



CODE OF CONDUCT

FOR ELECTED MEMBERS

SEPTEMBER 2011

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1 Introduction

All councils are required to have a Code of Conduct under the Local Government Act 2002, Schedule 7, Clause 15.

This Code of Conduct sets out the standards that are expected from the elected members of Waipa District Council, (being the Mayor and councillors of the Waipa District Council) relative to their conduct, their relationships and the exercising of their functions and duties. This Code does not apply to members of Community Boards.

The objectives of this Code are to enhance:

- the effectiveness of Council as the autonomous local authority with statutory responsibilities for the good local government of Waipa District
- the credibility and accountability of Council within its community
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and those people with whom they may interact in the course of their duties.

This Code seeks to achieve its objectives by setting out:

- agreed general principles (Section 2)
- an agreed statement on roles and responsibilities (Section 3)
- an agreed statement on relationships (Section 4)
- a section on meetings and hearings (Section 5)
- a section on compliance and review (Section 6).

2 General Principles

This Code is based on the following general principles of good governance:

Public interest

- Members should serve only the interests of the District as a whole, and not just the ward that elected them. They should never improperly confer an advantage or disadvantage on any one person, or group of persons.

Honesty and integrity

- Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

- Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- Members should also note that, once elected, their duty is to the interests of the entire District.

Accountability

- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.

Openness

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

Personal judgment

- Members can and will take account of the views of others, but should reach their own conclusions on the issues before them.

Respect for others

- Elected members should remember the respect and dignity of their office in their dealings with each other, management and the public.
- Members should treat people with respect, regardless of their race, age, religion,

gender, sexual orientation, or disability, and should not unlawfully discriminate against any person or group of persons.

Duty to uphold the law

- Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.

Stewardship

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

Leadership

- Members are community leaders, and should provide leadership by example at all times. Members should promote and support these principles by example, and should always endeavour to act in the best interests of the community.

3 Roles and Responsibilities

This part of the Code describes the roles and responsibilities of the Mayor, the Deputy Mayor, Committee Chairpersons and councillors.

3.1 Mayor

The Mayor is elected by the District as a whole and as one of the elected members shares the same responsibilities as other members of council. The Mayor also has the following roles:

- presiding at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during Council meetings (as determined by Standing Orders)
- advocating on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of Council
- spokesperson for Council
- ceremonial head of Council
- providing leadership and feedback to other elected members on teamwork and chairing of committees
- fulfilling the responsibilities of a Justice of the Peace (while the Mayor holds office)

3.2 Deputy Mayor

The Deputy Mayor must be elected by the members of council, at the first meeting of Council after the triennial local government elections. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of Council.

3.3 Committee Chairpersons

Council may create one or more committees (this includes subcommittees) of Council. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by Council, as set out in Council's Delegations Register. Committee chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees. Chairpersons may be removed from office by resolution of Council. Council may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

3.4 Elected Members

3.4.1 Governance

Elected members, acting as Council, are responsible for governance, including:

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

3.4.2 Meetings and decision making

Members are expected to attend the meetings (ordinary and extraordinary) of Council, as well as the committees and subcommittees, working parties, and external organisations to which they are appointed. An elected member, unable to attend a meeting, should advise the Chair or Chief Executive as soon as possible.

Unless otherwise provided in the Local Government Act 2002 or in Waipa District Council's Standing Orders, Council can only act by majority decisions at meetings. Any individual member (including the Mayor) has no authority to act on behalf of Council unless provided for by statute or Council has expressly delegated such authority.

A member who believes that a course of action proposed by, or already taken by Council or management is against the best interests of Council and the community, must be prepared to oppose the course of action and insist that their objection be fully documented and noted in the minutes. Similar steps must be taken by any member who believes Council is failing to take action to remedy irregular practices within Council.

3.4.3 Management of Council

Each member has a primary duty to ensure that Council is properly managed and constantly improved so as to protect and enhance the community's interests.

