

Council Agenda - 24 November 2020

Council Chambers
Waipa District Council
101 Bank Street, Te Awamutu



Chairperson
His Worship the Mayor JB Mylchreest

Members
EM Andree-Wiltens, EH Barnes, AW Brown, LE Brown, PTJ Coles, RDB Gordon,
ML Gower, SC O'Regan, MJ Pettit, EM Stolwyk, CS St Pierre, BS Thomas, GRP Webber

Opening Prayer

24 November 2020 09:00 AM - 12:20 PM

Agenda Topic		Presenter	Time	Page
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6.1	Council Minutes - 27 October 2020	Chairperson		8
7.	Documents Signed Under Council Seal	Chairperson	09:10 AM-09:11 AM	16
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9.	Resolution to Exclude the Public	Chairperson	09:31 AM-09:33 AM	75

Closing Prayer

COUNCIL AGENDA



APOLOGIES



DISCLOSURE OF MEMBERS' INTERESTS

Members are reminded to declare and stand aside from decision making when a conflict arises between their role as an elected member and any private or other external interest they may have.



LATE ITEMS

Items not on the agenda for the meeting require a resolution under section 46A of the Local Government Official Information and Meetings Act 1987 stating the reasons why the item was not on the agenda and why it cannot be dealt with at a subsequent meeting on the basis of a full agenda item. It is important to note that late items can only be dealt with when special circumstances exist and not as a means of avoiding or frustrating the requirements in the Act relating to notice, agendas, agenda format and content.

COUNCIL AGENDA



CONFIRMATION OF ORDER OF MEETING

Recommendation

That the order of the meeting be confirmed

COUNCIL AGENDA



COUNCILLORS UPDATE ON ATTENDANCES

Councillors who have attended a conference, seminar or meeting on behalf of Waipa District Council may provide a verbal update.

COUNCIL REPORT



To: His Worship the Mayor and Councillors
From: Governance
Subject: **CONFIRMATION OF MINUTES**
Meeting Date: 24 November 2020

1 EXECUTIVE SUMMARY

To confirm the minutes of the Waipā District Council meeting held on 27 October 2020.

2 RECOMMENDATION

That the open minutes of the Waipā District Council meeting held on 27 October 2020, having been circulated, be taken as read and confirmed as a true and correct record of that meeting.

3 ATTACHMENTS

Council Minutes – 27 October 2020



Time: 9.00am
Date: Tuesday, 27 October 2020
Venue: Council Chambers, Waipa District Council,
101 Bank Street, Te Awamutu

Opening Prayer

PRESENT

Chairperson

His Worship the Mayor JB Mylchreest

Members

EM Andree-Wiltens, EH Barnes, AW Brown, LE Brown, PTJ Coles, RDB Gordon,
ML Gower, SC O'Regan, MJ Pettit, EM Stolwyk, CS St Pierre, BS Thomas, GRP Webber

1 APOLOGIES

RESOLVED

1/20/65

That the apologies of Councillor Barnes for lateness be received.

Councillor Andree-Wiltens / Councillor L. Brown

2 DISCLOSURE OF MEMBERS' INTERESTS

Councillor Thomas declared an interest in item 11 'Pirongia Ward Committee Appointment' as the person recommended for appointment is a family member.

3 LATE ITEMS

There were no late items.



4 CONFIRMATION OF ORDER OF MEETING

RESOLVED

1/20/66

That the order of the meeting be confirmed.

Councillor Webber / Councillor Stolwyk

5 COUNCILLORS UPDATE ON ATTENDANCES

Councillor Thomas attended the monthly Commsafe meeting.

Councillor St Pierre attended the Pirongia cycleway meeting and a workshop conducted by Audit New Zealand.

Councillor Stolwyk attended the Cambridge i-Site celebration of 20 years in operation.

Councillor O'Regan attended the pōwhiri for the Te Kanohi Representatives.

Councillor Coles attended the opening of the community centre at Oaks Lifestyle Village and the Chamber of Commerce district tour.

Mayor Mylchreest attended the opening of the community centre at Oaks Lifestyle Village, the Maniapoto Trust Board meeting along with Waitomo, Ruapehu and Ōtorohanga District Council mayors, the volunteer fire brigade service, the Cambridge Pool tour and the Waikato Metro Wastewater Governance Group.

6 CONFIRMATION OF MINUTES

RESOLVED

1/20/67

That the open minutes of the Waipa District Council meeting held on 29 September 2020, having been circulated, be taken as read and confirmed as a true and correct record of that meeting.

Councillor Gordon / Councillor A. Brown



7 DOCUMENTS SIGNED UNDER COUNCIL SEAL

RESOLVED

1/20/68

That the following schedule of documents to which the Common Seal of the Waipa District Council has been applied under delegated authority be received:

a) Warrants as set out below:

<i>Position for Warrant</i>	<i>Name of Staff</i>
<i>Building Compliance Leader</i>	<i>Leanne Beal</i>

Councillor Webber / Councillor Thomas

8 TE WAKA ANNUAL REPORT

Te Waka is the Waikato regional economic development agency which was established in July 2018. Te Waka has partnership agreements in place with ten of the region's local authorities, sponsorship agreements with leading businesses in the region and support from regional trusts.

Te Waka reports performance against the functions and services every six months.

Kiri Goulter, Director at Te Waka presented the Te Waka six-month report by way of PowerPoint presentation and answered questions of council members in relation to funding and stakeholder feedback.

RESOLVED

1/20/69

*That the Te Waka Six Month Report to 30 June 2020 report (document number 10482171) of Steve Tritt, Business Development Manager be **RECEIVED**.*

Councillor Andree-Wiltens / Councillor Gordon

9 TE AWAMUTU COMMUNITY BOARD CHAIRPERSON'S ANNUAL REPORT

The Chairperson of the Te Awamutu Community Board, Ange Holt provided an update on the activities of the Te Awamutu Community Board from December 2019 to October 2020 by way of PowerPoint presentation.



RESOLVED

1/20/70

That the update of the Chairperson of the Te Awamutu Community Board be received.

Councillor St Pierre / Councillor Pettit

10 CAMBRIDGE COMMUNITY BOARD CHAIRPERSON'S ANNUAL REPORT

The Chairperson of the Cambridge Community Board, Sue Milner provided a verbal update on the activities of the Cambridge Community Board from December 2019 to October 2020.

RESOLVED

1/20/71

That the update of the Chairperson of the Cambridge Community Board be received.

