

Environment Waikato

(Waikato Regional Council)

Code of Conduct for Elected Members

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1 Introduction

Clause 15 of 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 (Clause 15(4) of Schedule 7 of the Act).

This Code of Conduct provides guidance on the standards of behaviour that are expected from elected members of the Waikato Regional 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 the Council
- the media
- the public.

The objectives of this Code are to enhance:

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

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

- an agreed statement of roles and responsibilities (recorded in Part Two of the Code)
- agreed general principles of conduct (recorded in Part Three of the Code)
- specific Codes of Conduct applying to particular circumstances or matters (also recorded in Part Three of the Code).
- procedures to establish whether the code has been breached
- sanctions that may be imposed if the code is breached

Elected members are primarily accountable to the electors of the Region 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 Region 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 are at question, should not behave improperly and should on all occasions avoid the occurrence or appearance of such behaviour.

Objectivity: Members should make decisions on merit, including decisions on 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 Region, not the constituency 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 co-operate fully and honestly with the openness appropriate to their particular office.

Openness: Members should be as open as possible about their actions and those of the Council, and should be prepared to explain the reasoning behind their actions and decisions.

Personal judgement: 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 the 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 the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations to both present and future generations.

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

These general principles of good governance compliment, and should be read in conjunction with, the principles relating to local authorities as set out in Section 14 of the Act and the governance principles as set out in Section 39 of the Act.

2 Roles And Responsibilities

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

2.1 Elected Members

Elected members, acting as the Council, are responsible for:

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

Any individual member (including the Chairperson) has no authority to act on behalf of the Council unless the Council has expressly delegated such authority. No member shall exceed or purport that they have the power to exceed their given authority.

Members, as individuals, must comply with:

- the requirements of this Code
- those enactments and other rules of law applicable to the conduct of members. Extracts from, or brief explanations of, those enactments are set out in Appendix 1.

Members, as individuals, shall take responsibility for:

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

2.2 Chairperson

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

- presiding member at Council meetings. The Chairperson is responsible for ensuring the orderly conduct of business during meetings (as determined in standing orders),
- an advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council,
- ceremonial head of the Council,
- a leader and provider of feedback to other elected members on teamwork and Chairpersonship of committees,
- Justice of the Peace (while the Chairperson holds office), and
- Spokesperson as outlined in Section 3.4 (Media Contact).

The Chairperson is obliged to follow the same rules as other elected members with respect to making public statements and committing the Council to a particular course of action. In addition the Chairperson has spokesperson responsibilities as outlined in section 3.4 (Media Contact).

2.3 Deputy Chairperson

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

2.4 Committee Chairpersons

The Council may create one or more Committees of Council. A Committee Chairperson presides over all meetings of the Committee, ensuring that the Committee acts within the powers delegated by Council, and as set out in the Council's Committee Structure Manual. Committee Chairpersons may be called on to act as an official spokesperson on a particular issue. They may be removed from office by resolution of Council.

2.5 Chief Executive

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

- Implementing the decisions of the Council.
- Providing advice to the Council.
- 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.
- Pursuant to Section 42 of the Act, employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

2.6 Meeting Attendance

Elected members are expected to attend and participate in all Council meetings, Standing Committee meetings and Subcommittee meetings to which they have been appointed, unless they have submitted an apology or obtained a leave of absence in advance for non-attendance.

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

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

3 Relationships and Behaviours

This part of the Code sets out the 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.

3.1 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.

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

3.2 Relationships with Staff

The effective performance of the Council also requires a high level of co-operation and mutual respect between elected members and staff. To ensure that level of co-operation 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 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 Chairperson or the Deputy Chairperson.

Elected members should be aware that failure to observe this portion 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.

3.3 Relationships with the Regional Community

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

Members should ensure that individual citizens are accorded respect in their dealings with the Council, have their concerns listened to and deliberated on in accordance with the requirements of the Act. This includes the quasi-judicial role members fulfil on hearings, refer to Appendix 2.