To meet these obligations members should:

- be diligent, attend Council and relevant committee meetings and make themselves as knowledgeable as possible about the activities and processes of Council and the cultural, environmental, economical and social environment within which it operates
- make themselves available to attend external meetings and forums on behalf of the District

- ensure that on a regular and timely basis the community and other stakeholders are fully and honestly informed of all material matters relating to Council's business
- be familiar with this Code of Conduct and the Waipa District Council Standing Orders
- avoid conflicts of interest
- maintain confidentiality
- be independent in their judgements and actions
- act honestly
- at all times exercise due care in their duties.

Where a member has a concern in regard to the management of Council business, that concern should be directed to the Chief Executive and not to a staff member. If the member is not satisfied then the appropriate process should be used to express the concern.

It is not appropriate for members to adversely comment publicly on the management or staff of Council. Members should draw a clear distinction between the effectiveness of the policy or activity itself, which they can comment on publicly if they wish, and the implementation or management of that policy or activity, which is a matter for management and should be handled accordingly.

3.5 Representation

The role of an elected member is such that public availability is important. They are likely to receive telephone calls outside of normal working hours, as well as being contacted at any time by ratepayers and others who have concerns, suggestions or seeking/sharing information.

Members should use their discretion in attending to or referring matters brought to their attention by members of the public. Members should remember that they have no personal power to commit Council to any particular policy or course of action or expenditure. That can only be done by resolution at a meeting of Council or a committee with delegated authority. Members should therefore take care not to make promises or give any personal undertakings to members of the public on matters which require Council's formal consent.

3.6 Confidential Information

In the course of their duties, members will receive information that they need to treat as confidential. Confidential information includes information that officers have judged there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 (LGOIMA). This will often be information that is either commercially sensitive or is personal to a particular individual or organisation. The Chief Executive is responsible for release of this information under LGOIMA.

Business conducted whilst the public is excluded from a meeting remains confidential and should not be disclosed to outsiders unless and until Council decides, by resolution, to make it public. Members should be aware of any rules about disclosure of information that may be set out in Standing Orders or other policy documents, as well as the general provisions of the Local Government Official Information and Meetings Act 1987 and its amendment.

Much of the discussions in Council workshops should also be regarded as subject to confidentiality in order to allow for free and frank discussion and provide direction and guidance for staff on particular matters, in preparation to bring these in to the public forum.

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

3.7 Conflicts of Interest

At all times a member must be able to act in the interests of the community as a whole. The interests of associates, individual ratepayers or citizens, personal interests of the member or the member's family must not be allowed to conflict with those of the community generally. That is to say, a member occupies a unique position of trust vis-à-vis the community which makes it unlawful for the member to gain any advantage for themselves from the fact that they are elected members. All facets of a member's role are bound up inextricably with that relationship and because it is akin to a trustee relationship, their membership of Council should be the subject of continual personal evaluation.

3.7.1 Declaration and Register of Interests

Members shall following the triennial election at the time of swearing in and in February each year at the first meeting of Council (or within 30 days of a request by the Chief Executive), complete a declaration of interests in relation to personal interests that may become a conflict of interest during the course of carrying out Council business. Any declaration should also be updated whenever a member's interest change. A Conflict of Interests register will be maintained.

3.7.2 Pecuniary conflicts of interest

Contracts and pecuniary conflicts of interest are covered by the Local Authorities (Members' Interests) Act 1968. The Act provides that no person shall be capable of being elected or appointed to, or being a member of, a local authority or of any committee thereof, if he or she is concerned or interested in any contract or contracts made by the local authority, where the payment made or to be made on behalf of the local authority in respect of such contract or contracts exceeds \$25,000 in any financial year.

Details of when a member is deemed to be concerned or interested in a contract

made by a local authority are set out in the Act. There are also provisions in relation to circumstances under which an exemption from disqualification may be granted.

The Act prohibits a member from voting or taking part in the discussion of any matter before Council or a committee in which the member has directly or indirectly, any pecuniary interest other than an interest in common with the public. In this respect, any member should view the performance of paid work, contract work, temporary employment, or any other assignment for which payment is received from Council, as a conflict of interest.