Councillor L. Brown / Councillor Coles

[The meeting adjourned for morning tea at 10.42am and resumed at 11.04am]

11 PIRONGIA WARD COMMITTEE APPOINTMENT

[Councillor Thomas, having previously declared an interest in this item, took no part in any discussions]

Manager Governance, Jo Gread presented the report and answered questions of council members.

RESOLVED

1/20/72

That –

- a) *The 'Pirongia Ward Committee Appointment' report (document 10484440), of Jo Gread, Manager Governance, be received; and*
- b) *Pursuant to section 31(1) and 31(3) of Schedule 7 of the Local Government Act 2002, Council appoint Jan Thomas (Ngahinapouri Community Group) as the Ngahinapouri representative to the Pirongia Ward Committee.*

Councillor Stolwyk / Councillor St Pierre



12 LEASE TO THE GREATER WAIKATO RAILWAY MODELLERS INCORPORATED

Manager Property Services, John Miles presented the report and answered questions of council members.

At its meeting on 16 June 2020, the Finance and Corporate Committee considered a request by Greater Waikato Railway Modellers Incorporated for a new lease to be granted by Council, in its capacity as the ‘administering body’ of the Leamington Domain (a classified recreation reserve) under the Reserves Act 1977. The Committee approved the application subject to staff undertaking public notification of the new lease, which has been completed with no submissions received.

Pursuant to a delegation from the Minister of Conservation (June 2013), Council must also undertake a supervisory role as the ‘delegate’ of the Minister in relation to certain powers and functions under the Reserves Act 1977 (‘the Act’). This supervisory role is to ensure that decisions have been made in compliance with the requirements of the Act.

There is an expectation that Council will maintain a distinction between the two roles, and that the exercise of each role will be recorded.

The purpose of the report was to enable Council to exercise its responsibilities as the delegate for the Minister of Conservation in relation to the granting of a lease to The Greater Waikato Railway Modellers Incorporated, pursuant to the Act.

RESOLVED

1/20/73

That –

- a) *The ‘Lease to the Greater Waikato Railway Modellers Incorporated’ report (document number 10476595) of John Miles, Manager Property be received; and*
- b) *Pursuant to a delegation from the Minister of Conservation (Instrument of Delegation for Territorial Authorities, 12 June 2013) and in accordance with sections 54(1)(b), 119 and 120 of the Reserves Act 1977, Council consent to the granting of a new lease of part of the Leamington Domain recreation reserve to The Greater Waikato Railway Modellers Incorporated, on the basis that Council in its role as the administering body:*



- i. *has followed the Reserves Act 1977 processes;*
- ii. *has taken the functions and purpose of the Act into account, in relation to the particular classification and purpose of the Leamington Domain;*
- iii. *has considered any objections or submissions received in respect of the proposal (if any); and*
- iv. *on the basis of the information provided, has made a reasonable decision to approve the application by The Greater Waikato Railway Modellers to be granted a new lease.*

Councillor Stolwyk / Councillor Pettit

13 HOUSING FOR THE ELDERLY RENT REVIEWS

Manager Property Services, John Miles presented the report and answered questions of council members.

The purpose of Council's housing for the elderly activity is to provide safe accommodation for elderly people with limited incomes. The activity is ring-fenced so there is no impact on rates, and while assessed at market rental, the rents are capped at 30% of national superannuation after taking into account the accommodation supplement. Rents are normally reviewed annually by way of registered valuation and increased on 1 July each year.

In response to COVID-19 the government introduced a six month freeze on rent increases resulting in Council deferring its normal 1 July rent review process.

While Council can now increase rents with 60 days' notice, it was proposed to a recent meeting of the Housing Working Group that we defer any increase until 1 July 2021 in order to avoid increases around the Christmas period, and to ensure we incorporate the new accommodation supplement and superannuation entitlements that are set to apply from 1 April each year.

The Residential Tenancies Act now limits rental increases to once every 12 months, so if we are to get back to our normal rent review cycles at some point we are going to have to delay a rent review by around 6 months. The Housing Working Group has agreed that it is better to have this 6 month delay now rather than in the first 6 months of 2022.

**RESOLVED**

1/20/74

That –

- a) *The ‘Housing for the Elderly Rent Reviews’ report (document number 10484073) of John Miles, Manager Property Services be received; and*
- b) *Council approve the deferral of rent increases for the Housing for the Elderly portfolio to 1 July 2021.*

Councillor A. Brown / Councillor Gordon

14 RESOLUTION TO EXCLUDE THE PUBLIC**RESOLVED**

1/20/75

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

<i>General subject of each matter to be considered</i>	<i>Reason for passing this resolution in relation to each matter</i>	<i>Ground(s) under section 48(1) for the passing of this resolution</i>
15. <i>Confirmation of Public Excluded Minutes</i>	<i>Good reason to withhold exists under section 7 Local Government Official Information and Meetings Act 1987</i>	<i>Section 48(1)(a)</i>
16. <i>Land Acquisition for Intersection Improvement – Peake, Pickering and Bruntwood Roads</i>		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, are as follows:



Item No.	Section	Interest
15, 16	Section 7(2)(i)	<i>To enable the Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</i>
15	Sections 7(2)(j)	<i>To prevent the disclosure or use of official information for improper gain or advantage.</i>

Councillor Coles / Councillor A. Brown

Closing Prayer

There being no further business the meeting closed at 11.21am.

CONFIRMED AS A TRUE AND CORRECT RECORD

CHAIRPERSON:

.....

DATE:

.....

COUNCIL REPORT



To: His Worship the Mayor and Councillors
From: Governance
Subject: **DOCUMENTS SIGNED UNDER COUNCIL SEAL**
Meeting Date: 24 November 2020

1 EXECUTIVE SUMMARY

Council policy and delegated authority provides for use of the Council seal prior to notification to Council in specified cases.

2 RECOMMENDATION

That the following schedule of documents to which the Common Seal of the Waipā District Council has been applied under delegated authority be received:

a) Warrants as set out below:

Position for Warrant	Name of Staff
<i>Environmental Health Officer</i>	<i>Poonam Patel</i>
<i>Enforcement Officer (Contractor)</i>	<i>Martin Church</i>
<i>Graduate Planner</i>	<i>Dominic Harris</i>



To: His Worship the Mayor and Councillors
From: Manager Governance
Subject: **ELECTED MEMBER CODE OF CONDUCT**
Meeting Date: 24 November 2020

1 EXECUTIVE SUMMARY

The purpose of this report is to seek the adoption of a revised Code of Conduct for Elected Members, in accordance with the Local Government Act 2002. The Code has been adapted so it will also apply to appointed members to Council's core committees.

