



Code of Conduct | Anga Tikanga Whanonga

Adopted: 9 November 2022

- Part 1: Code of Conduct
- Part 2: Policy for dealing with alleged breaches
- Part 3: Appendices



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1 Introduction | Kupu whakataki

The Hauraki District Council's Code of Conduct (the Code) sets out the standards of behavior expected from elected members towards other members, staff, the public, and the media. It is also concerned with the disclosure of information that members receive in their capacity as members. Members of a local authority must comply with the Code of Conduct of that local authority. This is addressed in Part One of this document. The second part of this document sets out the policy for dealing with alleged breaches of the Code.

A Code of Conduct must also provide members with a general explanation of the Local Government Official Information and Meetings Act 1987, and any other enactment or rule of law that affects members. This can be found in Appendix B.

A Council must have a code of conduct. The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and all members of the Hauraki District Council (the Council), must comply with the Code.

The Code should be read in conjunction with the Council's Standing Orders, which provide rules for the conduct for meetings, while a code governs day-to-day and less formal relationships. Members must also comply with Council's Sensitive Expenditure Policy for Elected Members and any other relevant policy.

2 Purpose | Te Aronga

The purpose of the Code is to:

- Enhance the effectiveness of the Council and the provision of good local government of local communities, the Hauraki District and the Waikato Region.
- Promote effective decision-making, including free and frank debate conducted in a civil and respectful way.
- Promote inclusivity and community engagement.
- Enhance the credibility and accountability of the Council to our communities.
- Develop a culture of mutual trust, respect and tolerance between the members of the Council and between the members and management.
- To uphold the mana of the Council and the position of the Mayor and Councillors.

This purpose is given effect through the values, principles, and behaviors agreed in the Code below.

PART ONE: CODE OF CONDUCT

3 Members' commitment | Ngā herenga a ngā mema

These commitments apply when conducting the business of the Hauraki District Council as its representative, and communicating with other members, the media, the public, or staff. By adopting the Code of Conduct members agree that they will:

1. treat all people fairly,
2. treat all other members, staff, and members of the public, with respect,
3. share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
4. operate in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi,
5. make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
6. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
7. not bully, harass, or discriminate unlawfully against any person,
8. not bring the local authority into disrepute,
9. not use their position to improperly advantage themselves or anyone else or disadvantage another person,
10. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
11. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

Please note: a failure to act in accordance with these commitments may result in a complaint being taken against you.

Further detail explaining the Code of Conduct is set out below.

4 Te Tiriti o Waitangi

The Council (kaunihera) commits to operating in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi and acknowledges the following principles:

1. **Tino Rangatiratanga:** The principle of self-determination provides for Māori self-determination and mana motuhake. The Council will be open to working

with mana whenua partners in the design and delivery of their work programmes.

2. **Partnership:** The Council will seek to establish a strong and enduring relationship with iwi and Māori, within the context of iwi and Māori expectations. The Council will identify opportunities, and develop and maintain ways, for Māori to contribute to kaunihera decisions, and consider ways kaunihera can help build Māori capacity to contribute to council decision-making,
3. **Equity:** The Council commits to achieving the equitable delivery of local public services,
4. **Active protection:** The Council will be well informed on the wellbeing of iwi, hapū and whanau within their respective rohe,
5. **Options:** The principle of options requires local authorities to ensure that its services are provided in a culturally appropriate way that recognises and supports the expression of te ao Māori.

5 Principles of good governance | Ngā whanonga pono mō te painga o te kāwanatanga ā-kāinga

Members recognise the importance of the following principles of good governance¹:

1. **Public interest:** members should act solely in the public interest.
2. **Integrity:** members should not act or take decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
3. **Accountability:** members should be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
4. **Tāria te wā and kaitiakitanga/stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
5. **Objectivity:** members should act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. This includes matters like appointments, awarding contracts, and recommending individuals for rewards or benefits.
6. **Openness:** members should act and take decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons for so doing.

¹ Drawn from the UK Government's Committee on Standards in Public Life and the findings of the 1994 Nolan Inquiry <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

7. **Honesty:** members should be truthful and not misleading.
8. **Leadership:** members should not only exhibit the principles listed above in their own behavior, but also be willing to challenge poor behaviour in others, wherever it occurs.