A conflict of interest can arise due to associations. Associates of a member include:

- Spouse or de facto partner
- Close family members
- Trustee of a trust in which the member or an associate has, or may have, a beneficial interest
- A company in which the member or an associate has a significant interest
- Any other person over whose judgement the member could be expected to have an influence
- Any other person or organisation who could be expected to have an influence over the judgement of the member

The acceptance or giving of gifts of any value should be avoided as these could lead to actual or perceived conflict of interest.

3.7.3 Non-pecuniary conflicts of interest

Members are required to comply with not only the provisions of the Local Authorities (Members' Interests) Act 1968, which covers financial interests, but also with other requirements (such as common law) relating to non-pecuniary conflicts of interest. Members should ensure they are familiar with the guidance on these contained in the Office of the Auditor General's publication "*Managing Conflicts of Interest: Guidance for Public Entities*" and other information available on their website.

3.7.4 How conflicts can arise

It is important to maintain a clear separation between personal interests and duties as an elected member, and to carry out those duties free from bias (whether real or perceived). In particular, where a member has a role in or is strongly identified with another organisation then there is a risk that the member will be perceived to have a conflict of interest. There may also be a conflict due to interests or associations (as above) arising out of family and domestic relationships, employment or membership of community or professional/industry sector organisations. Also, a conflict may arise or be perceived due to something that the member has said or done.

3.7.5 How conflicts should be handled

- The approach to these will differ on a case by case basis, as some conflicts will be minor. For example in relation to a situation where a member is

associated with an organisation, it may be determined on whether the matter in question specifically and significantly concerns that organisation, such as an application for a proposed grant of money, or something directly affecting the organisation's funding or property/assets.

- A decision needs to be made by the member as to how to handle non-pecuniary conflicts of interest, which is a difficult area for members. Issues may arise at short notice or matters that appear straightforward at the outset, may become less clear or change as the matter progresses, which means care is required. In all cases, the member should err on the side of caution in considering whether or not there is a conflict or perception of a conflict and whether or not it is or could be perceived to be more than minor. It would be appropriate to discuss this with the Chief Executive.
- If there is a conflict of interest, then the member should declare the conflict at the meeting. Unless the member is of the opinion that the conflict is very minor and that they will refrain from discussion and voting but remain in the room to hear the discussion, the member should withdraw from any participation in the discussion and voting on the issue, by leaving the room following the declaration. They should ensure that this action is appropriately recorded in the minutes.
- In some cases, it may be that resignation of the member is required but this would need to be decided on a case by case basis, and would not be likely to apply in the case, for example, of a member being an executive holder or trustee for another organisation. It is to be expected that members may be actively involved in their communities.

3.7.6 Managing Conflicts

- It is important that conflicts of interest are properly managed as the risk to Council is that the integrity of its decision-making process may be undermined, and/or if legal bias is found, the High Court has the jurisdiction to quash a decision by way of judicial review.
- This does not require proof of actual bias, it can be sufficient that there is the appearance or possibility of bias. A member may be confident that there is no bias on their part, but if public perception differs then bias may arise.
- The test is commonly regarded as being where a reasonable, fair minded and informed observer may consider that a member of Council might unfairly regard with favour (or disfavour) the case of a party to an issue under consideration.

3.8 Ethics

Waipa District Council seeks to promote the highest standards of ethical conduct amongst its members. Accordingly, members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of Council

developed in accordance with that determination

- not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests
- not use Council resources for personal business (including campaigning)
- not abuse the advantages of their official position for personal gain, or solicit or accept gifts, entertainment, rewards or benefits that might compromise their integrity.

3.9 Bankruptcy

All members will be required to complete a written declaration attesting as to whether or not the member is an un-discharged bankrupt. The declaration shall be completed by all members at the first meeting of Council following a triennial local government election.

Elected members who are declared bankrupt during their term of office shall notify the Chief Executive as soon as practicable after being declared bankrupt.