A draft Waipa District Council Code of Conduct 2020 is provided as Appendix 1, which is based on the LGNZ template and adapted for Waipa Council. The track changes show the amendments proposed to the current Code of Conduct. The main changes have been to align the code with the LGNZ template and clarify processes around breaches of the code. A summary of the changes made are included in this report and include the establishment of a Code of Conduct Committee.

If the Council wishes to adopt the new Code of Conduct this requires a vote in support of the new Code of not less than 75% of the members present at the meeting, in accordance with the requirements of the Local Government Act 2002.

If adopted, a Code of Conduct prepared for the Community Boards using the LGNZ Community Board template incorporating the relevant Waipa specific provisions will be presented to the Community Boards for consideration and approval.

2 RECOMMENDATION

That –

- a) The report titled 'Elected Member Code of Conduct (document number 10441555) of Jo Gread, Manager Governance be received;*
- b) Council adopts the Waipa District Council Code of Conduct 2020 (Appendix 1 to the staff report, document number 10485242), and revokes the existing Code of Conduct (Appendix 2 to the staff report, document number 10375775)*

with immediate effect, in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002;

- c) *Council establishes a Code of Conduct Committee, which will not be a committee for the purposes of Local Government Act 2002, with the following Terms of Reference:*

Purpose:

- *Consider, in relation to a Code of Conduct complaint referred to the Committee, the findings of an investigator and make recommendations to the governing body of the Council as to whether or not a penalty or action should be imposed and if so the nature of that penalty or action; and*
- *Consider any matters relating to the Code of Conduct and/or the behaviour of elected members referred to it by the governing body for advice.*

In fulfilling its purpose, the Committee will:

- *In considering a report from the Chief Executive, ask, if necessary, the investigator to provide a briefing on their findings and invite the complainant and/or respondent to speak to any submissions that might have been made;*
- *On consideration of the evidence, decide whether a material breach of the Code has occurred and what, if any, penalty or action should occur in response to the breach; and*
- *Ensure that penalties or actions recommended in response to a serious breach of the Code are proportionate to the breach and consistent with the actions set out in clause 13.1 of the Code.*

Membership

The Committee will consist of the following members:

- *The Mayor with the Deputy Mayor as alternate when required,*
- *A senior independent legal advisor as appointed by the Mayor, or Deputy Mayor where the Deputy Mayor is acting as the Mayor's alternate, and*
- *An additional external appointment made by the Mayor, or the Deputy Mayor, where the Deputy Mayor is acting as the Mayor's alternate, if it is determined by the Mayor or Deputy Mayor that this would assist the process.*

3 OPTIONS AND ASSESSMENT

Code of Conduct

When the Local Government Act 2002 came into force, all Councils were required to adopt a Code of Conduct. Once adopted, the Code can only be amended or replaced with a new Code by a vote of support of not less than 75% of the members present at the meeting.

The Code sets out the understanding and expectations of Council in relation to the conduct of Elected Members in their role.

Local Government New Zealand (LGNZ) has provided a new template for a Code of Conduct with accompanying guidelines. The LGNZ Code of Conduct template has four objectives in assisting Councils namely:

- To enhance the effectiveness of a local authority and the provision of good local government of the community, city, district or region
- To promote effective decision-making and community engagement
- To enhance the credibility and accountability of the local authority to its communities
- To develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.

A draft Waipa District Council Code of Conduct 2020 is provided as Appendix 1, which is based on the LGNZ template and adapted for Waipa Council. The track changes show the amendments proposed to the current Code of Conduct. The main changes have been to align the code with the LGNZ template and clarify processes around breaches of the code. This includes the establishment a Code of Conduct Committee. A summary of the changes are set out below.

