

Banks Peninsula Community Board

Code of Conduct

Adopted 22 May 2017

Contents

| | | |
|------|---|----|
| 1. | Introduction | 4 |
| 2. | Scope | 5 |
| 3. | Values | 6 |
| 3.1 | The Code is designed to give effect to the following values:..... | 6 |
| 3.2 | Values | 6 |
| 4. | Role and responsibilities..... | 8 |
| 4.1 | Members..... | 8 |
| 4.2 | Chief executive | 8 |
| 5. | Relationships..... | 10 |
| 5.1 | Relationships between members..... | 10 |
| 5.2 | Relationships with staff | 10 |
| 5.3 | Relationship with the public | 11 |
| 6. | Contact with the media | 12 |
| 6.1 | Media contact on behalf of the Council | 12 |
| 6.2 | Media comment on a member's own behalf..... | 12 |
| 7. | Information..... | 14 |
| 7.1 | Confidential information..... | 14 |
| 7.2 | Use of Council Resources..... | 14 |
| 8. | Conflicts of Interest | 15 |
| 9. | Register of Interests | 16 |
| 10. | Ethical behaviour..... | 17 |
| 10.1 | Undischarged bankrupt | 17 |
| 11. | Creating a supportive and inclusive environment | 18 |
| 12. | Breaches of the Code | 19 |
| 12.1 | Principles:..... | 19 |
| 12.2 | Complaints | 19 |
| 12.3 | Investigation, advice and decision..... | 20 |
| 12.4 | Materiality..... | 20 |
| 13. | Penalties and actions..... | 21 |
| 13.1 | Material breaches..... | 21 |
| 13.2 | Statutory breaches | 21 |
| 14. | Review | 23 |

| | |
|---|----|
| Appendix A: Legislation bearing on the role and conduct of elected members..... | 24 |
| The Local Authorities (Members' Interests) Act 1968..... | 24 |
| Local Government Official Information and Meetings Act 1987 | 26 |
| Secret Commissions Act 1910 | 26 |
| Crimes Act 1961 | 26 |
| Financial Markets Conduct Act 2013..... | 26 |
| The Local Government Act 2002..... | 27 |
| Appendix B: Process for the determination and investigation of complaints..... | 28 |

1. Introduction

This Code of Conduct (the Code) sets out the standards of behaviour expected from elected members of the Christchurch City Council (the Council) in the exercise of their duties. Its purpose is to:

- enhance the effectiveness of the Council and the provision of good local government of the Council's district ;
- ensure effective decision-making and community engagement;
- promote the credibility and accountability of the Council to its communities; and
- develop a culture of mutual trust, respect and tolerance between the members of the Council and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed to in this Code.

Where referred to in the Code:

The "governing body" consists of the mayor and members elected in accordance with the Local Electoral Act 2001 and responsible, and democratically accountable for, the decision-making of the Council.

A "community board" consists of the members of each board elected in accordance with the Local Electoral Act 2001, and members of the governing body appointed to that board.

The code applies to all members of the governing body and community boards, with any modifications necessary to reflect, where appropriate, that a reference to the Council is also a reference to a community board.

2. Scope

The Code has been adopted in accordance with clause 15 of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members of the Council and community boards. The Code is designed to deal with the behaviour of members towards:

- each other;
- the chief executive and staff;
- the media; and
- the general public.

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

For the purpose of ensuring consistency across the organisation members elected to community boards are requested to adopt this code without amendments.

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

3. Values

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

1. Public interest: members will serve the best interests of the people within their community, or district and discharge their duties conscientiously, to the best of their ability.
2. Public trust: members, in order to foster community confidence and trust in their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.
3. Ethical behaviour: members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour.
4. Objectivity: members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. Respect for others: will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of officials.
6. Duty to uphold the law: members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.
7. Equitable contribution: members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. Leadership: members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s.14 of the LGA 2002 and the governance principles of s.39 of the LGA 2002.

3.2 Values

Members also agree to reflect the following shared values in their dealings with each other in order to 'respect the contest of ideas', 'balance the dual focus', cultivate and strengthen trust amongst members ('trust the team').

