

# **Queenstown Lakes District Council**

## **Code of Conduct**

**DRAFT**

**Adopted on the .....**

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## 1 Introduction

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

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

This purpose is given effect through the values, roles, responsibilities and specific behaviors agreed in the 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 members, including the members of any local boards as well as the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- Each other;
- The Chief Executive and staff;
- The general public.

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

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

### 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 in an accountable and transparent manner;
3. **Organisational trust:** members will respect the integrity and objectivity of Council officers;
4. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials;
5. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
6. **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
7. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.
8. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
9. **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.<sup>1</sup>

These values complement, and work in conjunction with, the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

### 4 Role and responsibilities

The Code of Conduct is designed to strengthen the good governance of our district. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

#### 4.1 Members

The role of the governing body includes:

- Representing the interests of the people of our district;
- Reviewing, inputting and adopting plans, policies and budgets;

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

- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan (Monthly and Annual Reports);
- Providing prudent stewardship;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

## 4.2 Chief Executive

The role of the Chief Executive includes:

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

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

# 5 Relationships

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

## 5.1 Relationships between members

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

- Maintains public confidence;
- Is open, honest, respectful and courteous;
- Is focused on issues rather than personalities;
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.
- Avoids consistently and or repeatedly traversing the detail and vagaries of a topic or issue during a meeting where the majority of members are satisfied.

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

## **5.2 Relationships with staff**

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

- Raise any concerns about employees, officers or contracted officials with the Chief Executive;
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor in liaison with the General Manager Corporate Services;
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer;
- Treat all employees with courtesy and respect and not publicly criticise any employee;
- Behave in a manner that does not impact the safety, well-being or productivity of staff; and
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees.

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

## **5.3 Relationship with the public**

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

- Ensure their interaction with the community is fair, honest and respectful;
- Be available to listen and respond openly and honestly to community concerns;
- Members can advocate on behalf of the community if they consider any one position to be representative, however they must set aside their own personal views, even if those views are contrary to the community position;
- Ensure that in the event issues are raised by the community, members will maintain complete objectivity and always endeavor to seek advice and context from the organisation in working through the issue; and
- Ensure their interactions with the community are always respectful of the organisation, staff and fellow members.

## 6 Media and social media

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

1. In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.
2. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
  - Comments shall be consistent with the Code;
  - Comments must not purposefully misrepresent the views of the Council or the views of other members;
  - Social media pages controlled by members and used for making observations relevant to their role as an elected members should be open and transparent;
  - Social media constitutes published material. The Council is obligated to monitor all published material and raise any matters that are inaccurate, inappropriate or reputational in nature. For clarity members social media posts are subject to the Code of Conduct but this should not impede any member's ability to clearly state their personal position on a matter as outlined (See [Appendix A](#) for guidelines on the personal use of social media):
  - Social media posts about other members, 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); and
  - Members will operate in the spirit of 'no surprises'. This is particularly relevant where the comment may generate further media enquiries to other members or staff.

## 7 Information

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

### 7.1 Confidential information

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

All confidential matters will be considered in terms of potential future release of material under delegation to the Chief Executive.

## 7.2 Information received in capacity as an elected member

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

## 8 Conflicts of Interest

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

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

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

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

## 9 Register of Interests

Members shall undertake a six month review of their declaration of interest made at the commencement of the triennium. These declarations are recorded in a public Register of Interests maintained by the Council. The declaration must include information on the nature and extent of any interest, including:

- a) Any employment, trade or profession carried on by the member or the members' spouse/partner for profit or gain;
- b) Any company, trust, partnership etc for which the member or their spouse/partner is a director, business partner or trustee;

- c) A description of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and
- d) A description of any land owned by the local authority in which the member or their spouse/partner is:
  - A tenant; or
  - The land is tenanted by a firm in which the member or spouse/partner is a business partner; a company of which the member or spouse/partner is a director; or a trust of which the member or spouse/partner is a trustee.
- 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 the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families, personal or business interests;
- Only use the Council's resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; 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 the code.

## 11 Creating a supportive and inclusive environment

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

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

- Taking part in any assessment or evaluation of the members' performance and operating style during the triennium.<sup>2</sup>
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the city, district or region.