These values complement, and work in conjunction with, the principles of section 14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

6 Behaviours | Ngā Whanonga

To promote good governance and build trust between the Council, its members, and citizens, members **agree** to the following standards of conduct when they are:

- conducting the business of the Council,
- acting as a representative of the Council,
- acting as a representative of their electorate,
- communicating with other members, the media, the public and staff, and
- using social media and other communication channels.²

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint made under the Council's 'Policy for alleged breaches of the Code of Conduct' in Part 2 of this document.

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

6.1 Respect

Members will treat all other members, staff, and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. As a member of a local authority you can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You must not, however, subject individuals, groups of people or organisations to personal attack.

Members will conduct their dealings with each other in a manner that focuses on issues rather than personalities. They will avoid abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order.

In your contact with the public, you should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, your local

² Please refer to the Guidelines for the responsible use of social media in the LGNZ Good Governance Guide

authority. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, you are entitled to stop any conversation or interaction in person or online and report them to the Chief Executive of the Council, the relevant social media provider or the police.

6.2 Bullying, harassment, and discrimination

Members will treat all people fairly and will not:

- bully any person,
- harass any person, or
- discriminate unlawfully against any person.

For the purpose of the Code of Conduct, bullying is offensive, intimidating, malicious, or insulting behaviour. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may be:

- a regular pattern of behaviour, or a one-off incident,
- occur face-to-face, on social media, in emails or phone calls, happen in the workplace, or at work social events, and
- may not always be obvious or noticed by others.

Harassment means conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person because of any of the following³:

age	skin, hair, or eye colour	race
disability	employment status	ethical belief
ethnic or national origin	family status	marital status
political opinion	religious belief	gender identity
sex	sexual orientation.	

6.3 Sharing Information

Members will share with the local authority any information received that is pertinent to the ability of the Council to properly perform its statutory duties.

Occasionally members will receive information in their capacity as members of the governing body, which is pertinent to the ability of their kaunihera to properly

³ See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

perform its statutory duties. Where this occurs members will disclose any such information to other members and, where appropriate, the chief executive. Members who are offered information on the condition that it remains confidential will inform the person making the offer that they are under a duty to disclose such information, for example, to a governing body meeting in public exclusion.

6.4 Expressing personal views publicly

Members, except when authorised to speak on behalf of the local authority, will make it clear, when speaking to the media, on social media, or in hui and presentations, that statements reflect their personal view.

The media play an important role in the operation and efficacy of our local democracy and need accurate and timely information about the affairs of the local authority to fulfil that role. Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- they do not purport to talk on behalf of the local authority, if permission to speak on behalf of the authority has not been given to them,
- their comments must not be inconsistent with the Code, for example, they should not disclose confidential information or criticise individual members of staff, and
- their comments must not purposefully misrepresent the views of the Council or other members.

Members will abide by the media and social media protocols described in Appendix A.

6.5 Provide equitable contribution

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them.

Being a member is a position of considerable trust, given to you by your community to act on their behalf. To fulfil the expectations of your constituents and contribute to the good governance of your area it is important that you make all reasonable efforts to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training seminars.

The local government workload can be substantial, and it is important that every member contributes appropriately. This requires members to often work as a team and avoid situations where the majority of the work falls on the shoulders of a small number of members.

6.6 Disrepute

Members will not bring the local authority into disrepute.

Members are trusted to make decisions on behalf of their communities and as such their actions and behaviours are subject to greater scrutiny than other citizens. Members' actions also reflect on the Council as well as themselves and can serve to either boost or erode public confidence in both.

Behaviours that might bring a local authority into disrepute, and diminish its ability to fulfil its statutory role, include behaviours that are dishonest and/or deceitful.

Adhering to this Code does not in any way limit a member's ability to hold the local authority and fellow members to account or constructively challenge and express concerns about decisions and processes undertaken by their local authority.

6.7 Use of position for personal advantage

Members will not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Being a member of a local authority comes with certain opportunities and privileges, including the power to make choices that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member may be subject to the provisions of the Secret Commissions Act 2010.

6.8 Impartiality

Members will not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They must not be coerced or persuaded to act in a way that would undermine their neutrality. Members can question officers to gain understanding of their thinking and decision-making, however, they must not seek to influence officials to change their advice or alter the content of a report, other than in a meeting or workshop, if doing so would prejudice their professional integrity. Members should:

- make themselves aware of the obligations that the local authority and chief executive have as employers and always observe these requirements, such as the obligation to be a good employer, and
- observe any protocols put in place by the chief executive concerning contact between members and employees, and not publicly criticise individual staff.

