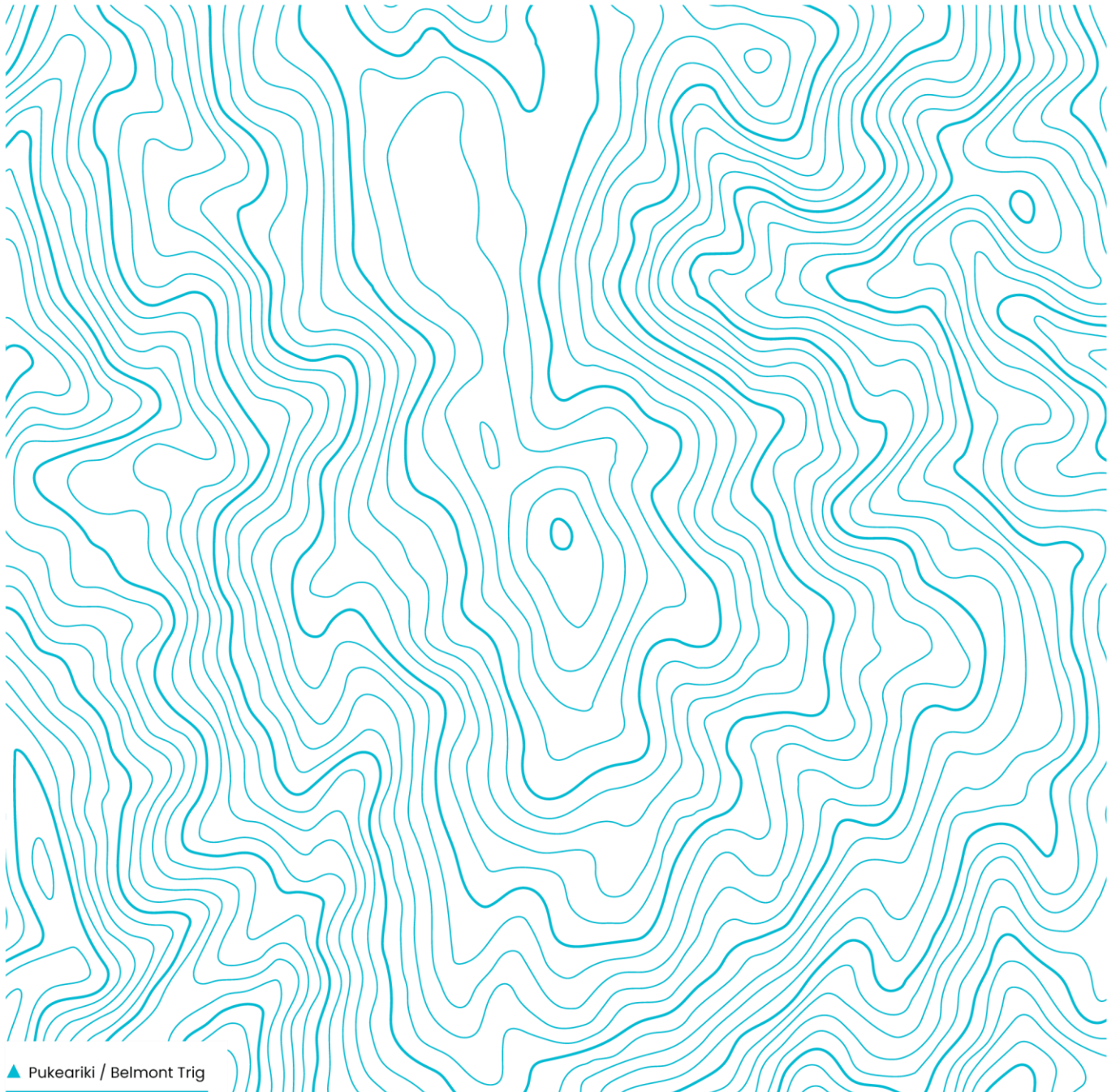


# Elected Member Code of Conduct 2022-2025



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# Introduction

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

- Enhance the effectiveness of the local authority and the provision of good local governance of the community, city, district, or region.
- Promote effective decision making and community engagement.
- Enhance the credibility and accountability of the local authority to its communities.
- Develop a culture of mutual trust, respect, and tolerance between the members of the local authority and between the members and management.

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

## 1. Scope

The Code has been adopted in accordance with Schedule 7, clause 15(1) of the Local Government Act 2002 (LGA 2002) and applies to all members, including the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- Each other
- The Chief Executive and staff
- The media
- The public

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

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 when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

## **2. Values**

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

### **2.1 Public interest**

Members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.

### **2.2 Public trust**

Members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner.

### **2.3 Ethical behaviour**

Members will act with honesty and integrity at all times and respect the impartiality and integrity of officials.