4 Relationships

This Code applies to members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of Council
- the media
- the general public

4.1 Relationships with Other Members

To ensure good teamwork and effectiveness through mutual respect, members will conduct their dealing with each other in ways that:

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggression, offensive or abusive conduct.

4.2 Relationships with Chief Executive and Staff

The effective performance of Council also requires a high level of co-operation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive or his or her delegated appointee may hire, dismiss or instruct or censure an employee
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
- observe any guidelines that the Chief Executive puts in place regarding contact with employees
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive

Performance Management Committee

- not seek to improperly influence staff in the normal undertaking of their duties.

Members should ensure the anonymity of individual officers is preserved so that they may properly carry out their responsibility of implementing Council policy effectively and efficiently. Administrative mistakes should be conveyed to the Chief Executive who will take the necessary action.

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

4.3 Relationships with the media

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

- the Mayor (or in the Mayor's absence the Deputy Mayor) is the first point of contact for the official view on any issue. Usually, a matter will be referred to the relevant committee chairperson for their comment
- comment on operational or management matters should be left to the Chief Executive and management. This includes situations where individuals or organisations have approached a member for advice or comment on issues that are topical or are relevant to particular interests of individuals or groups within the community. Members should seek appropriate advice from the Chief Executive or staff before commenting on operational matters or issues that call for particular technical or other expertise, including when responding to emails.
- no other member may comment on *behalf of Council* without having first obtained the approval of the Mayor, or in the Mayor's absence, the Deputy Mayor.

Members are free to express a *personal view* in the media, at any time. When doing so, they should observe the following:

- media comments must not state or imply that they represent the views of Council
- where an elected member is making a statement that is contrary to a Council decision or Council policy, the member must not state or imply that his or her statements represent a majority view
- media comments must observe any legislative requirements as well as the other requirements of the Code of Conduct, e.g. not disclose confidential information.

Members constitute Council and each is responsible as an individual and collectively for the actions of Council. Members, not officers, bear the ultimate responsibility for decisions made by them and by officers. When a decision is in the process of deliberation by Council, each individual member represents the community. When a decision has been made by Council and the decision is contrary to a particular member's point of view, as above, that member's public statements should make it clear that they represent a minority view. The decision has been made

democratically by a majority representing the community and the focus should move to effective implementation rather than publicly attacking the democratic process and effectiveness of Council.

4.4 Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure that individual citizens are accorded respect in their dealings with Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Local Government Act 2002.

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

5 Meetings and Hearings

Members have the responsibility to see that whenever possible, business is conducted in an “open” meeting. Powers to exclude the public should be used only when absolutely essential and only for the specific reasons permitted by law.

5.1 Council Hearings

As members of the Regulatory Committee and the District Licensing Agency, certain members are also involved in regulatory hearings (such as for Dog Control, Liquor Licensing etc.).

In addition, Council’s Strategic Planning and Policy committee has hearings for submissions where the same principles should apply.

For hearings there is an obligation for members to:

- Complete any necessary preparatory work and reading pre-circulated material
- Listen attentively
- Act fairly to all parties
- Ask questions for clarification and refrain from expressing personal views or making statements that could indicate predetermination or bias. (Opinion is for the decision process which is “in-committee” at the conclusion of the hearing).
- Refrain from discussing the hearing with any party after the hearing.

5.2 Resource Management Hearings

Hearings under the Resource Management Act 1991 are in essence an aspect of administration which aims to ensure that Council’s resource management and planning policies are put in to effect. The District Plan outlines Council’s objectives, policies and rules governing resource management and it is a responsibility of Council to promote and uphold there within the context of the principles and requirements of the Resource Management Act 1991.

Accredited hearing commissioners will be appointed by the Regulatory Committee for specific hearings as provided for in the Resource Management Act 1991. The conduct of the Regulatory committee is part of a statutory process conducted under the Resource Management Act 1991 and accredited commissioners should at all times act in a manner that brings credit to Council and respects principles of fairness and judicial responsibility.