## 12 Breaches of the Code

Members must comply with the provisions of the code (LGA 2002, schedule 7, cl. 15(4)). Any member, or the Chief Executive, who believes that the code has been breached by the behavior 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 the processes for investigating and determining whether or not a breach under the code has occurred:

- The approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- The processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- The concepts of natural justice and fairness will apply in the determination of any complaints made under the code. This includes the following rights, conditional on the nature of an alleged breach, which are afforded to 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 an impartial hearing;
  - Have a right to seek appropriate advice and be represented; and
  - Have their privacy respected. Note: This may not apply where a matter is deemed to be material and the subject matter appropriate for public scrutiny in the spirit of a transparent process.

### 12.2 Raising a Complaint

There are three different methods by which a complaint may be raised:

1. A **complaint is made by an elected member** about another elected member.
2. An **issue is raised by a member of the public** about an elected member. In this case, the Mayor will review and after consultation with the Chief Executive, decide whether to raise a complaint on behalf of the member of the public
3. An **issue is raised by a member of QLDC staff** about an elected member. In this case, the CE will review and decide whether to raise a complaint on behalf of the staff member.

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

For the avoidance of doubt, only Elected Members and the Chief Executive can make a complaint alleging a breach of the Code of Conduct. Neither the public nor QLDC staff members (with the exception of the CE) can personally make a complaint. Under such circumstances either the Mayor or the Chief Executive will choose whether to make a complaint on behalf of the member of public or QLDC staff.

In all of the above scenarios, if a complaint or issue relates to the Mayor, then all complaint management responsibilities shall be transferred in their entirety to the Deputy Mayor.

### 12.3 Complaint Investigation Process

The high level process flow for investigating a complaint about a breach of the Code of Conduct is illustrated in [Appendix C](#).

The detailed breakdown for each process step is as follows:

Process Step		Description
Step 1	Complaint Received by CE	<p>All complaints made under the Code of Conduct must be made in writing and submitted to the Chief Executive with a clear description of the alleged breach.</p> <p>Upon receipt the Chief Executive shall forward the complaint to the Mayor/Deputy. They shall also inform the Elected Member who is the subject of the complaint.</p>
Step 2	Initial Assessment by Mayor/Deputy	<p>An initial investigation of the complaint will be undertaken by the Mayor/Deputy and Chief Executive. This may involve interviews with the Complaint Raiser and the Elected Member for the purpose of understanding the full extent of the complaint.</p> <p>If the Mayor considers it necessary, additional interviews with the member of the public or staff who raised the issue may also be conducted.</p>
Step 3	Materiality Assessment	<p>The Mayor/Deputy will determine, at their sole discretion, whether the complaint is material or non-material.</p> <p>For the purpose of this assessment the following definitions shall apply:</p> <ul style="list-style-type: none"> <li>• <b>Material</b> means a breach of the code that would bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.</li> <li>• <b>Non-material</b> means a breach of the code where any adverse effects are minor and no investigation or referral is warranted or if the complaint is trivial, frivolous or vexatious.</li> </ul>

		The Mayor/Deputy may consult with the Chief Executive for the purpose of making this determination.
Step 4	Complaint is assessed as being <b>non-material</b>	<p>If the Mayor/Deputy considers that a complaint is non-material, they may undertake any of the following actions, as appropriate to the circumstances:</p> <ul style="list-style-type: none"> <li>• Dismiss and close the complaint</li> <li>• Request an apology from the Elected Member or assist to find a mutually agreeable course of remediation</li> </ul> <p>The Chief Executive will communicate the decision and complaint closure outcome to all affected parties which are not open to challenge.</p>
Step 5	Complaint is assessed as being <b>material</b>	If the Mayor/Deputy considers a complaint is material, the complaint will be referred back to the Chief Executive for referral to an Independent Investigator.
Step 6	Appointment of Independent Investigator	<p>An Independent Investigator shall be appointed from a list that is determined by the Chief Executive in consultation with the Mayor.</p> <p>The Chief Executive will inform the Complaint Raiser and affected Elected Member that an Independent Investigator has been appointed and will provide them with the name of the Investigator.</p>
Step 7	Initial assessment by Independent Investigator	<p>Upon receipt of the complaint the Investigator will assess whether:</p> <ol style="list-style-type: none"> <li>1. The complaint is outside the scope of the Code of Conduct (e.g. legislative breach) and should be re-directed to another agency or institutional process;</li> <li>2. The complaint is non-material; or</li> <li>3. The complaint is material and a full assessment is required.</li> </ol> <p>In making this assessment the Investigator may undertake whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties. A preliminary assessment report will then be provided to the Chief Executive.</p>
Step 8	Investigator determines complaint to be <b>non-material</b>	<p>If the Independent Investigator determines the complaint to be non-material and may recommend a course of action appropriate to the breach, such as:</p> <ul style="list-style-type: none"> <li>• The Elected Member is referred for guidance; and/or</li> </ul>