Members will:

- Deal with members of the community in a fair, equitable and honest manner.
- Be available to listen and respond to community concerns, but will avoid promising things the member cannot deliver.
- Strive to understand different points of view within the community.
- Make decisions that affect the community only after considering all relevant interests, arriving at balanced and sustainable decisions.
- Encourage partnerships with the community so that mutual strengths can be used to achieve common goals.

3.4 Councillors' Contact with the Media

The media plays an important part in local democracy. To fulfil this role the media needs access to accurate, timely information about the Council's activities. Individual Councillors can expect to be approached to comment on a particular issue, either on behalf of the Council, or as an elected member. This part of the Code deals with the rights and duties of Councillors when speaking to the media.¹

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

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

- The Chairperson or Chief Executive is the first point of contact for official views on any issue. Where the Chairperson is absent, matters may be referred to the Deputy Chairperson or relevant Committee Chair. A Councillor may, however, communicate with the news media in relation to matters that are of local interest or have local implications in the Councillor's constituency. Councillors should notify the Chairperson when they make statements to the media if they believe the matter may be contentious.
- The Chairperson or Chief Executive may refer any matter to the relevant Committee Chair for comment.
- No other Councillor may comment on behalf of the Council without having first obtained the Chairperson's approval.

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

- Media comments must not state or imply that they represent the Council's view.
- Where an elected member is making a statement contrary to a Council 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 - to not disclose confidential information or compromise the impartiality or integrity of staff or fellow members.
- In presenting a personal view members should not undermine Council's policy.

¹ A copy of the Council's media policy for staff is at Docs No.596520

3.4.1 Meeting Decisions

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

Once a matter has been determined at a Council meeting, it becomes the Council's position until it is lawfully changed by a subsequent Council decision. All members and staff will respect this position.

The Chairman can make statements that accurately report Council decisions.

Committee Chairs can make statements that accurately report their Committee's decisions, or factual statements about Council or Committee decisions.

Members have the right to voice their own opinion to the news media, on Council/Committee decisions, but they must state clearly when they are expressing a majority, collective Council view and when they are expressing a personal, minority opinion.

3.5 Information

3.5.1 Confidential Information

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

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

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

Elected members should be aware that failure to observe these provisions may affect the Council's performance, 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, and may expose individual members to responsibility for loss pursuant to Section 46 of the Act.

3.5.2 Information Received in Capacity as an Elected Member

Any information received by an elected member in his/her capacity as an elected member that relates to the ability of Council to give effect to any provision of the Local Government Act 2002 or any other statute under which Council has responsibilities shall be disclosed by that elected member to all other elected members and, if appropriate, the Chief Executive.

This duty of disclosure will require elected members to whom information may be offered on the basis that confidence be preserved to inform the intended provider of the information of the duty of disclosure and to decline to receive the information if that duty is likely to be compromised.

3.6 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 will ensure that they are aware of the legislative requirements of the Local Authority (Members Interest) Act 1968, which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

Conflicts of Interest include:

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

Members must take a precautionary approach to all conflicts of interest. Members must ensure that where an audit office ruling is sought, under the Local Authorities (Members' Interests) Act 1968, the application for exemption is made on a timely basis. Where a conflict of interest is established members must take no part in the discussion of the matter nor the decision. In a case of doubt a member should withdraw. Members withdrawing should (in protection of their own and the Council's interests) ensure that their actions are appropriately minuted.

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

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

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.

Directors of Council Organisations, Council Controlled Organisations and Council Controlled Trading Organisations (CO's, CCO's and CCTO's) must follow these provisions relating to conflicts of interest. (See sections 4.3, 5.3 and 6.3 of the 'Policy on Appointment and Remuneration of Directors of Council Organisations (Doc#961998).

3.6.1 Register of Interests

Elected members shall make a declaration of interests following each triennial election within six weeks after the triennial meeting and at any time after that as soon as practicable after becoming aware of any interests. These declarations are recorded in a "Register of Interests" maintained by the Council. The declaration is separated into two parts and must notify the Council of the nature and extent of any interest as follows:

- Part A – Matters in which a member has a financial or pecuniary interest (as per the Local Authorities (Members Interests) Act 1968 including:
 - any employment, trade or profession carried on by the elected member or his/her spouse for profit or gain;
 - any company, trust, partnership etc for which the elected member or his/her 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 Waikato region;
 - the address of any land where the landlord is the Waikato Regional Council and:
 - o the member or their spouse is a tenant, or
 - o 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.
- Part B – All other external interests eg. memberships/representation/businesses/shareholdings that have the potential to give rise to a conflict of interest.