Summary of Changes proposed to Code of Conduct

Section 2 Introduction and throughout	<p>A definition of “Member(s)” setting out who the code applies to, which is His Worship the Mayor, Councillors and Council appointments to Council’s core committees, has been included and appropriate amendments made throughout the Code. Note that there are some specific provisions of the Code which only apply to elected members, and where the term ‘elected member’ has been specifically used.</p> <p>The reference to the Code covering the Community Boards have been removed. Community Boards are not required to have a Code of Conduct, but it is good practice to do so. The Community Boards are not automatically bound by the Council’s Code. In order for the Code to apply to them, they</p>
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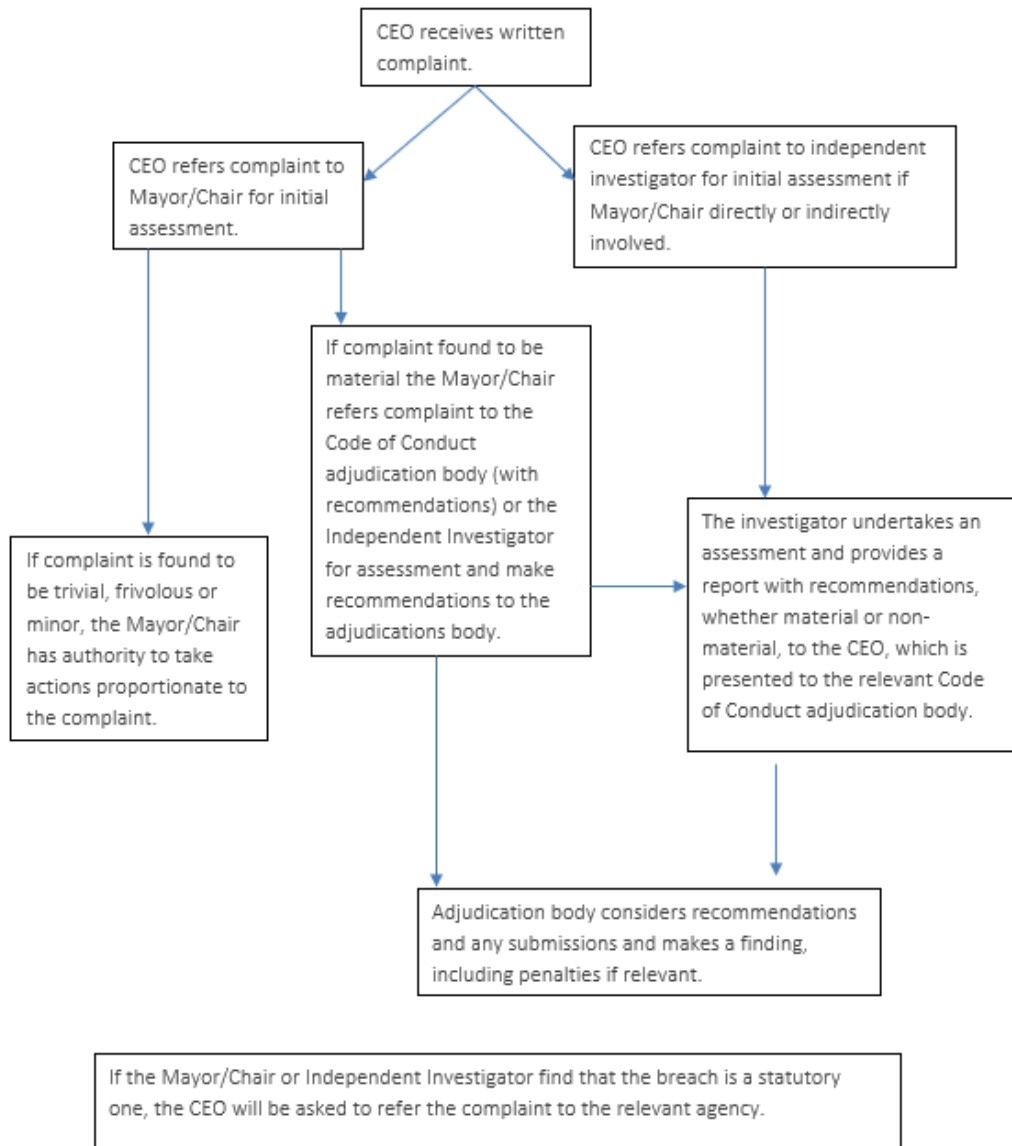
	must adopt the Code at a meeting. LGNZ has produced a Code of Conduct template specifically for Community Boards and it is proposed to use this template, adapted with the relevant Waipa specific provisions which are agreed as part of the Code included in this report for adoption. The most significant difference between the LGNZ template for Councillors and Community Boards is the removal of the section on roles and responsibilities.
Section 3 Values	Updated to align with LGNZ template.
Section 4 Role and responsibilities	Amendments to align with LGNZ template and slight change to the first bullet point under 4.1 as only 'district' is relevant in Waipa's case.
Section 5 Relationships	Amendments to align with LGNZ template, but retained Waipa additional item under relationships with staff - "avoid anything which might compromise, or could be seen as compromising, the impartiality of an employee". A new section has been added to cover relationships between Members and the Community Board.
Section 6 Media	<p>Retained Waipa provisions as our provisions include authority to provide media comment on behalf of Council and more comprehensive restrictions in relation to expressing a personal view in the media. 'Chair' has been removed in the context of 'Mayor/Chair' in 6.1 as in that context it does not refer to Committee Chair but Chair of a Regional Council. Approval for another member to comment on behalf of Council has therefore been updated to 'Mayor/Deputy Mayor'.</p> <p>The social media provisions have been brought in from the LGNZ template and section 6.2 has been extended so that the provisions in relation to expressing a personal view apply not only to the media but also to social media.</p>
Section 7 Information	Amendments made to align with LGNZ template in the initial paragraph and paragraph 7.1, however, 7.2 has not been changed as the Waipa provisions are more detailed.
Section 8 Conflicts of Interest	Amendments made to align with LGNZ template, however, the Waipa reference to the guidelines available from the Office of the Auditor General has been retained.
Section 9 Register of Interests	Amendments made to align with LGNZ template, with an amendment made to reflect that it is the Elected Member declarations which are made public.
Section 10 Ethical behaviour	10.1 is not included in the LGNZ template, but has previously been included in the Waipa Code of Conduct in accordance with clause 15(5) of Schedule 7 of LGA 2002: <i>"A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to</i>

	<i>declare whether or not the member or newly elected member is an undischarged bankrupt”.</i>
Section 11 Creating a supportive and inclusive environment	Amendments made to align with the LGNZ template. The final bullet point has been amended to reflect that ‘city and region’ are not applicable.
Section 12 Breaches of the Code	<p>12.1 updated to align with LGNZ template.</p> <p>12.2 updated to align with LGNZ template and recognise that in the case of the Mayor the Executive Committee will not be able to hear the matter, therefore, as proposed by the LGNZ template an independent investigator will be used. Complaints about a Member will initially be dealt with by the Mayor and a process has been included for the steps for the Mayor to follow. If the complaint is trivial, frivolous or minor or a mutually agreed solution can be reached, the matter will be dealt with by the Mayor. Alternatively the Mayor can decide to have the matter investigated by an independent investigator. Once the complaint has been investigated recommendations from either the Mayor or the independent investigator (as applicable) will be put to the Code of Conduct Committee to determine and make a binding recommendation to Council. A copy of the LGNZ complaints procedure – flow diagram has been included following on from this table to this report as a reference guide for the complaint process.</p> <p>12.3 updated to align with LGNZ template.</p>
Section 13 Penalties and actions	Updated to align with LGNZ template.
Section 14 Review	Updated to align with LGNZ template.
Appendix A: Guidelines on the personal use of social media	New provisions from LGNZ template on social media.
Appendix B: Legislation bearing on the role and conduct of elected members	Updated to align with LGNZ template.
Appendix C: Process where a complaint is	Updated to align with LGNZ template, including the incorporation of a Code of Conduct Committee into the process, but adapted to reflect that this Committee will not be

referred to an independent investigator	a formal committee of Council.
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Complaints Procedure – Flow Diagram

Appendix E: Complaints Procedure – Flow Diagram



LGNZ code of conduct guidelines

Code of Conduct Committee

It is proposed to establish a Code of Conduct committee to consider the recommendations of the investigation into the complaint. It is not intended that this

committee will not be a formal committee of Council, subject to the Local Government Act 2002. It is proposed that the Committee will include external representation and consist of the Mayor, with the Deputy Mayor as alternate, an independent legal advisor, with the potential for an additional person to be co-opted onto the committee if the Mayor or Deputy Mayor consider it appropriate.

The proposed purpose of the Code of Conduct Committee is to:

- Consider, in relation to a Code of Conduct complaint referred to the Committee, the findings of an investigator and make recommendations to the governing body of the Council as to whether or not a penalty or action should be imposed and if so the nature of that penalty or action; and
- Consider any matters relating to the Code of Conduct and/or the behaviour of elected members referred to it by the governing body for advice.

In fulfilling its purpose, the Committee will:

- In considering a report from the Chief Executive, ask, if necessary, the investigator to provide a briefing on their findings and invite the complainant and/or respondent to speak to any submissions that might have been made;
- On consideration of the evidence, decide whether a material breach of the Code has occurred and what, if any, penalty or action should occur in response to the breach; and
- Ensure that penalties or actions recommended in response to a serious breach of the Code are proportionate to the breach and consistent with the actions set out in clause 13.1 of the Code.