### **2.4 Objectivity**

Members will make decisions on merit, including appointments, awarding contracts, and recommending individuals for rewards or benefits.

### **2.5 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. Refer Appendix B.

### **2.6 Respect for others**

Members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.

### **2.7 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.

## **2.8 Harmful Digital Communications Act 2015**

Elected Members must be mindful that it is a criminal offence to cause serious emotional distress by posting a 'digital communication' intended to cause harm on social media (or any other digital source) in accordance with the Harmful Digital Communications Act 2015 (HDCA).

Where abuse is made against an Elected Member, they are encouraged to take a screenshot and record the URL of the webpage. Any complaints about breaches under the HDCA should be made to NetSafe and when serious, also reported to Police as well as the Mayor/CEO.

Refer to Appendix A for further guidelines on use of social media and dealing with online abuse.

## **2.9 Equitable contribution**

Members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.

## **2.10 Leadership**

Members will actively promote and support these values 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.<sup>1</sup>

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.

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<sup>1</sup> See Code of Conduct Guide for examples.

## 3. Role and responsibilities

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

### 3.1 Members

The role of the governing body includes:

- Representing the interests of the people of the city, district, or region.
- Developing and adopting plans, policies, and budgets.
- Monitoring the performance of the Council against stated goals and objectives set out in its long-term plan.
- Providing prudent stewardship of the Council's resources.
- Employing and monitoring the performance of the Chief Executive.
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

### 3.2 Chief Executive

The role of the Chief Executive includes:

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

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

## 4. Relationships

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

### 4.1 Relationships between members

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

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

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

### 4.2 Relationships with staff

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

- Raise any concerns about employees, officers, or contracted officials with the Chief Executive.
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor.
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer.
- Treat all employees with courtesy and respect and not publicly criticise any employee.



- Observe any protocols put in place by the Chief Executive concerning contact between members and employees.

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

### **4.3 Relationship with the public**

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

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

## 5. Media and social media

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

1. In dealing with the media, elected members must clarify whether they are communicating a view endorsed by their Council, committee, or community board, or are expressing a personal view.
2. Members are free to express a personal view to the media or through social media at any time, provided the following rules are observed:
  - a. Comments shall be consistent with the Code;
  - b. Comments must not purposefully misrepresent the views of the Council or the views of other members;
  - c. Social media pages controlled by members and used for making observations relevant to their role as elected members should be open and transparent, except where abusive or inflammatory content is being posted;
  - d. Social media posts about other members, Council staff or the public must be consistent with section five of this Code; and
  - e. Use of Council social media pages or social media pages controlled by members and used for making observations relevant to their role as elected members is restricted to comments made by elected members in their capacity as an elected member, and not to be used for personal or non-Council business purposes.

See **Appendix A** for guidelines on the personal 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 following provisions:

## **5.1 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 Chair or portfolio holder.
- The Mayor may refer any matter to the relevant committee Chair or to the Chief Executive for their comment.
- No other member may comment on behalf of the Council without having first obtained the approval of the Mayor.

## **5.2 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, criticise, or compromise the impartiality or integrity of staff.
- 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.

## **6. Information**

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

### **6.1 Confidential information**

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

### **6.2 Information received in the capacity as an elected member**

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

## 7. 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 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 public. This rule also applies where the member's spouse/partner has a pecuniary interest, such as through a contract with the Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

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

## 8. Register of Interests

Members shall, at least annually, make a declaration of interest. These declarations are recorded in a public Register of Interests maintained by the Council. A summary of the Register of Interests is available for public inspection and published on Council's website. The declaration must include information on the nature and extent of any interest, including:

- a) Any employment, trade or profession carried on by the member or the member's spouse/partner for profit or gain;
- b) Any company, trust, partnership etc. for which the member or their spouse/partner is a director, business partner or trustee;
- c) A description of any land in which the member has a beneficial interest within the jurisdiction of the local authority;
- d) A description of any land owned by the local authority in which the member or their spouse/partner is:
  - A tenant; or
  - The land is tenanted by a firm in which the member or spouse/partner is a business partner; a company of which the member or spouse/partner is a director; or a trust of which the member or spouse/partner is a trustee; and
- e) Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

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

## 9. 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 their family's, personal or business interests.
- Only use the Council's resources (such as facilities, staff, equipment, and supplies) in the course of their duties and not in connection with any election campaign or personal interests.
- Not solicit, demand, or request any gift, reward, or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$50 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

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

## 10. Creating a supportive, inclusive environment

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

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment or evaluation of the Council's performance and operating style during the triennium<sup>2</sup>.
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of the city, district, or region.

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<sup>2</sup> A self-assessment template is provided in the Guidance to the Code.



# 11. Breaches of the Code

Members must comply with the provisions of the Code (Schedule 7, cl.15(4) LGA 2002). 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.