Part B is useful when considering Hearing Committee membership for specific cases (one of the submitters might be a group or organisation that a Councillor is a member of), or making a recommendation or decision at a meeting that affects a group or organisation that a Councillor is a member of.

3.6.2 Undischarged Bankrupt

If a newly elected Member is an undischarged bankrupt he or she must notify the Chief Executive of this prior to the Triennial meeting. If a Member is adjudicated bankrupt during the course of their term, he or she must also notify the Chief Executive of this. These Members should also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the member's adjudication and the likely outcome of the bankruptcy.

3.7 Standing Orders

Elected members must adhere to the standing orders adopted by the Council (currently NZS 9202:2003 incorporating Amendment No.1) or as amended from time to time to comply with relevant legislative changes.

3.8 Ethics

Waikato Regional 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.
- Only use Council resources (including facilities, staff, equipment and supplies) effectively and economically in the course of their duties, and within other guidelines, and not in connection with any election campaign or other personal business.
- Not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests.

Acceptance of substantial gifts, favours or hospitality may be construed as a bribe or perceived as undue influence. The offer and receipt of substantial gifts, including special occasion goodwill gifts must be reported to the Chief Executive. Working meals and social occasions should be undertaken in an appropriate manner.

3.9 Disqualification of Members from Office

Pursuant to Schedule 7 of the Local Government Act 2002, elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years imprisonment, or if they cease to be or lose their status as an elector (see section 80 Electoral Act 1993) or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

4 Compliance and Review

4.1 Compliance

Compliance with the Code is mandatory for all elected members (Clause 15(4) of Schedule 7 of the Act)

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 made 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 has with respect to conduct of elected members is attached in Appendix 1 to this Code.

While outside agencies, such as the Audit Office, the Police etc have a role in dealing with breaches of a statutory nature, it is considered that the local authority and its community will monitor compliance with the non-statutory provisions of the Code of Conduct.

In practice, elected members themselves are likely to play a major role in monitoring the actions of other members. It is expected that one or more members will warn members whom they suspect of breaching the Code of Conduct. If the alleged offending continues, or if a serious breach occurs, then the procedures outlined in Section 4.2 and Appendix 3 are to be followed.

4.2 Breaches of the Code

Council will use the process outlined in Appendix 3 to determine any complaint while observing the overriding principles of natural justice and fairness and in accordance with the following general principles:

- Any person who considers that the provisions of this Code have been seriously breached by an elected member of Council, shall submit to the Chairperson (or the Chief Executive if the alleged breach involves the Chairperson), a statement in writing detailing the alleged breach of the Code of Conduct together with any corroborating evidence.
- The Chairperson, or Chief Executive as the case may be, shall, determine whether the subject matter of the complaint is appropriately dealt with under the Code of Conduct and if considered appropriate, shall attempt to resolve the matter through discussion with the relevant parties. If the matter is resolved by discussion, Council may accept that it has been successfully concluded upon written notification by both the complainant and respondent.
- The Council will have the discretion to determine whether any report is considered in open or closed meeting of Council. Where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a member of staff or of the general public, the report will be held in closed meeting.
- In accordance with Appendix 3 Council shall determine whether a breach of the Code of Conduct has occurred and determine the appropriate sanction or penalty (if any).

4.3 Responses to Breaches of the Code

The exact nature of the action the Council 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 render members liable for prosecution by the Auditor-General under the Local Authority (Member's 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 Council may refer an issue to the relevant body. Any member of the public may make a complaint, or the body itself may take action of its own initiative.

Where there are no statutory provisions, the Council may take the following action:

- Education
- Mentoring
- Censure
- Removal or suspension of the elected member from Council committees and/or other representative type bodies.
- Removal or suspension of any special status of the member, such as Chair of a Committee.