If you have concerns about the behaviour of an official, whether permanent or contracted, you should raise your concerns with the local authority's chief executive, or, if the concerns are to do with the chief executive, raise them with the mayor, the council chairperson, or Chief Executive Performance Committee.

6.9 Maintaining Confidentiality

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless:

- they have the consent of a person authorised to give it,
- they are required by law to do so,
- the disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person, or
- the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.

PART TWO: POLICY FOR DEALING WITH ALLEGED BREACHES OF THE CODE

7 Policy for dealing with alleged breaches of the Code | Te kaupapahere hei whakahaere i ngā whakapae i takahia te Tikanga

Members must comply with the provisions of the Code. 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.

7.1 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.

7.2 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 or, where the Mayor is a party to the complaint, to the Council Management Committee.

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

7.3 Complaint referred to Mayor

On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor 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 (relevance and significance).
- Where a complaint is assessed by the Mayor to be trivial, frivolous or minor, the Mayor will 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 will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor, to the Council or Council Management Committee to assess and rule on complaints made under the Code.

If the Mayor chooses they may, instead of undertaking an initial assessment, immediately refer the complaint to the Council Management Committee, via the Chief Executive.

7.4 Complaint referred to Independent Investigator

After the initial review of a complaint the Council Management Committee may 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**.

7.5 Materiality

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

⁴ Shortly after the start of a triennium the Chief Executive will prepare, on behalf of the Council and in consultation with the Mayor, 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.

8 Penalties and actions | *Te reo version to come*

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.

8.1 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:

- A letter of censure to the member;
- A request (made either privately or publicly) for an apology;
- Removal of certain Council-funded privileges (such as attendance at conferences);
- Removal of responsibilities, such as committee chair or deputy committee chair;
- Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
- A vote of no confidence in the member;
- Suspension from committees or other bodies to which the member has been appointed; or
- 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.

8.2 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).

Review

A Council must have a code of conduct. 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: Interactions with the Media and Use of Social Media

From time to time individual members will be approached to comment on a particular issue either on behalf of the council, or as an elected member in their own right. When responding to the media members must be mindful that operational questions should be referred to the Chief Executive and policy-related questions referred to the Mayor or the member with the appropriate delegated authority.

When speaking to the media more generally members will abide by the provisions listed below.

Media contact on behalf of the council

- The Mayor is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Mayor is absent, requests for comment will be referred to the Deputy Mayor or relevant committee chairperson.
- The Mayor may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- No other member may comment *on behalf of the council* without having first obtained the approval of the Mayor.

Media comment on a member's own behalf

Elected members are free to express a personal view in the media, at any time, provided the following rules are observed:

- Media comments must not state or imply that they represent the views of the council.
- Media comments which are contrary to a Council decision or policy must clearly state that they do not represent the views of the majority of members.
- Media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticize, or compromise the impartiality or integrity of staff.
- Media comments must not be misleading and should be accurate within the bounds of reasonableness.
- Social media pages controlled by members and used for making observations relevant to their role as an elected member should be open and transparent.
- Social media posts about other members, council staff or the public must be consistent with this Code. (See below for guidelines on the personal use of social media).

Any failure by members to meet the standards set out above represents a breach of this Code.

Guidelines on the personal use of social media

There is a big difference in speaking 'on behalf of the 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.

- **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.
- **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 social media, but in so doing you must exercise sound judgment and common sense.
- **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. 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.
- **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.
- **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 the Council is doing, can bring you into conflict with the Code if it is not made clear that they are your personal views.
- **Never post sensitive and confidential information from the Council:** Disclosure of confidential items, public excluded reports and/or commercially sensitive information will contravene the requirements of the Code.
- **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. 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.

Appendix B: Legislation bearing on the conduct of elected members

The key statutes that promote ethical behaviour in Elected Members are the:

1. Crimes Act 1961.
2. Financial Markets Act 2013.
3. Harmful Digital Communications Act 2015 (HDCA).
4. Health and Safety at Work Act 2015.
5. Local Authorities (Members' Interests) Act 1968 (LAMIA).
6. Local Government Act 2002 (LGA).
7. Local Government Official Information Act 1987 (LGOIMA).
8. Local Government (Pecuniary Interests Register) Act 2022.
9. Protected Disclosures (Protection of Whistleblowers) Act 2022.
10. Secret Commissions Act 1910.
11. Serious Fraud Office Act 1990.

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.

1. 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.

2. 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.