## 11.1 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.
- 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.
  - Have their privacy respected.

## 11.2 Complaints

All complaints made under the Code must be made in writing and forwarded to the Mayor.

On receipt of a complaint, the Mayor will attempt to resolve the complaint through informal dispute resolution, within a reasonable timeframe. The Mayor may use external services or support to assist with this.

Where the Mayor is a party to the complaint, the Deputy Mayor will perform this role.

Where the Mayor and Deputy Mayor are parties to the complaint, the Chief Executive will perform this role.

In the event the parties do not agree to informal dispute resolution, or the informal dispute resolution is unsuccessful, the process will then follow the steps outlined in Appendix D.

**Please note:** Only members and the Chief Executive may make a complaint under the Code.

A complaint and all information relating to its resolution are strictly confidential up to and including the preliminary investigation stage. This is to allow the equivalent of 'without prejudice' discussions, with a view to the early resolution of complaints, where possible.

For clarity, a complaint under this Code can be made by a member or the Chief Executive in reliance on information or evidence provided by the public or an organisation.

## 11.3 Form of Complaints

Before making a complaint under this Code, a complainant should first make all reasonable attempts to resolve the matter, if appropriate.

A complaint must contain the following:

1. The nature of the complaint, including the parts of the Code that are alleged to have been breached;
2. How the breach, if proven, would bring a member or Council into disrepute, or, if not addressed, reflect adversely on another member of Council;
3. What steps the complainant has already taken to resolve the complaint; and
4. Include all the information and evidence relied on to substantiate the breach.

A complaint could be rejected at any stage as incomplete if it did not contain these details.

The requirements to provide all information and evidence relied on also apply to a member defending a complaint.

## **11.4 Substantial or material breaches**

An alleged breach under the Code is material if, in the opinion of the 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 substantial if, in the opinion of the independent investigator, it is less than material but more than minor or trivial.

## **11.5 Support**

Members have access to Council's Employment Assistance Programme (EAP) which offers access to counselling and other support. EAP sessions are confidential.

## 12. Penalties and actions

Where a complaint is determined to be substantial or 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.

### 12.1 Substantial or material breaches

In the case of substantial or material breaches of the Code the Council, or the adjudicative body with delegated authority, may require one or more of the following:

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

A Council or adjudicative body with delegated authority may decide that instead of a penalty, one or more of the following may be required:

- Attendance of a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participation in voluntary mediation (if the complaint involves a conflict between two members); and/or

- Tendering 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.

## **12.2 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).

- 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).

## **13. Review**

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

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

# Appendix A: Guidelines on the personal use of social media

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

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online;
2. **You are responsible for your actions.** Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense;
3. **Be an "advocate" for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body;
4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding. Take care mixing your political (Council) and personal lives. Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.

Use of Council social media pages or social media pages controlled by members and used for making observations relevant to their role as elected members is restricted to comments made by elected members in their capacity as an elected member, and not to be used for personal or non-Council business purposes;

5. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code; and
6. **Elected Members' social media pages should be open and transparent.** When commenting on matters related to the local authority no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

## Dealing with online abuse

Elected Members are public facing and interacting with the public should be robust, but it should also be respectful. Elected Members are encouraged to participate in debate and entitled to take a view on critical issues that call for a decision of Council including doing so on social media platforms, websites or blogs whilst presenting and applying an open mind. Whilst this open-minded debate is acceptable, personal attacks are not, as well as any of the misconduct in clause 5.10.

To apply best practice, Elected Members may decide to utilize the following template to display to users in on their social media accounts:

*I openly welcome your comments to encourage discussion on this platform but ask that you are polite and respectful in your comments and views. I reserve the right to hide or remove posts or comments from this page which include any content that is disrespectful, rude, or abusive language, any direct personal attacks or any disclosure of private information or details of any elected members or staff or other users, objectionable material and any unsolicited advertising marketing or spam. If your*



*comments fail to comply with the above terms, you may be blocked from posting on this page and comments will be hidden.*

## **Taking action against harmful digital communications**

Abuse sent to and from the public on social media may be in different forms, so good judgment is required when determining what is an appropriate response or post.

Elected Members must be mindful that it is a criminal offence to cause serious emotional distress by posting a 'digital communication' intended to cause harm on social media (or any other digital source) in accordance with the Harmful Digital Communications Act 2015 (HDCA) – refer Appendix C for details of the legislation.

Where abuse is made against an Elected Member, they are encouraged to take a screenshot and record the URL of the webpage. Any complaints about breaches of under the HDCA should be made to NetSafe and when serious, also reported to Police as well as the Mayor/CEO.

If necessary, where abuse is serious, Elected Members should report the abusive comments to the social media platform, mute or block repeat offenders or refuse to engage with aggressive comments by not replying or hiding the comments.