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

4.4 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 of Conduct require a resolution supported by 75 percent or more of the members of the Council present.

The Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be presented to Council for their consideration and vote.

5 Adoption and Implementation of the Code

This Code is intended to provide guidance to members and management in their relationships and the exercising of their functions and duties. It should be read in conjunction with, and does not replace, the obligations set out in the Local Government Act, the Local Government Official Information and Meetings Act 1987, any other relevant Acts and Council Standing Orders.

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

This document (#1134706 – June 2007) is the current operative Code of Conduct for Elected Members incorporating the amendments formally adopted by Council at its meeting on 28 June 2007 (WRC07/37.8.1).

Appendix 1 – 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 the council libraries or in the office of the Chief Executive.

Local Government Act 2002 (extracts)

10 PURPOSE OF LOCAL GOVERNMENT

The purpose of local government is –

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

14 PRINCIPLES RELATING TO LOCAL AUTHORITIES

(1) In performing its role, a local authority must act in accordance with the following principles:

- (a) a local authority should –
 - (i) conduct its business in an open, transparent, and democratically accountable manner; and
 - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:
 - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
 - (c) when making a decision, a local authority should take account of –
 - (i) the diversity of the community, and the community's interests, within its district or region; and
 - (ii) the interests of future as well as current communities; and
 - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10:
 - (d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:
 - (e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and
 - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
 - (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
 - (h) in taking a sustainable development approach, a local authority should take into account –
 - (i) the social, economic, and cultural well-being of people and communities; and
 - (ii) the need to maintain and enhance the quality of the environment; and
 - (iii) the reasonably foreseeable needs of future generations.
- (2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

39 GOVERNANCE PRINCIPLES

A local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of members, is clear and understood by members and the community; and
- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and
- (d) a local authority should be a good employer; and
- (e) a local authority should ensure that the relationship between members and management of the local authority is effective and understood.

40 LOCAL GOVERNANCE STATEMENTS

(1) A local authority must prepare and make publicly available, following the triennial general election of members, a local governance statement that includes information on –

- (a) the functions, responsibilities, and activities of the local authority, and
 - (b) any local legislation that confers powers on the local authority; and
 - (c) the electoral system and the opportunity to change it; and
 - (d) representation arrangements, including the option of establishing Maori wards or constituencies, and the opportunity to change them; and
 - (e) members' roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and
 - (f) governance structures and processes, membership, and delegations; and
 - (g) meeting processes (with specific reference to the applicable provisions of the Local Government Official Information and Meetings Act 1987 and standing orders); and
 - (h) consultation policies; and
 - (i) policies for liaising with, and memoranda or agreements with, Maori; and
 - (j) the management structure and the relationship between management and elected members; and
 - (k) equal employment opportunities policy; and
 - (l) key approved planning and policy documents and the process for their development and review; and
 - (m) systems for public access to it and its elected members; and
 - (n) processes for requests for official information.
- (2) A local authority must comply with subsection (1) within 6 months after each triennial election of members of the local authority.
- (3) A local authority must update its governance statement as it considers appropriate.

41 GOVERNING BODIES

- (1) A regional council must have a governing body consisting of –
 - (a) members elected in accordance with the Local Electoral Act 2001; and
 - (b) a chairperson elected by members of the regional council in accordance with clause 25 of Schedule 7.
- (2) A territorial authority....
- (3) A governing body of a local authority is responsible and democratically accountable for the decision-making of the local authority.
- (4) A chairperson of a regional council, or a mayor of a territorial authority, is a Justice of the Peace during the time that he or she holds the office of chairperson or mayor.
- (5) An employee of a local authority who is elected to be a member of the local authority's governing body must resign from his or her position as an employee of the local authority before taking up his or her position as a member of the local authority.

42 CERTAIN MEMBERS INDEMNIFIED

- (1) A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the Local Electoral Act 2001 or appointed by the local authority, for –
 - (a) costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and
 - (b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.
- (2) Subsection (1) does not apply to a member's liability for a loss under section 46.
- (3) To avoid doubt, a local authority may not indemnify a director of a council-controlled organisation for any liability arising from that director's acts or omissions in relation to that council-controlled organisation.