1. Respect: for each other and the perspectives, ideas, and experience members bring, consistently maintaining professionalism (including: investing energy preparing for, punctually attending, giving full attention to, and meaningfully contributing to, meetings);

2. Trust: to ensure members can have confidence in the honesty and integrity of each other, and an expectation that confidentiality will be maintained when required;
3. Empathy: for other members, expressed through being supportive, offering encouragement, and being prepared to offer forgiveness – we all make mistakes;
4. Commitment: members will consistently seek to balance the ward view and the city-wide perspective, and take collective responsibility for the decisions reached by the Council;
5. Effective Communication: members will engage and communicate through inclusive, assumption-free, informed, and reasoned debate, and outcome-focused deliberations, in order to achieve efficient decision-making, while valuing feedback between members.

The shared values set out in clause 3.2 are separate to those in 3.1. A breach of shared values will not constitute a breach of this Code of Conduct.

4. Role and responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of Council decisions. The key roles are:

4.1 Members

The role of the governing body of the Council includes:

- representing the interests of the people of the Council's district;
- developing and adopting plans, policies and budgets;
- monitoring the performance of the Council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of the Council's resources;
- employing and monitoring the performance of the chief executive; and
- ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

The role of a community board includes:

- representing, and acting as an advocate for, the interests of its community;
- considering and reporting on all matters referred to it by the Council, or any matter of interest or concern to the community board;
- maintaining an overview of services provided by the Council within its community;
- preparing an annual submission to the Council for expenditure within its community;
- communicating with community organisations and special interest groups within its community;
- undertaking any other responsibilities that are delegated to the board by the Council.

4.2 Chief executive

The role of the chief executive includes:

- implementing the decisions of the Council;
- ensuring that all responsibilities delegated to the chief executive are properly performed or exercised;
- ensuring the effective and efficient management of the activities of the Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council ;

- providing leadership for the staff of the Council; and
- employing staff on behalf of the Council (including negotiation of the terms of employment for those staff).

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

5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public.

5.1 Relationships between members

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

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

Any failure by members to act in the manner described in s.5.1 represents a breach of this Code.

Please note that nothing in this section of the Code is intended to limit robust debate within the Council as long as it is conducted in a respectful and insightful manner.

5.2 Relationships with staff

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

- raise any concerns about employees, officers or contracted officials with the chief executive;
- raise any concerns about the performance or behaviour of the chief executive with the mayor;
- make themselves aware of the obligations that the Council and the chief executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;
- observe any protocols put in place by the chief executive concerning contact between members and employees;
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

Any failure by members to act in the manner described above represents a breach of this Code.

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

5.3 Relationship with the public

Given that the performance of the Council requires the trust and respect of individual citizens, members will:

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- act in a way that upholds the reputation of the Council.

Any failure by members to act in the manner described above represents a breach of this Code.

6. Contact with the media

The media play an important part in the operation and efficacy of local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of the Council.

From time to time individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. 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.

Paragraphs 6.1 and 6.2 deal with the rights and duties of elected members when speaking to the media on behalf of the Council or on their own behalf.

6.1 Media contact on behalf of the Council

- the mayor is the first point of contact for an official view of the governing body on any issue, unless delegations state otherwise. Where the mayor is absent requests for comment will be referred to the deputy mayor, relevant committee chairperson, or community board chairperson;
- the mayor may refer any matter to the relevant committee chairperson, community board chairperson, or to the chief executive for their comment;
- A community board chairperson is the first point of contact for an official view in relation to local matters where decision-making, public consultation, or advocacy is the responsibility of the community board.
- no other member may comment on behalf of the Council without having first obtained the approval of the mayor or deputy mayor, relevant committee chairperson, or community board chairperson.

6.2 Media comment on a member's own behalf

In this paragraph 'media' includes 'social media' such as Facebook, Twitter, or other electronic means of communication.

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 governing body, committee, or community board.
- Where an elected member is making a statement that is contrary to a governing body, committee or community board decision or Council policy, the member must not state or imply that his or her statement represents a majority view.

- 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; or be derogatory in respect of another elected member. and
- media comments must not be misleading and should be accurate within the bounds of reasonableness.

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

7. Information

Access to information is critical to the effective performance of a local authority and the level of public trust felt by the public.

7.1 Confidential information

In the course of their duties members will receive information that they need to treat as confidential. This is information that staff will have judged should not be publicly available for any one of more of the reasons set out in sections 6 and 7 of the Local Government Official Information and Meetings act 1987. Often the information is either commercially sensitive or is personal to a particular individual or organisation.