3. Harmful Digital Communications Act 2015

The Harmful Digital Communications Act (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include

racist, sexist and religiously intolerant comments – plus those about disabilities or sexual orientation. It sets out 10 communication principles for guiding communication online. Under the Act a digital communication should not:

- disclose sensitive personal facts about an individual.
- be threatening, intimidating, or menacing.
- be grossly offensive to a reasonable person in the position of the affected individual.
- be indecent or obscene.
- be used to harass an individual.
- make a false allegation.
- contain a matter that is published in breach of confidence.
- incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual.
- incite or encourage an individual to commit suicide.
- denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation or disability.

More information about the Act can be found at [Netsafe](#).

4. Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 aims to create a new culture towards health and safety in workplaces. A council is termed a Person Conducting a Business or Undertaking (PCBU). All involved in work, including elected members, are required to have a duty of care. Elected members are 'officers' under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as elected members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

- stepping up and being accountable,
- identifying and managing your risks,
- making health and safety part of your organisation's culture, and
- getting your workers involved.

Councils have wide discretion about how these matters might be applied, for example:

- adopting a charter setting out the elected members' role in leading health and safety – with your chief executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with your chief executive,
- ensuring there is an effective linkage between health and safety goals and the actions and priorities of your chief executive and their senior management, or

- having effective implementation of a fit-for-purpose health and safety management system.

Elected members, through their chief executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet the health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

5. 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 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).

6. Local Government Act 2002

The Local Government Act 2002 (LGA) is local government's empowering statute. It sets out the general powers of local government, its purpose and operating principles (including the role of the CE and the Mayor), decision-making requirements, Te Tiriti obligations as set by the Crown, and details the personal liability of members.

Although having qualified privilege⁵, 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

⁵ Council meetings must generally be held in public. Therefore, in order to allow free and frank discussion, oral statements and matters published in meeting agendas and minutes supplied to members of the public are covered by qualified privilege. Qualified privilege is a legal defence to a claim of defamation, which allows certain people in a position of authority or trust to make statements or communicate or publish statements that would otherwise be considered defamatory. Qualified privilege does not apply if the speaker is predominately motivated by ill will or taking improper advantage of the opportunity to have a matter published.

- 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).

7. 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 the Council's Standing Orders for more detail.

8. Local Government (Pecuniary Interests Register) Act 2022

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. The purpose of the register is to record members' interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers must comprise the following:

- the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the 30 main business activities of each of those companies,

- the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities,
- if the member is employed, the name of each employer of their employer and a description of the main business activities of those employers,
- the name of each trust in which the member has a beneficial interest,
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the member has been elected,
- the title and description of any organisation in which the member holds an appointment by virtue of being an elected member,
- the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property,
- the location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust (disclosed under subclause 20) or a retirement scheme whose membership is open to the public.

Each council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

9. Protected Disclosures (Protection of Whistleblowers) Act 2022

The Protected Disclosures (Protection of Whistleblowers) Act 2022 is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, serious wrongdoing in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has an employment type relationship with the organisation they are disclosing about and includes current and former employees, homeworkers, secondees, contractors, volunteers, and board members. Serious wrongdoing includes:

- an offence
- a serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- a serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial

- an unlawful, corrupt, or irregular use of public funds or public resources
- oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government

Kaunihera need to have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protections available under the Act, and explain how the organisation will provide practical assistance and advice to disclosers. A discloser does not have to go through their organisation first. An appropriate authority can include the head of any public sector organisation and any officer of Parliament, such as the Ombudsman and Controller and Auditor-General. Ombudsmen are also an “appropriate authority” under the Protected Disclosures (Protection of Whistleblowers) Act 2022.

10. 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.

11. Serious Fraud Office Act 1990

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational frameworks and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

- Operations people with the right skills and experience in the relevant areas, with clear accountability lines.
- Risk mitigation to manage risks that can’t be eliminated through segregation, discretion reduction, delegations, management oversight, and audit.
- Basic standards of behaviour moderated by a Code of Conduct, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support.

- Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal).

Appendix C: Process where a complaint is referred to an independent investigator

Step 1: Councillor Conduct Review Committee receives complaint

On receipt of a complaint under the Code, after an initial assessment, the Councillor Management Committee via 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 Management Committee via the Chief Executive. On receiving the investigator's preliminary assessment the Committee 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 Council Management Committee via 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 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 Council Management Committee, 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 this Code.

The Council, or the Council Management Committee, will consider the Chief Executive's report in an 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 this 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.