While it is proposed that the complaint is considered and recommendations formulated by the small informal Code of Conduct Committee, which includes independent advisors, it is proposed that the recommendations are then put before Council for adoption.

The draft of the Code of Conduct states that the report, including recommendations from the Code of Conduct Committee, will be heard and accepted by the Council in an open session, unless grounds for excluding the public exist, without debate. The purpose of the Council accepting the recommendations without debate is to avoid the complaint being litigated twice.

Significance and Engagement Policy

The process to adopt and maintain a Code of Conduct is a statutory one, and there is no requirement in the Local Government Act 2002 to consult or engage with the community in relation to the Code. It is very much a matter for Elected Members who will be required to conduct themselves in accordance with the Code. For these reasons, the assessment is considered to be low in terms of the Significance and Engagement Policy and the Code of Conduct will be available for information purposes only for the public.

Financial status

There is no cost involved with the adoption of the new Code of Conduct with the template being provided by LGNZ. There may be cost associated with the appointment of an external party to investigate breaches of the Code of Conduct or costs associated with the Code of Conduct Committee but this would be a rare occurrence and able to be covered by existing budgets.

If the revised Code (or an amended version) is not adopted by the Council, the current code will continue to operate until it is replaced.



Jo Gread

MANAGER GOVERNANCE



Approved by Ken Morris

DEPUTY CHIEF EXECUTIVE / GROUP MANAGER BUSINESS SUPPORT

APPENDIX 1

Proposed Code of Conduct (document number 10485242 – track change version)

CODE OF CONDUCT

Adopted ~~30 May 2017~~ 24 November 2020

1. Introduction

This Code of Conduct (the Code) sets out the standards of behavior expected from:

▪ ~~_____elected members~~ His Worship the Mayor and Councillors at Waipa District Council (Council), and

▪ Council-appointed members of the following Council Committees:

- Strategic Planning and Policy Committee,
- Service Delivery Committee,
- Finance and Corporate Committee,
- Regulatory Committee, and
- Audit and Risk Committee

(together referred to as “Members” and individually “Member”) in the exercise of their duties.

Its purpose is to:

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

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

2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all Councillors and His Worship the Mayor. ~~elected members, including the members of any community boards that have agreed to adopt it.~~

It also applies to appointed members of the following Council committees ~~and sub-committees~~ in relation to their role on the committee: Strategic Planning and Policy Committee, Service Delivery Committee, Finance and Corporate Committee, Regulatory Committee and Audit and Risk Committee. ~~or sub-committee~~. The Code is designed to deal with the behaviour of ~~M~~members towards:

- each other;
- the Chief Executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that ~~M~~members receive in their capacity as ~~elected M~~members and information which impacts on the ability of Council 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 ~~M~~members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with Council's Standing Orders.

3. Values

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

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

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

and the governance principles of s.39 of the LGA 2002.

4. Role and responsibilities

~~This Code of Conduct is designed to strengthen the good governance of our District. Good governance requires clarity of that the complementary roles of the governing body and the administration are understood and respected. and respect between those charged with responsibility for the leadership of Council and those responsible for advice and the implementation of Council decisions. These key roles involve:~~

4.1 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 Council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of Council's resources;
- employing and monitoring the performance of the Chief Executive; and
- ensuring Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 Chief Executive

The role of the Chief Executive includes:

- implementing the decisions of 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 Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Council;
- providing leadership for the staff of Council; and
- employing ~~staff~~ on behalf of Council, the staff of the local authority, (including negotiation of the terms of employment for those staff).

~~Under s.42 of the LGA 2002, the Chief Executive is the only person directly employed by 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. Further information is available on roles and conduct in Council's Governance Statement.~~

5. Relationships

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

5.1 Relationships between ~~M~~members

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

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

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

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

5.2 Relationships with staff

An important element of good governance involves the relationship between Council, ~~and~~ 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 or the chairperson of the Chief Executive performance review committee (however described);
- make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and not avoid publicly criticising any employee;
- observe any protocols put in place by the Chief Executive concerning contact between ~~M~~members and employees;

- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

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

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

5.3 Relationships between Members and Community Board Members

~~Given the importance of relationships to the effective performance of Council, Members will conduct their dealings with Cambridge and Te Awamutu Community Board members in a manner that:~~

- ~~maintains public confidence;~~
- ~~is open, honest and courteous; and~~
- ~~is focused on issues rather than personalities.~~

5.3.4 Relationship with the public

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

- ~~ensure their interactions interact with members of the public in a citizens are fair, honest and respectful, equitable and honest manner;~~
- ~~be available to listen and respond openly and honestly to community citizens' concerns;~~
- ~~consider all points. Represent the views of view or interests when participating in debate citizens and making decisions, organisations accurately, regardless of the Member's own opinions of the matters raised; and~~
- ~~treat member s of the public in a courteous manner; and~~
- ~~ensure their interactions with citizens and communities uphold act in a way that upholds the reputation of Council.~~

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

6. Contact with the media

The media play an important ~~role part~~ 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 a Member to comply with the provisions of this section can represent a breach of this Code.

From time to time individual ~~member~~ Members will be approached to comment on a particular issue either on behalf of Council, or as an ~~elected member~~ Member in their own right. When responding to requests for comment ~~member~~ 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~~ Member with the appropriate delegated authority.

When speaking to the media more generally ~~member~~ Members will abide by the following provisions:

6.1 Media contact on behalf of Council

- the Mayor ~~or chairperson~~ is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Mayor ~~/chair~~ is absent requests for comment will be referred to the DDeputy Mayor ~~/chair~~ or relevant committee chairperson or portfolio holder;
- the Mayor ~~/chair~~ may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- no other ~~member~~ Member may comment on behalf of Council without having first obtained the written approval of the Mayor ~~or d~~ Deputy Mayor ~~/chair~~.

6.2 Media /Social media comment on a ~~member~~ Member's own behalf

- Elected member ~~Member~~ are free to express a personal view in the media or social media, at any time, provided the following rules are observed:
- Members must make it clear that any media ~~comments~~ made reflect a personal view and do not must not state or imply that they represent the views of 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 ~~member~~ 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; ~~and~~
- ~~media~~ comments must not be misleading and should be fair and accurate within the bounds of reasonableness;
- social media pages managed by Members and used for making observations relevant to their role as Members should be open and transparent and observe the requirements of the code; and
- social media posts about others, Council staff or the public must be consistent with section five of this code (See Appendix A for guidelines on the personal use of social media).

