goose Papermill Charitable Trust	1	Trustee	Founding document - trustees shall have regard to desirability to appoint reps of WDC
Citizen's Advice Bureau Whangarei Inc	1	Liaison	No requirement or power for WDC to appoint
Chamber of Commerce and Industry of Northland Inc	1	Honorary member	No power for WDC to appoint - Mayor can be elected by board to be Honorary Member

(f) Working parties, reference groups, community groups			
NRC Ruakaka River Liaison Working Group	1	Liaison	NRC Collaborative Community Working Group - Awaiting confirmation from NRC
NRC Urban Whangarei River Liaison Working Group	1	Liaison	NRC Collaborative Community Working Group - Awaiting confirmation from NRC
NRC Ngunguru Catchment Working Group	1	Liaison	NRC Collaborative Community Working Group - Awaiting confirmation from NRC
NRC Mangere Catchment Working Group	1	Liaison	NRC Collaborative Community Working Group - Awaiting confirmation from NRC
NRC Whangarei Harbour Catchment Group	1	Liaison	NRC Collaborative Community Working Group - Awaiting confirmation from NRC
NRC Whangarei Public Transport Working Party	3	Liaison	Agreement to work together (part of NRC Governance Structure - 3 EM each)
Walking and Cycling Reference Group	1	Liaison	TOR provides for at least one EM
Upper North Island Strategic Alliance (UNISA)	1	Liaison	Historically appointed HWM - Council sector group
Kaipara Moana Working Party	1	Liaison	Historically appointed
City Safe	1	Liaison	Historically appointed
Hikurangi Flood Management Scheme Working Goup	1	Liaison	Historically appointed
Community Networkers Group	1	Liaison	Historically appointed
District Wide Ward Groups			
Pukenui / Western Hills Forest Charitable Trust	1	Liaison	Elected member
Northable Matapuna Hauora	1	Liaison	Elected member
Friends of Matakoho Limestone Island Society Inc	1	Liaison	Elected member
Town Basin Businesses Liaison	1	Liaison	Elected member
Mangakahia - Maungatapere Ward Groups			
Maungatapere Community Centre Inc	1	Liaison	Elected member
Pakotai Te Oru Sports and Recreation Centre Inc	1	Liaison	Elected member
Anawhata Museum Trust (Packard and Pioneer)	1	Liaison	Elected member
Mangakahia Community Trust	1	Liaison	Elected member
Hikurangi Ward Groups			
Friendship House Charitable Trust	2	Liaison	Elected member
Friends of Lake Waro	2	Liaison	Elected member
Matapouri Hall Committee	2	Liaison	Elected member
Ngunguru Sports and Recreation Inc	2	Liaison	Elected member
Teal Bay R&R Association	2	Liaison	Elected member
Tutukaka Coast R&R Association	2	Liaison	Elected member
Whananaki Beach R&R	2	Liaison	Elected member
Whangaruru North R&R Association	2	Liaison	Elected member
Whangaruru South R&R Association	2	Liaison	Elected member
Whangarei Heads Ward Groups			
Parua Bay R&R	1	Liaison	Elected member
Whangarei Heads Citizens Association	1	Liaison	Elected member
Whareoa / Pataua R&R	1	Liaison	Elected member
Tamaterau R&R	1	Liaison	Elected member
Denby Ward Groups			
Kamo Community Inc	3	Liaison	Elected member
Tikipride Community House	1	Liaison	Elected member
Bream Bay Ward Groups			
Ruakaka Parish R&R	2	Liaison	Elected member
Waipu Business Promotion Group	2	Liaison	Elected member
Portland Recreation Centre	1	Liaison	Elected member
Ruakaka Reserve Board	1	Liaison	Elected member
Port Liaison	1	Liaison	Elected member
Portland R&R	1	Liaison	Elected member
Maungakamea Recreation Society Inc	1	Liaison	Elected member