The information will be clearly identified as being confidential. Members must not disclose or use confidential information for any purpose other than the purpose for which the information was supplied to them.

Also, members must not disclose to any person, other than another member, Council staff, or person authorised by the chief executive, any information that has been, or will be, presented to a meeting from which members of the public are excluded, or it is proposed they be excluded.

Members may be offered, in their capacity as elected members, information from other sources on condition it remains confidential. In this situation, the provider of the information must be advised that if the information is concerned with a function or activity of the Council, the member has a duty to disclose confidential information to other members, Council staff and/or the chief executive. The offer should be declined if that duty is likely to be compromised.

An example may be an alleged misuse of funds provided to a community group for a project.

Any failure by members to act in the manner described above may constitute a breach of this Code. Members should also be aware that such failure will impede the performance of the Council by inhibiting information flows and undermining public confidence in the organisation. It may also expose the Council to prosecution under the Privacy Act and/or civil litigation.

7.2 Use of Council Resources

Digital resources (for example mobile phones, digital devices, internet and email services) may be provided to elected members to support the efficient and effective performance of their duties. Reasonable personal use of these resources is allowed, provided such use does not compromise the Council's systems, nor breach the general standards expected of a responsible digital citizen. Put simply, being a responsible digital citizen means respecting yourself, protecting yourself, respecting others, protecting others, respecting intellectual property, and protecting intellectual property.

8. Conflicts of Interest

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

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

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

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

9. Register of Interests

The mayor and councillors (together referred to in this section as councillors) shall annually make a declaration of interest, to be recorded in the Register of Pecuniary and other Specified Interests adopted by the Council in 2013. This is based on the model used by members of parliament.

The purpose of the Register is to provide transparency in the governance of the Council, and to increase public confidence in the democratic process. It is not intended to be a means by which the individual value or specific location of interests can be assessed.

Details of the Register are set out in the 'Register of Interests' page of the Council's website. The information required from councillors includes:

- companies or other entities in which they have an interest (whether financial, as an owner, or as a member of the governing body);
- employment;
- trusts in which councillors are trustees and/or beneficiaries;
- organisations or trusts that receive (or seek) funding from the Council or a community board and in which councillors may have an interest (whether financial or as a member of the governing body);
- interests in property (whether as owner, lessee, or as beneficiary);
- debtors and/or creditors, if the amount is greater than \$50,000;
- debts greater than \$500 that are owed by councillors and paid by third parties;
- payments received, and not previously declared for activities in which councillors are involved (such as directors' fees, speaking engagements, and book royalties).

The Council has appointed an independent person as Registrar of Pecuniary Interests to assist with the completion of returns, receive returns, and arrange for the Register to be posted on the Council's website. The Registrar will also receive and deal with any complaints raised by councillors about other councillors not complying with their obligations to complete returns.

If the matter cannot be resolved by the Registrar to the satisfaction of the affected parties the member making the complaint may raise it as a complaint made against another member under para. 12.2 of this Code.

Please note: where a councillor's circumstances change he or she must ensure that the Register of Pecuniary and other Specified Interests is updated as soon as practicable.

10. Ethical behaviour

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

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families' personal or business interests;
- only use the Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the chief executive if any such gifts are accepted. Where a gift to the value of \$500 or more is accepted by a member, that member must immediately disclose this to the chief executive for inclusion in the publicly available register of interests.

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

10.1 Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an "undischarged bankrupt" will notify the chief executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will 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.

11. Creating a supportive and inclusive environment

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

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment of the Council's overall performance and operating style during the triennium.
- Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the Council's district.

12. Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 5, s. 14(4)). Any member, or the chief executive, either for him or herself or on behalf of an employee, 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]. All complaints will be considered in a manner that is consistent with the principles in paragraph 12.1.

Before making a complaint, members are encouraged to resolve the matter by discussion with the member alleged to have committed the breach.

If a member of the public makes a written complaint about the behaviour of a member, the matter will be dealt with in accordance with the complaints process set out in 12.2 as if it was a complaint made by a member (the Mayor or Deputy Mayor) against another member.

12.1 Principles:

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

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
 - have a right to know that an investigation process is underway;
 - are given due notice and are provided with an opportunity to be heard;
 - have a right to seek appropriate advice and be represented; and
 - have their privacy respected.