		<ul style="list-style-type: none"> <li>The Elected Member attend appropriate courses or programmes to increase their knowledge and understanding of the matter that instigated the complaint.</li> </ul> <p>The Chief Executive will advise the Mayor of the Investigator's recommendation who may then decide whether or not to impose the recommended course of action.</p> <p>The Chief Executive will advise both the Complaint Raiser and the Elected Member of the Mayor's decision which is not open to challenge.</p>
Step 9	Investigator determines complaint to be <b>material</b>	<p>If the Independent Investigator determines the subject of the complaint to be material, then the Chief Executive will inform the Complaint Raiser and Elected Member.</p> <p>The Investigator will then prepare a report for the Elected Member Conduct Committee on the seriousness of the breach. In preparing the report, the investigator may:</p> <ul style="list-style-type: none"> <li>Consult further with the complainant, respondent and any directly affected parties; and/or</li> <li>Undertake a hearing with relevant parties; and/or</li> <li>Refer to any relevant documents or information.</li> </ul>
Step 10	Convene Elected Member Conduct Committee	<p>On receipt of the Investigator's report, the Chief Executive will convene the Elected Member Conduct Committee to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed.</p> <p>The Committee shall be convened in accordance with the Terms of Reference.</p> <p>Committee meeting will be held in a public excluded forum in accordance with (s48, LGOIMA 1987)</p> <p>Chief Executive will be present and will prepare a report outlining the recommendations of the Committee.</p>
Step 11	Report to full Council	<p>The Chief Executive will report the findings of the Elected Member Conduct Committee to Council which will consider the recommendations and make a decision.</p> <p>There will be no opportunity for further debate in respect of the report.</p>

Note: If the Mayor/Deputy chooses they may bypass their initial assessment (step 2-5) and immediately refer the complaint via the Chief Executive to an independent investigator.

## 13 Penalties and actions

Where a complaint is determined to be material and referred to Elected Member 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 the Code, the Elected Member Conduct Committee, may recommend one of the following:

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

The Elected Member Conduct Committee may recommend that instead of a penalty, one or more of the following may be required:

- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology and where appropriate, for example in the event of a published statement in breach of the code, issue a public apology.

On consideration of the recommendation from the Elected Member Conduct Committee, the Council may impose any of the above recommended actions.

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

## **14 Review**

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

The code can be reviewed at the commencement of each triennium, in the event that matters have arisen in the course of the term that may need to reflect in a revision to the code.

## Appendix A: Guidelines on the personal use of social media<sup>3</sup>

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.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
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 the local authority no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

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<sup>3</sup> Based on the Ruapehu District Council Code of Conduct.

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

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

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

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

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

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

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

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

### Determining whether a pecuniary interest exists

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

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

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

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

Members may seek assistance from the Mayor/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 the Council's Standing Orders.)

### **The contracting rule**

A member is disqualified from office if he or she is "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

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

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

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

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

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

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

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

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

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

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

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

See 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 person's, monetary gain or advantage.

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

## **Financial Markets Conduct Act 2013**

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

## **The Local Government Act 2002**

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

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

- a) Money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) An asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) A liability has been unlawfully incurred by the local authority; or
- d) A local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.<sup>890</sup>

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

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

In certain situation members will also be responsible for paying the costs of proceedings (s47 LGA 2002).

# Appendix C: Complaint Investigation Process