6 Compliance and Review

6.1 Compliance

Members must comply with the provisions of this Code of Conduct which sets out the expected standards for elected members to assist them to carry out their duties and responsibilities with a commitment to honesty, fair dealing and common good. It should be read in conjunction with, and does not replace the obligations set down in the Local Government Act 2002, the Waipa District Council Standing Orders, or in the Declaration by elected members when sworn in.

Members are also bound by the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of these Acts are freely available to elected members. Short explanations of the obligations that each of these Acts has with respect to conduct of elected members is attached in Appendix 1 to this Code.

6.2 The Spirit of the Law

In so far as aspects of the trustee obligations of members are expressed in legislation, the member must ensure that not only do their actions comply with the letter of the law but also that they are in full compliance with their general trustee duties. At all times, in their observance of the law and their duties, members should remember that there is, above all, a standard of truly ethical behaviour by which all their actions should be judged.

6.3 Breaches of statutory provisions

If it appears that a breach constitutes a statutory offence then Council may refer the matter to the relevant body for action.

Where there are statutory provisions:

- breaches relating to members' interests render members liable for prosecution by the Auditor-General under the Local Authorities (Member's Interests) Act 1968
- breaches which result in Council suffering financial loss or damage may be reported on by the Auditor-General under the Local Government Act 2002, which may result in the member having to make good the loss or damage.
- breaches relating to the commission of a criminal offence may leave the member liable for criminal prosecution.

6.4 Breaches of the Code

Any person who considers that there has been a breach by a member of the provisions of this Code, for which there is not a process and penalty provided elsewhere, shall submit to the Mayor a statement in writing detailing the alleged breach of the Code together with any corroborating evidence (or if in relation to an alleged breach by the Mayor, all actions herein to be carried out by the Mayor shall be conducted by the Chief Executive, who may seek advice as appropriate).

The Mayor, in consultation with the Chief Executive (where appropriate) shall determine whether the alleged breach is appropriately dealt with under the Code of Conduct. If the decision is that the alleged breach does not fit within the Code or does not relate to a member, then the allegation should be re-directed as appropriate or simply declined and the complainant advised of the outcome in writing.

Where it is considered that the provisions of the Code apply, then in all cases when responding to an allegation, the following fundamental principles shall apply:

- due process is to be followed in a manner that is fair to of both parties
- the member in question has a right to be given due notice that an allegation has been made and notice of the process for the investigation and determination of the allegation, together with the potential outcomes that may arise
- the member in question has a right and opportunity to be involved in the process
- the member in question has a right to consider and to respond to the allegation
- the parties involved have a right to have their privacy respected as appropriate throughout the process.

A process will then follow for investigation and determination of the allegation in accordance with the process set out in Appendix 2.

6.4.1 Penalties for breaches of the Code

The form of penalty that may be applied will depend on the nature of the breach, and may include one or more of the following:

- Censure of the member, by letter and/or in an open meeting
- Removal of the member from representation on Council committees or other bodies as a representative of Council
- Removal of any special status of the member, such as Deputy Mayor or Chair of a committee.

6.5 Review

Once adopted, a code of conduct continues in force until amended by Council. A code can be amended at any time but cannot be revoked unless Council replaces it

with another code. Once adopted, amendments to a code of conduct, or the adoption of a new code, require a resolution supported by 75 per cent or more of the members of Council present.

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

Appendix 1

Legislation Bearing on the Role and Conduct of Elected Members

This is a summary of the legislation requirements that has some bearing on the duties and conduct of elected members. Copies of these statutes can be found in the council library or in the office of the Chief Executive.

Local Authorities (Members' Interests) Act 1968

This Act regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings.

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 received a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fines up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

Crimes Act 1961

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

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council
- use information gained in the course of their duties for their, or another persons, monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

Securities Act 1978

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

Appendix 2

Process for Investigation and Determination of a Breach of the Code

The Mayor and Chief Executive may conduct the investigation or appoint an independent party to investigate and, if required to conduct any mediation.