These rules should also be applied with letters to the Editor.

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

7. Information

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

7.1 Confidential information

In the course of their duties ~~member~~ Members will ~~occasionally~~ 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, ~~member~~ 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~~ Member. This includes business conducted in Public Excluded meetings and workshops, until any such business is made public.

7.2 Information received in capacity as an ~~elected member~~ Member

Members will disclose to other ~~member~~ Members and, where appropriate the Chief Executive, any information received in their capacity as an ~~elected member~~ Member that concerns Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclosure the information and will decline the offer if that duty is likely to be compromised.

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

Please note: failure to observe these provisions may impede the performance of Council by inhibiting information flows and undermining public confidence. It may also expose Council to prosecution under the Privacy Act and/or civil litigation.

8. Conflicts of Interest

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

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the ~~Member's~~ spouse/~~partner contracts with the authority or~~ has a pecuniary interest, ~~such as through a contract with Council.~~ ~~Member~~ Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests. There are also Guidelines available from the Office of the Auditor General to assist ~~member~~ Members and staff in relation to conflicts and interests (see www.oag.govt.nz).

If a ~~member~~ 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~~ 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~~ Member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

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

9. Register of Interests

Members shall, at least annually, make a declaration of interest. The ~~elected member~~ se declarations are recorded in a public Register of Interests maintained by Council. The declaration must include information on the nature and extent of any interest, including:

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

the Chief Executive)

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

10. Ethical behaviour

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

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, officer or ~~member~~ Member in order to benefit their own, or families personal or business interests;
- only use Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$50 or more is accepted by ~~a~~ a Member, that ~~member~~ Member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

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

10.1 Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any ~~M~~member who is an “undischarged bankrupt” will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The ~~M~~member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the Member's adjudication and the likely outcome of the bankruptcy.

11. Creating a supportive and inclusive environment

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

- Attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council's vision, goals and objectives and the manner and operating style by which ~~member~~ Members will work.

- Taking part in any assessment or evaluation of Council's ~~overall~~ performance and operating style during the triennium.¹
- Elected members taking all reasonable steps to ~~ensure they possess~~ acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the ~~district~~ or region.

¹ A self assessment template is provided in the Guidance to this Code.

12. Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 7, s. 15(4)). Any ~~member~~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.

12.1 Principles:

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

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

12.2 Complaints

All complaints made under this Code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward the ~~complaint~~ complaint to ~~an Assessor to undertake a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation. The role of Assessor will be performed by the Mayor and Chief Executive- the Mayor or, where the Mayor is a party to the complaint, an independent investigator, selected from a list agreed in advance by the Mayor and the Chief Executive. if the complaint involves the Mayor, by the Executive Committee which will be chaired in this instance by the Deputy Mayor.~~

Please note, o~~nly~~ member~~Members~~ and the Chief Executive may make a complaint under this Code.

Complaint referred to Mayor

On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor will, as the situation allows:

- Interview the complainant to assess the full extent of the complaint.
- Interview the Member(s) subject to the complaint.
- Assess the complaint to determine materiality.
- Where a complaint is assessed by the Mayor to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.
- Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor, to the Code of Conduct Committee established by the Council to assess and rule on complaints made under the Code.

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

Complaint referred to Independent Investigator

On receipt of a complaint from a Member which concerns the Mayor, or from the Mayor after initial consideration, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Code of Conduct Committee for assessing and ruling on complaints.

~~12.3 Investigation, advice and decision~~

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

~~12.4~~12.3 Materiality

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

~~Other factors that might be considered when determining the level of materiality include whether complaints are intended to:~~

- ~~• Intimidate or harass another member or employee~~
- ~~• Damage another member's reputation~~
- ~~• Obtain a political advantage~~
- ~~• Influence Council in the exercise of its functions or to prevent or disrupt the exercise of those functions~~
- ~~• Avoid disciplinary action under this Code~~
- ~~• Prevent or disrupt the effective administration of this Code.~~

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

13. Penalties and actions

Where a complaint is determined to be material and referred to ~~Council or a Council Committee~~ the Code of Conduct Committee established to consider complaints, the nature of any penalty or action will depend on the seriousness of the breach.

13.1 Material breaches

In the case of material breaches of this Code ~~Council, the Code of Conduct Committee or a~~

~~committee with delegated authority~~, may ~~recommend~~ require one of the following:

1. a letter of censure to the ~~member~~ Member;
2. a request (made either privately or publicly) for an apology;
3. a vote of no confidence in the ~~member~~ Member;
4. removal of certain council-funded privileges (such as attendance at conferences);
- 4.5. removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
- 5.6. restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- 6.7. limitation on any dealings with Council staff ~~other than so that they are confined to the~~ Chief Executive or identified senior manager only;
- 7.8. suspension from committees or other bodies to which the Member has been appointed; or
- 8.9. an invitation ~~to~~ for the ~~member~~ Member to consider resigning from Council.

The Code of Conduct Committee ~~Council or a committee~~ may ~~recommend~~ decide that instead of a penalty ~~will not be imposed where a respondent agrees to~~ one or more of the following may be required:

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

On the advice of the Code of Conduct Committee, the Council may impose any of the above actions recommended by the Committee.

A report, including recommendations from the Code of Conduct Committee, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.

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

13.2 Statutory breaches

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

- breaches relating to ~~member~~ Members' interests (where ~~M~~members may be liable for prosecution by the Auditor-General under the LAMIA);

- breaches which result in Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s. s. 44 LGA 2002 which may result in the elected member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the ~~elected member~~Member liable for criminal prosecution).

14. Review

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

Councils are encouraged to ~~may~~ formally review ~~their existing the~~ Code ~~and either amend or re-adopt it~~ as soon as practicable after the beginning of each triennium ~~in order to ensure that all elected members have the opportunity to provide their views on the Code's provisions.~~ ~~The results of that review will be considered by Council in regard to potential changes for improving the Code.~~

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.
5. Take care mixing your political (Council) and personal lives. 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.
6. 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.
7. Elected members' social media pages should be open and transparent. When commenting on matters related to Council no Members should represent themselves falsely via aliases or differing account names or block. Elected members should not block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

Appendix **BA**: Legislation bearing on the role and conduct of **elected** **M**~~m~~embers

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

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about **M**~~m~~embers discussing and voting on matters in which they have a pecuniary interest and about contracts between **M**~~m~~embers and 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 **M**~~m~~ember personally (or for their spouse/**p**~~a~~rtner 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 **p**~~e~~r partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- a person, or their spouse **p**~~e~~r 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 **C**~~c~~ouncil.