Elected Members are guided to:

- Make it clear that inappropriate comments are unacceptable.
- Be factual and polite to avoid escalation and retaliatory comments.
- De-escalate situations negative situations by acknowledging a person's frustrations, assure them that they have been heard and commit to follow up where appropriate.

## **Online behaviour – leading by example**

Elected Members should model good online behaviour when using social media. As a rule of thumb, an Elected Member should only post what they would be

prepared to say in person in a public gathering and if in doubt, do not post it. Once it is posted, it can be copied and shared, even if it has been deleted.

Focus should be on the issue, not the person, counter misinformation with facts and call out inappropriate behaviour. It is recommended that Elected Members consider logging off before responding and seek guidance if you are unsure.

## **Appendix B: Bullying, harrassment, 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 favorably, than another person because of any of the following<sup>3</sup>:

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	

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<sup>3</sup> See Human Rights Commission [www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/](http://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/)

## **Appendix C: 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](http://www.legislation.govt.nz).

### **The Local Authorities (Members' Interests) Act 1968**

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

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse/partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- A person, or spouse/partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their spouse/partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the Council.

## Determining whether a pecuniary interest exists

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

*“...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.” (OAG, 2001)*

In deciding whether you have a pecuniary interest, members should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision – do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor or other person, to determine if they should discuss or vote on an issue, but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the Council’s Standing Orders.)

## The contracting rule

A member is disqualified from office if he or she is “concerned or interested” in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts

in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

## **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not, members need to ask:

*“Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”*

The question is not limited to actual bias but relates to the appearance or possibility of bias, reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members’ focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members’ statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a “closed mind”); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration.

For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

## **Local Government Official Information and Meetings Act 1987**

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and community boards. Of particular importance for the roles and conduct of elected members is the fact that the Chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another Councillor is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Council's Standing Orders for more detail.

## **Secret Commissions Act 1910**

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fined up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.



## **Crimes Act 1961**

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

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- Use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

## **Financial Markets Conduct Act 2013**

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

## **The Local Government Act 2002**

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose, and operating principles, and details the personal liability of members.

### **Personal liability of members**

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

- a) Money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) An asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) A liability has been unlawfully incurred by the local authority; or

d) A local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

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 (s.47 LGA 2002).

## **The 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 and 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](#).

# **Appendix D: Process where a complaint is referred to an independent investigator**

## **Step 1: Complaint is made**

All complaints made under the Code must be made in writing and forwarded to the Mayor.

On receipt of a complaint, the Mayor will attempt to resolve the complaint through informal dispute resolution, within a reasonable timeframe. The Mayor may use external services or support to assist with this.

Where the Mayor is a party to the complaint, the Deputy Mayor will perform this role.

Where the Mayor and Deputy Mayor is a party to the complaint, the Chief Executive will perform this role.

In the event the parties do not agree to informal dispute resolution or the informal dispute resolution is unsuccessful, the process will then follow the steps outlined in Appendix D.

## **Step 2: Investigator brief**

If a complaint cannot be resolved through informal dispute resolution and has not been dismissed, the Chief Executive will refer the complaint to an independent investigator.

The brief to the investigator will make the following clear:

1. The onus is on the complainant and subject of the complaint to provide all the information and evidence relied on, as part of their initial complaint or defence.
2. The expectation is that telephone calls may be made to clarify the information or evidence, but that face-to-face interviews or further investigation of the issues will only be undertaken if the complaint is of a particularly serious nature.

3. The investigation should be proportionate to the potential harm that might result if the breach is proven.

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 3: 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 substantial or material and a full assessment is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine their recommendations. On receiving the investigator's preliminary assessment the Chief Executive will:

1. Where an investigator determines that a complaint is trivial or frivolous, inform the complainant, respondent and other members (if there are no grounds for confidentiality) of the investigator's decision;
2. In cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the Chief Executive who will then inform the complainant, the respondent and members.

## **Step 4: Actions where a breach is found to be non-material and not substantial**

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as;

- That the respondent is referred to the Mayor 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 and not substantial breach are non-binding on the respondent and the Council.

## **Step 5: Actions where a breach is found to be material or substantial**

If the subject of a complaint is found to be material or substantial the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach. In preparing that report the investigator may:

- Consult with the complainant, respondent and any directly affected parties; and/or
- Undertake a hearing with relevant parties; and/or
- Refer to any relevant documents or information.

On receipt of the investigator's report, the Chief Executive will prepare a report for the relevant Council body charged with assessing and ruling on material complaints, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the investigator's full report.

## **Step 6: 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 clause 12.1 of the Code.

The Council, or adjudicative body, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the relevant body will give the respondent an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings in a decision-making capacity.

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

The report, including recommendations from the adjudicative body, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.

### **For more information contact:**

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