A copy of the written allegation and corroborating evidence should be given to the member in question (“the respondent”) as soon as reasonably practicable after receipt and consideration by the Mayor and Chief Executive. Information should also be provided to the respondent of the process to be followed, potential timeframes and outcomes. The respondent should be requested to respond to the allegation within a reasonable period of time and in such manner as is considered appropriate.

At the same time, the complainant should be advised in writing that the allegation has been received and the process that will be followed to investigate and determine the allegation, the potential timeframes and outcomes. It may be necessary to request further information from the complainant at this stage in order to fully investigate the allegation and the complainant should be requested to provide any such information reasonably requested, within a reasonable period of time and in such manner as is considered appropriate.

At this point, on receipt of the respondent’s response and any further information obtained either from the complainant or from any other appropriate sources, the Mayor and Chief Executive will, in a timely manner, further consider the allegation and whether there has been sufficient evidence provided which clearly demonstrates that there has been a breach of the Code or whether the allegation has been refuted.

If the allegation has not been supported by appropriate evidence and has been successfully refuted by the respondent then both the respondent and complainant should be advised of the determination in writing as soon as possible thereafter.

If it is considered that a breach of the code has occurred then the Mayor and Chief Executive are required to decide, in a timely manner, on the nature of the breach and whether it is sufficiently serious to be referred to Council or that the matter may be resolved at this stage, either by determination or through mediation.

If the outcome is that the matter is resolved at this stage (or after mediation) then the Mayor and Chief Executive shall decide whether there is to be any penalty applied in relation to the allegation, in accordance with the penalty provisions in Section 6 of this Code. Both the respondent and the complainant should be advised as soon as possible in writing of the determination and whether or not any penalty is to be applied and the type of penalty.

Referral to Council

The matter should be referred to Council (in the form of a report) in the following circumstances:

- if the allegation is considered by the Mayor and Chief Executive to be of a serious enough nature

- if there is an allegation of repeated breaches of the Code
- if the matter has not been resolved through mediation
- the determination and/or penalty applied by the Mayor and Chief Executive is appealed by either party.

Council's conduct of the process and consideration of the matter will comply with statutory requirements relating to matters such as personal privacy, or confidentiality of information. In particular, no member should communicate to the media or others the existence or details of an allegation of a breach of this Code, unless a decision to do so has been made by Council.

The investigation and determination process should then be conducted by Council, applying the same fundamental principles and following the relevant provisions above. At all times, the respondent should be kept informed of the process and has the right to be provided with copies of any reports or material placed before Council, the right to consider them and respond by way of written submission(s) and to be heard by Council in relation to the allegation. The respondent will have the right to be represented if he/she considers it necessary. Council may nominate a sub-committee for the purpose of a code of conduct hearings committee.

The respondent shall not be present during Council's (or Council's sub-committee's) deliberations process. After deliberations, or on recommendation from Council's sub-committee, Council shall determine whether a breach has occurred and whether or not any penalty should apply. If Council decides that there has been no breach or that the matter is finalised and no further action is required then the respondent and complainant shall be advised as soon as possible thereafter and the file closed. There is no right of appeal, the Council decision shall be final in this matter.

If the decision is that a breach has occurred and that a penalty is appropriate, Council shall advise the respondent accordingly and provide him/her with the opportunity and a reasonable period of time to make submissions regarding penalty. Following receipt of any submission, Council, in a timely manner, shall decide by resolution on the penalty in accordance with the penalty provisions in Section 6 of this Code.

At the conclusion of the investigation and determination process, Council will need to weigh the relevant privacy and public interest issues and consider the relevant statutory provisions, to decide which, if any, aspects of the allegation and determination is publicly reported. In all cases, the respondent should be advised immediately as to the decision made by Council in relation to this.

In all cases, the Mayor and Chief Executive and/or Council may identify that as a result of the allegation and/or the investigation and determination process, there is a need for education or mentoring or changes required to this Code or to Council policy and may initiate same.