Determining whether a pecuniary interest exists

Elected-**M**~~m~~embers 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, **M**~~m~~embers 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/Chair of the relevant committee 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 Mmember who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists Mmembers 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 Council's Standing Orders.)

The contracting rule

A Mmember 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 Council (or committee of 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 Mmembers 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 Mmembers 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:

- Mmembers' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, Mmembers have a "closed mind"); and

- ~~M~~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, ~~M~~members must also take into account the context and circumstance of the issue or question under consideration. For example, if an elected 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 elected 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 local/community boards. Of particular importance for the roles and conduct of elected ~~M~~members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected ~~M~~members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected ~~M~~member should:

- create a disturbance or a distraction while another Councillor or His Worship the Mayor 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 Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected ~~M~~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 seven ~~two~~ years, ~~and/or fines up to \$1000~~. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the Mmember 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.

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

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever 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. ~~Provisions directly relevant to this Code include:~~

Personal liability of members

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

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

Elected mMembers 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:

- without the elected member's knowledge;
- with the elected member's knowledge but against the elected member's protest made at or before the time when the loss occurred;
- contrary to the manner in which the elected member voted on the issue; and
- in circumstances where, although being a party to the act or failure to act, the elected 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 elected members will also be responsible for paying the costs of proceedings (s.47 LGA 2002).

Appendix **CB**: Process where a complaint is referred to an independent investigator for the determination and investigation of complaints

Step 1: Chief Executive receives complaint

On receipt of a complaint under this Code, whether from a Member (because the complaint involves the Mayor) or from the Mayor after an initial assessment, the Chief Executive will refer the complaint to an independent investigator selected from a list agreed in advance by the Mayor and the Chief Executive Assessor.

~~If the complaint is about a member, the role of the Assessor will be performed by the Chief Executive and Mayor. If the complaint is about the Mayor, the role of Assessor will be performed by the Executive Committee which in this instance will be chaired by the Deputy Mayor.~~

The Chief Executive will also:

- inform the complainant that the complaint has been referred to the Assessor-independent investigator and the name details of the investigator Assessor, 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 details of the investigator Assessor and remind them of the process for dealing with complaints as set out in the Code.

Step 2: Assessor-Investigator makes preliminary assessment

On receipt of a complaint the investigator Assessor will assess whether:

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

In making the assessment the investigator Assessor may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties, which are then forwarded to the Council's Chief Executive. the appropriate course of action. The Assessor has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

On receiving the investigator's Assessor's preliminary assessment the Chief Executive will:

1. where an investigator Assessor determines that a complaint is trivial or frivolous ~~or without~~

- ~~substance,~~ inform the complainant, ~~and~~ respondent ~~directly~~ and ~~inform other~~ ~~member~~ Members (if there are no grounds for confidentiality) of the investigator's Assessor's decision;
2. in cases where the investigator Assessor finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform ~~both~~ the Chief Executive who will then inform the complainant, ~~and the~~ respondent and Members of the action.

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

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

- that the respondent ~~seek~~ is referred to the Mayor for guidance ~~and/or from an appropriate mentor or source~~
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters ~~leading to~~ resulting in the complaint.

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

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

If the subject of a complaint is found to be material the investigator ~~Assessor~~ will inform the Chief Executive, who will inform the complainant and respondent. ~~The next step is for a full investigation to be undertaken. Depending on the nature and seriousness of the complaint, the investigation will be undertaken by either the Mayor and Chief Executive, or in the case of a serious complaint or a complaint about the Mayor, referred to the Executive Committee which should then appoint an external suitably qualified person to act as investigator and report on the complaint.~~

The investigator will then prepare a report for the Council on the seriousness of the breach ~~investigation~~. 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 Code of Conduct Committee ~~Executive Committee~~, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the investigator's full report ~~prepared by the investigator~~.

Step 5: Process for considering the investigator's ~~Chief Executive's~~ report

~~Depending upon the nature of the complaint and alleged breach the Chief Executive's report may be considered by the Executive Committee or if of a very serious nature, referred to Council, (excluding the~~

~~complainant, respondent and any other 'interested' members),, with the Deputy Mayor to chair Council if the complaint relates to the Mayor. Where the matter is referred to Council, the references to the Executive Committee in the next four paragraphs will be deemed to refer to Council.~~

~~The investigator's report will be considered by the Code of Conduct Committee 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 section 12.1 of the Code.~~

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

~~Before making any decision on a specific complaint, the relevant body in respect of the Chief Executive's report the Executive Committee will give the respondent member against whom the complaint has been made 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 section 13.1 of this Code.

~~In accordance with this Code. Councils will agree to implement The report, including the recommendations of the Executive Committee from the Code of Conduct Committee, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.~~

APPENDIX 2

Existing code of conduct (document number 10375775)

CODE OF CONDUCT

Adopted 30 May 2017

1. Introduction

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

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

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

2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all elected members, including the members of any community boards that have agreed to adopt it. It also applies to appointed members of Council committees and sub-committees in relation to their role on the committee or sub-committee. The Code is designed to deal with the behaviour of members towards:

- each other;
- the Chief Executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of Council 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 Council's Standing Orders.

3. Values

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

1. **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.

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

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

4. Role and responsibilities

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

4.1 Members

The role of the governing body includes:

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

4.2 Chief Executive

The role of the Chief Executive includes:

- implementing the decisions of 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 Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Council;
- providing leadership for the staff of Council; and
- employing staff on behalf of Council (including negotiation of the terms of employment for those staff).

Under s.42 of the LGA 2002 the Chief Executive is the only person *directly* employed by Council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the Chief Executive. Further information is available on roles and conduct in Council's Governance Statement.

5. Relationships

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

5.1 Relationships between members

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

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

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

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

5.2 Relationships with staff

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

- raise any concerns about employees, officers or contracted officials with the Chief Executive;
- raise any concerns about the performance or behaviour of the Chief Executive with the Mayor or the chairperson of the Chief Executive performance review committee (however described);
- make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;
- observe any protocols put in place by the Chief Executive concerning contact between members and employees;

- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

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

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

5.3 Relationship with the public

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

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

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

6. Contact with the media

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

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

6.1 Media contact on behalf of Council

- the Mayor or chairperson is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Mayor/chair is absent requests for comment will be referred to the deputy Mayor/chair or relevant committee chairperson or portfolio holder;
- the Mayor/chair may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- no other member may comment on behalf of Council without having first obtained the written approval of the Mayor/chair.