12.2 Complaints

All complaints under this Code must be made in a timely manner and in writing to the following recipients:

- If made by a member against another member - to the mayor or, if the mayor is the subject of the complaint (or is the complainant) to the deputy mayor;
- If made by a member against an employee - to the chief executive;
- If made by the chief executive, and/or on behalf of an employee, against a member - to the mayor or, if the mayor is the subject of the complaint, to the deputy mayor.

Any complaints by an elected member against an employee must be made in a timely manner and in writing to the chief executive, who will deal with the matter in accordance with the Council's Employee Code of Conduct.

The recipient will determine, in his or her discretion, whether or not a complaint has been made in a timely manner.

A complaint may be made as a result of a single incident or as the culmination of a series of previous incidents.

All complaints will be discussed initially by the mayor, or deputy mayor, and the chief executive. They will determine, in a way that is fair to and includes the affected parties, whether or not the complaint can be resolved at this point. At their discretion the services of an external facilitator may be engaged.

The outcome of this initial process may be that the parties reach an informal agreement to resolve the complaint, in which case no further action is required. A written record of the agreement must be kept.

If the mayor, or deputy mayor, and the chief executive decide that on the face of it there is a case to answer, and the parties have been unable to settle the matter informally, the chief executive must forward the complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.

The independent investigator will be selected from a panel prepared at the start of each triennium by the chief executive, in consultation with the mayor.

Only members and the chief executive may make a complaint under this Code.

12.3 Investigation, advice and decision

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

12.4 Materiality

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

13. Penalties and actions

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

13.1 Material breaches

In the case of material breaches of this Code the Council may require one of the following:

- a letter of censure to the member;
- a request (made either privately or publicly) for an apology;
- a vote of no confidence in the member;
- removal of certain Council-funded privileges (such as attendance at conferences);
- 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 so that they are confined to the chief executive only;
- suspension from committees or other bodies; or
- an invitation for the member to consider resigning from the Council.

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

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

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

13.2 Statutory breaches

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

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the 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.30 of the LGA 2002 which may result in the member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

14. Review

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

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

Appendix A: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz.

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse 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 or partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- a person, or their spouse or 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 they 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 a 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 the member is 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 the member.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify a member 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 should focus 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 or she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and 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 member is speaking;
- be disrespectful when they refer to each other or other people; or
- use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected member (or employee 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, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

Crimes Act 1961

Under this Act it is unlawful for an elected member (or employee 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 the Council; and
- use information gained in the course of their duties for their, or another persons, monetary gain or advantage.

These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will automatically cease to be members.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever the Council offers stock to the public. Elected members may be personally liable if investment documents such

as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

Health and Safety at Work Act 2015

Elected members have a role to play in making sure the Council operates in a safe and healthy environment. The well-being of other members and Council employees must be a primary concern.

The Local Government Act 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to this Code include:

Personal liability of members

Although having qualified privilege, elected members can be held personally accountable for losses incurred by the Council where, following a report from the Auditor General under s.44 LGA 2002, it is found that one of the following applies:

- a) money belonging to, or administered by, the Council has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the Council ; or
- c) a liability has been unlawfully incurred by the Council ; or
- d) the Council has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

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 situations members will also be responsible for paying the costs of proceedings (s.47 LGA 2002).

Appendix B: Process for the determination and investigation of complaints

Step 1: Chief executive receives complaint

If the mayor, or deputy mayor, and the chief executive decide that on the face of it there is a case to answer, and the parties have been unable to settle the matter informally, the chief executive must forward the complaint to an investigator selected from a panel 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 refer them to the process for dealing with complaints as set out in the Code.

Step 2: Investigator makes preliminary assessment

On receipt of a complaint the investigator will assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; or
4. the complaint is material and a full investigation is required.

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

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

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the investigator's decision;
2. in cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

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

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

- that the respondent seek guidance from the mayor (or the deputy mayor), and/or the chief executive;
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The chief executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-binding on the respondent and the Council.

Step 4: Actions where a breach is found to be material

If the subject of a complaint is found to be material the investigator will advise 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 affected parties;
- undertake a hearing with relevant parties; and/or
- refer to any relevant documents or information.

On receipt of the investigator's report the chief executive will prepare a report for the Council, 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 full report prepared by the investigator.

Step 5: Process for considering the investigator's report

The investigator's report will be considered by the full Council, excluding the complainant, respondent and any other 'interested' members.

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

Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 13.1 of this Code.