44 REPORT BY AUDITOR-GENERAL ON LOSS INCURRED BY LOCAL AUTHORITY

- (1) For the purposes of this section and sections 45 and 46, a local authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the local authority has not been fully compensated for the action or omission concerned:
 - (a) money belonging to, or administrable 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.
- (2) If the Auditor-General is satisfied that a local authority has incurred a loss. The Auditor-General may make a report on the loss to the local authority, and may include in the report any recommendations in relation to the recovery of the loss or the prevention of further loss that the Auditor-General thinks fit.

- (3) The Auditor-General must send copies of the report to the Minister and every member of the local authority.

45 LOCAL AUTHORITY TO RESPOND TO AUDITOR-GENERAL

- (1) On receipt of a report from the Auditor-General, the local authority must, within 28 days, respond in writing to the Auditor-General, and send a copy of the response to the Minister.
- (2) the local authority's response must –
 - (a) respond to each of the Auditor-General's recommendations; and
 - (b) include a statement as to what action, if any, the local authority intends to take in respect of the loss.
- (3) The Minister may extend the period of time within which the local authority must forward its response.
- (4) An individual member of the local authority may respond to the Auditor-General –
 - (a) by making a separate response to the Auditor-General, and sending a copy to the local authority and the Minister, within the time required for the local authority's response; or
 - (b) with the consent of the local authority, by incorporating that member's response in the local authority's response.
- (5) The local authority must, as soon as practicable after the expiry of the time for forwarding its response, table in a meeting of the local authority that is open to the public a copy of the Auditor-General's report, the local authority's response, and any response of an individual member of the local authority not incorporated in the local authority's response.

46 MEMBERS OF LOCAL AUTHORITY LIABLE FOR LOSS

- (1) If the Auditor-General has made a report on a loss to a local authority under section 44, then, without limiting any other person's liability for the loss, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.
- (2) if the members of the local authority or any other person or persons do not pay the amount of the loss to the Crown or the local authority within a reasonable time, the Crown may commence proceedings to recover the loss from any or all of those members.
- (3) Any amount recovered by the Crown, under subsection (2), less all costs incurred by the Crown in respect of the recovery, must be paid by the Crown to the local authority concerned.
- (4) It is a defence to any proceedings under subsection (2) if the defendant proves that the act or failure to act resulting in the loss occurred –
 - (a) without the defendant's knowledge; or
 - (b) with the defendant's knowledge but against the defendant's protest made at or before the time when the loss occurred; or
 - (c) contrary to the manner in which the defendant voted on the issue at a meeting of the local authority; or
 - (d) in circumstances where, although being a party to the act or failure to act, the defendant acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any of the following persons:
 - (i) an employee of the local authority whom the defendant believed on reasonable grounds to be reliable and competent in relation to the matters concerned:
 - (ii) a professional advisor or expert in relation to matters that the defendant believed on reasonable grounds to be within the person's professional or expert competence.

47 MEMBERS MAY BE REQUIRED TO PAY COSTS OF PROCEEDING IN CERTAIN CASES

- (1) This section applies if, in a proceeding commenced by the Attorney-General, the local authority is -
 - (a) held to have -
 - (i) disposed of, or dealt with, any of its property wrongfully or illegally; or
 - (ii) applied its property to any unlawful purpose; or
 - (iii) permitted the reserves that it must manage to be used for purposes not authorised by law; or
 - (b) restrained from acting in the ways referred to in paragraph (a).
- (2) If subsection (1) applies, costs and other expenses arising out of the proceeding or incurred in doing the things to which the proceeding relates -
 - (a) must not be paid out of general revenues by the local authority; and
 - (b) must be paid, by order of the Court, by the members of the local authority who, by voting or otherwise, assented to the acts concerned.
- (3) The court must not make an order under subsection (2) against a member of the local authority if the member proves that, in doing the act concerned, -
 - (a) the member acted in good faith and in accordance with the written advice of the solicitor to the local authority; or
 - (b) the member acted honestly and reasonably and, having regard to all the circumstances of the case, the member ought fairly to be excused.