6.2 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 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; and
- media comments must not be misleading and should be accurate within the bounds of reasonableness.

These rules should also be applied with letters to the Editor.

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

7. Information

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

7.1 Confidential information

In the course of their duties members will occasionally receive information 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. This includes business conducted in Public Excluded meetings and workshops, until any such business is made public.

7.2 Information received in capacity as an elected member

Members will disclose to other members and, where appropriate the Chief Executive, any information received in their capacity as an elected member that concerns Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

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

Please note: failure to observe these provisions may impede the performance of Council by inhibiting information flows and undermining public confidence. It may also expose Council to prosecution under the Privacy Act and/or civil litigation.

8. Conflicts of Interest

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

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's spouse contracts with the authority or has a pecuniary interest. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests. There are also Guidelines available from the Office of the Auditor General to assist members and staff in relation to conflicts and interests (see www.oag.govt.nz).

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

9. Register of Interests

Members shall annually make a declaration of interest. These declarations are recorded in a Register of Interests maintained by Council. The declaration must include information on the nature and extent of any interest, including:

- a) any employment, trade or profession or business interest carried on by the member or the members' spouse for profit or gain;
- b) any company, trust, partnership etc for which the member or their spouse is a director, partner or trustee;
- c) the address of any land in which the member has a beneficial interest within the jurisdiction of Council; and
- d) the address of any land owned by Council in which the member or their spouse is:
 - a tenant; or
 - the land is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee;
- 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.

10. Ethical behaviour

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

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families personal or business interests;

- only use Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and

- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$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 this Code.

10.1 Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an “undischarged bankrupt” will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the member’s adjudication and the likely outcome of the bankruptcy.

11. Creating a supportive and inclusive environment

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

- Attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council’s vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment of Council’s overall performance and operating style during the triennium.¹
- Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfill their Declaration of Office and contribute to the good governance of the, district or region.

¹ A self assessment template is provided in the Guidance to this Code.

12. Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 7, s. 15(4)). 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.

12.1 Principles:

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

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

12.2 Complaints

All complaints made under this Code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward that complaint, to an Assessor to undertake a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation. The role of Assessor will be performed by the Mayor and Chief Executive or if the complaint involves the Mayor, by the Executive Committee which will be chaired in this instance by the Deputy Mayor.

Only members and the Chief Executive may make a complaint under this Code.

12.3 Investigation, advice and decision

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

12.4 Materiality

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

Other factors that might be considered when determining the level of materiality include whether complaints are intended to:

- Intimidate or harass another member or employee
- Damage another member's reputation
- Obtain a political advantage
- Influence Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- Avoid disciplinary action under this Code
- Prevent or disrupt the effective administration of this Code.

13. Penalties and actions

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

13.1 Material breaches

In the case of material breaches of this Code Council, or a committee with delegated authority, may require one of the following:

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

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

- attend a relevant training course; and/or

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

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

13.2 Statutory breaches

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

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- breaches which result in Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s. s. 44 LGA 2002 which may result in the member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

14. Review

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

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

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

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

The Local Authorities (Members' Interests) Act 1968

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

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

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

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

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

Determining whether a pecuniary interest exists

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

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

In deciding whether 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/chair 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 Council's Standing Orders.)

The contracting rule

A member is disqualified from office if he or she is "concerned or interested" in contracts with 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 Council (or committee of 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 local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another councillor is speaking;
- be disrespectful when they refer to each other or other people; or
- use offensive language about the council, other members, any employee of Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

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

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

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 persons, monetary gain or advantage.

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

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever 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. Provisions directly relevant to this Code include:

Personal liability of members

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

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

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) without the member's knowledge;
- b) with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) contrary to the manner in which the member voted on the issue; and
- d) in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

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

Appendix B: Process for the determination and investigation of complaints

Step 1: Chief Executive receives complaint

On receipt of a complaint under this Code the Chief Executive will refer the complaint to an Assessor.

If the complaint is about a member, the role of the Assessor will be performed by the Chief Executive and Mayor. If the complaint is about the Mayor, the role of Assessor will be performed by the Executive Committee which in this instance will be chaired by the Deputy Mayor.

The Chief Executive will also:

- inform the complainant that the complaint has been referred to the Assessor and the details of the Assessor, 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 details of the Assessor and refer them to the process for dealing with complaints as set out in the Code.

Step 2: Assessor makes preliminary assessment

On receipt of a complaint the Assessor will assess whether:

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

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

On receiving the Assessor's preliminary assessment the Chief Executive will:

1. where an Assessor determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the Assessor's decision;

2. in cases where the Assessor finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

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

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

- that the respondent seek guidance from an appropriate mentor or source
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

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

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

If the subject of a complaint is found to be material the Assessor will inform the Chief Executive, who will inform the complainant and respondent. The next step is for a full investigation to be undertaken. Depending on the nature and seriousness of the complaint, the investigation will be undertaken by either the Mayor and Chief Executive, or in the case of a serious complaint or a complaint about the Mayor, referred to the Executive Committee which should then appoint an external suitably qualified person to act as investigator and report on the complaint.

The investigator will then prepare a report on the investigation.

In preparing that report the investigator may:

- consult with the complainant, respondent and any affected parties;
- undertake a hearing with relevant parties; and/or
- refer to any relevant documents or information.

On receipt of the investigator's report the Chief Executive will prepare a report for the Executive Committee, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the full report prepared by the investigator.

Step 5: Process for considering the Chief Executive's report

Depending upon the nature of the complaint and alleged breach the Chief Executive's report may be considered by the Executive Committee or if of a very serious nature, referred to Council, (excluding the complainant, respondent and any other 'interested' members), with the Deputy Mayor to chair Council if the complaint relates to the Mayor. Where the matter is referred to

Council, the references to the Executive Committee in the next four paragraphs will be deemed to refer to Council.

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

Before making any decision in respect of the Chief Executive's report the Executive Committee will give the member against whom the complaint has been made 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.

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

In accordance with this Code. Councils will agree to implement the recommendations of the Executive Committee without debate.

COUNCIL REPORT



To: His Worship the Mayor and Councillors
From: Governance
Subject: **RESOLUTION TO EXCLUDE THE PUBLIC**
Meeting Date: 24 November 2020

1 RECOMMENDATION

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
10. Confirmation of Public Excluded Minutes	Good reason to withhold exists under section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, are as follows:

Item No.	Section	Interest
10.	Section 7(2)(i)	To enable the Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)