SCHEDULE 7 – PART 1

1 DISQUALIFICATION OF MEMBERS

- (1) A person's office as a member of a local authority is vacated if the person, while holding office as a member of the local authority -
 - (a) ceases to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993; or
 - (b) is convicted of an offence punishable by a term of imprisonment of 2 years or more.
- (2) If subclause (1)(b) applies -
 - (a) the disqualification does not take effect -
 - (i) until the expiration of the time for appealing against the conviction or decision; or
 - (ii) if there is an appeal against the conviction or decision, until the appeal is determined; and
 - (b) the person is deemed to have been granted leave of absence until the expiration of that time, and is not capable of acting as a member during that time, and is not capable of acting as a member during that time.
- (3) A person may not do an act as a member while disqualified under subclause (1) or while on leave of absence under subclause (2).

15 CODE OF CONDUCT

- (1) A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.
- (2) The code of conduct must set out -
 - (a) understandings and expectations adopted by the local authority 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) a general explanation of –
 - (i) the Local Government Official Information and Meetings Act 1987; and
 - (ii) any other enactment or rule of law applicable to members.
- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.
- (4) A member of a local authority must comply with the code of conduct of that local authority.
- (5) A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.
- (6) After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.
- (7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

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 public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Elected members must declare his/her interests at the Council and Committee meetings where matters in which they have a pecuniary interest arise.

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 potentially invalidate the particular decision made, or the action taken by the Council and 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

Official Information

LGOIMA contains rules relating to the disclosure of information held by a local authority to the public on request. The underlying principle of LGOIMA is that information should be made available unless there is good reason to withhold disclosure. There are a number of grounds for withholding disclosure, principally contained within Sections 6 and 7 of this Act.

The obligations of LGOIMA are binding on elected members and apply to the disclosure of information by a member in respect of any information held by that member (in his or her capacity as a member) to a member of the public. It does not apply to the disclosure of information to the Council in accordance with the requirements of the Code of Conduct.

Meetings

LGOIMA also regulates and sets out the procedural requirements for meetings of local authorities, the publication of agenda, procedures for discussion with the public excluded and access by the public to the minutes of meetings.

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, or
- use offensive language about the Council, other Councillors, any employee of the 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 the Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, or fines up to \$1000, or both. A conviction therefore would trigger the ouster provisions of Clause 1 of Schedule 7 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 or
- 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 seven years or more. Elected members convicted of these offences will also be automatically ousted from office.

Securities Act 1978

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 2 – Complaint Investigation/Determination Process

This process is at all times to follow the principles of natural justice. The fundamental principles are that each party:

- Has the right to know what the investigation/determination process is, and what the potential outcomes may be.
- Is given due notice and is provided with an opportunity to be involved in the process.
- Has a right to be heard.
- Has their privacy respected as appropriate throughout the process.

Complaint Investigation Process

(The numbering relates to the attached flow diagram. The following points elaborate on the purpose and process of each stage).

1. Receipt of written complaint.
 - i. Elected members and staff must be aware of the type of matters that the elected member's code of conduct applies to and how to access the process.
2. Chair/CEO to determine whether the subject matter of the complaint is appropriately dealt with under the Code of Conduct.
 - i. The written complaint is passed to the Chair (or if it is about the Chair then to the CEO) who confirms that the complaint is about an elected member and who makes a decision as to whether the subject matter of the complaint is appropriate to be dealt with under the Elected Members Code of Conduct.
 - ii. If in doubt and there isn't another statutory or other process that applies the matter should continue at this stage.
 - iii. If the complaint doesn't fit within the code then it should be redirected in an appropriate fashion or simply declined and the complainant advised.
3. Reply to complainant within two (2) working days, in writing advising them:
 - i. That the complaint has been received.
 - ii. That if the complaint does not fit within the code, where it has been redirected.
 - iii. The process that will be used to address the complaint.
 - iv. The time frame within which they can expect a response; and
 - v. A contact person who they can get in touch with to find out about progress of their matter.
 - vi. It may be necessary at this stage to ask the complainant for more information so that the Council and the Respondent understand the complaint sufficiently to be able to respond.

4. Advise respondent
 - i A copy of written complaint to be sent to the respondent (within two working days unless more detail is required and then within two (2) working days after receipt of the details requested) with the letter/brochure outlining the process to be used to address the complaint.
 - ii Respondent is requested to provide a response to the Chair/CEO in writing within 14 days of receipt of the complaint.

5. Chair/CEO views the **complaint** and the **response** and determines whether there is a case to answer.
 - i. The test of whether there is a case to answer is simply a positive answer to the questions:
 - Is the complaint about an elected member?
 - If the allegations in the complaint were proven could they amount to a breach of the Code?
 - ii. This is not an attempt to determine the truth of the complaint, simply an examination that ensures that the matter is one which should and can be dealt with under the code.

6. If the assessment is that there is no case to answer the Chair/CEO will write to the complainant and respondent and advise them of that outcome.
 - i. That letter may be used as an opportunity to recommend action.
 - ii. Such action could include
 - provision of information and/or education for the complainant or the respondent,
 - a change in process, practice or policy to remedy the problem,

7. If the assessment is that there is a case to answer, the Chair/CEO is to commission an investigation and/or mediation if appropriate, as the case requires.
 - i. The Chair/CEO will appoint an independent person to investigate and/or mediate the matter.
 - ii. Council are involved in appointing and contracting the independent person but do not have a part to play in the investigation or determination made other than as a party with whom the investigator/mediator may consult or include in the process.
 - iii. The Respondent will be advised in writing of the alleged nature of the breach, the process that will be followed to investigate and that if the breach is substantiated what options the Council has available to it.

8. Investigator/Mediator to investigate/mediate and report to the Chair/CEO re the outcome.
 - i. If there was a successful resolution by mediation the process goes to stages 9 and 10.
 - ii. If the matter was not resolved by mediation or mediation is not appropriate then the process goes to stage 11.
9. If the matter is resolved by mediation then the investigator/mediator shall prepare an agreement that is signed by the parties and will be subsequently provided to Council.
10. Council shall consider the outcome of the mediation and, if considered appropriate, move to give effect to the terms of agreement reached in the mediation.
11. If mediation is not appropriate or not successful then a "Findings" document including a summary of agreed and disputed facts that relate to the complaint and the investigator/mediator's opinion regarding the matter is to be prepared and presented to the Chair/CEO in the first instance.
12. Council makes a decision based on findings:
 - i. Prior to making a decision, the Chair/CEO should first send a copy of the findings document to the complainant and the respondent with a letter asking them whether they agree or whether they wish to avail themselves of a final opportunity for written submissions before a Council decision is made.
 - ii. Council meets and if the findings and recommendations of the investigator are accepted by the complainant, respondent and Council then they shall be applied accordingly.
 - iii. If any party does not agree with the findings and recommendations of the investigator then all information is then placed before Council who will decide if a breach has occurred.
 - iv. In exceptional circumstances Council may call for the complainant or respondent or any witnesses to give oral evidence in person. Any oral submissions may be heard by Council or a subcommittee nominated for that purpose as a code of conduct hearings committee. This may be especially useful in situations where the evidence is contradictory and the credibility of the parties or a witness is an issue.
 - v. Council, after considering the investigators report, written submissions and hearing any further evidence (if appropriate) then decides whether a breach has occurred.
 - vi. The Councillor complained about shall not be a part of the council decision making process and shall not be present during deliberations.
13. If Council decides that the matter is finalised and no further action is required then the complainant and respondent are advised and the file closed.
 - i. There is no right of appeal. The Council decision in relation to any matter is final.

14. If a breach of the code is found to have occurred Council will give the respondent a 28 day opportunity to make submissions regarding penalty.
15. Following receipt of submission, Council will meet to decide penalty.
 - i. Where there are no statutory provisions, the Council may take the following action:
 - (i) Education
 - (ii) Mentoring
 - (iii) Censure
 - (iv) Removal or suspension of the elected member from Council committees and/or other representative type bodies.
 - (v) Removal or suspension of any special status of the member, such as Chair of a Committee.

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

EW CCEM
Draft Process

