

# Auckland Council Elected Members Code of Conduct - Attachments -

Adopted 27 May 2021



## AMENDMENTS

Date	Attachment	Amendment	Comment
3 February 2002	D - Election year policy	Changed references to the Auditor-General's guidance to that of Taituarā / LGNZ guidance.	Auditor-General has removed guidance from website.
3 February 2002	D - Election year policy	Inserted the 2022 election timetable and made additions to FAQs.	Updated to make current.
1 December 2022	A – Conflict of interest policy	Amended clauses 4.1 to 4.4 to align with the timeline in LGA 2002 s 54C. Amended gift threshold in 4.5 (n) to \$500.	Governing Body resolution: GB/2022/12

# CONTENTS

<b>A</b>	<b>Conflict of interest policy .....</b>	<b>1</b>
1	Purpose .....	1
2	Conflicts of Interest (bias) .....	1
3	Pre-determination .....	5
4	Register of Members' Interests .....	6
5	Further Information and Guidance .....	8
<b>B</b>	<b>Confidential information - policy and protocol .....</b>	<b>13</b>
	Policy .....	13
1	Purpose .....	13
2	Principles .....	13
3	Nature of confidential information .....	13
4	Provision of confidential information .....	15
5	Requirement in relation to disclosure of information .....	15
6	Managing the disclosure of confidential information .....	16
7	Access to non-confidential information .....	17
8	Council-controlled organisations .....	17
	Protocol .....	18
9	Purpose .....	18
10	Interpretation .....	18
11	Elected members' right to council information under the "good reason" principle .....	19
12	Requests for confidential information under the "good reason" principle .....	21
13	Council-controlled organisations .....	23
<b>C</b>	<b>Working with staff policy .....</b>	<b>25</b>
1	Role and responsibilities of staff .....	25
2	Our Charter .....	25
3	Conduct .....	26
<b>D</b>	<b>Election year policy .....</b>	<b>29</b>
1	Summary .....	29
2	Who does this policy apply to? .....	29
3	Complaints about potential breaches of this policy .....	29
4	Principles .....	29
5	General business of council continues during pre-election period .....	30
6	Use of council resources .....	30
7	Use of mayoral resources .....	31
8	Elected members correspondence .....	31
9	Council communications .....	31
10	Council support staff for elected members .....	32
11	Neutrality of public servants .....	32
12	Definitions .....	33
13	Related policies .....	33
14	Operational protocols .....	33
15	FAQ .....	34
<b>E</b>	<b>Communications policy .....</b>	<b>37</b>
1	Definition of Communications .....	37
2	Provision of communications .....	37
3	Protocols .....	38

4	Auckland Council’s Council Controlled Organisations .....	38
<b>F</b>	<b>Media protocols .....</b>	<b>39</b>
1	Responding to media .....	39
2	Speeches .....	39
<b>G</b>	<b>Social Media Guidelines .....</b>	<b>41</b>
1	Social media .....	41
2	Dealing with online abuse.....	41
3	Elected member conduct on social media.....	43
4	Staff support .....	44
<b>H</b>	<b>Governance roles and responsibilities .....</b>	<b>45</b>
1	Mayor of Auckland.....	45
2	Role of governing body.....	45
3	Role of local boards .....	46
4	Role of elected members.....	46
5	Protocols for working together.....	49
6	Protocols for engaging with the public.....	49
<b>I</b>	<b>Expense policy.....</b>	<b>51</b>
1	Purpose and scope.....	52
2	Overarching principles .....	52
3	Allowances and benefits .....	53
4	Health, Safety and Well-being .....	54
5	Travel rules and processes.....	54
6	Land and sea transport .....	55
7	Air travel .....	56
8	Accommodation.....	56
9	Travel expenses .....	57
10	Travel insurance .....	59
11	Professional development programmes and conferences.....	60
12	Catering, hospitality and entertainment .....	61
13	Approval process .....	63
14	Breach of expense and reimbursement rules .....	65
<b>J</b>	<b>Legislation relevant to the conduct of members .....</b>	<b>67</b>
1	Introduction .....	67
2	Local Government Act 2002.....	67
3	Local Government (Auckland Council) Act 2009.....	68
4	Local Authorities (Members’ Interests) Act 1968.....	68
5	Local Government Official Information and Meetings Act 1987 (LGOIMA) .....	69
6	Health and Safety at Work Act 2015.....	69
7	Secret Commissions Act 1910.....	70
8	Crimes Act 1961.....	70
9	Financial Markets Conduct Act 2013 .....	70
10	Public law decision-making principles .....	71
11	Council decision-making requirements.....	72
12	Personal liability of elected members .....	73

# A Conflict of interest policy

## 1 Purpose

- 1.1 This Policy sets out the expectations on and requirements of elected members of Auckland Council regarding conflicts of interest (bias) and pre-determination.
- 1.2 This Policy seeks to preserve the integrity of the council's decisions. If elected members participate in a decision when they have a conflict of interest or a closed mind, public confidence in those decisions will be diminished and the decisions themselves may be exposed to challenge by judicial review. This causes delay, cost and uncertainty. Elected member conflicts of interests pose a reputational, legal and financial risk to not only the individual elected member, but also the council.
- 1.3 Conflicts of interest are concerned with public perceptions as to impartial decision-making, based on the interests or relationships of the decision-maker. Pre-determination is concerned with "closed mind" decision-making and is not dependent on the interests or relationships of the decision-maker.
- 1.4 The purposes of this Policy are –
  - (a) to ensure that elected members make decisions on their merits, in the interests of the public, and unaffected by illegitimate considerations such as personal interests, or other duties or relationships;
  - (b) to ensure that elected members make decisions with an open mind to the views of others and to alternatives, and are prepared, despite any predisposition, to change their mind;
  - (c) to ensure the integrity of decisions made by Auckland Council, and to ensure that the people of Auckland can have trust and confidence in the decision making of the council's elected members.
- 1.5 To achieve the purposes of this Policy, elected members must disclose all personal and outside interests, relationships and duties, and abstain from discussion and voting where they have a conflict of interest or a closed mind. A register of interests is maintained by Auckland Council.
- 1.6 This Policy applies to all elected members of Auckland Council.

## 2 Conflicts of Interest (bias)

- 2.1 A conflict of interest may arise from a financial or non-financial interest of an elected member.

## Financial interest

- 2.2 An elected member has a financial interest in a matter being decided by Auckland Council (Governing Body or local boards) if they could reasonably expect a financial gain or loss, depending on how the council decides to deal with the matter. An interest in common with the public (for example as a general ratepayer of Auckland) is not a concern. For a financial interest to arise, it does not matter how the elected member votes (or intends to vote), or whether financial gain is sought.
- 2.3 A member could have a financial interest if, for example, the decision involves a quantifiable dollar amount, cash changing hands, or if the decision could be expected to have an effect on the value of land or shares that an elected member owns, or the turnover of a business that an elected member is involved in.
- 2.4 The interest may be direct or indirect. A direct interest will usually involve a direct financial gain or loss to an elected member. An indirect financial interest will usually involve financial gain or loss to other people or organisations an elected member is connected to. An elected member must consider the financial interests of their spouse/partner as their own.
- 2.5 Where a decision may give rise to a very small financial gain or loss to an elected member, this may be too trivial or negligible to amount to a financial interest. This will depend on the circumstances of the particular interest and decision.
- 2.6 The question of whether an interest is held in common with the public is a matter of fact and degree. While there is no formula that can be applied to this assessment, it generally requires a consideration of:
- (a) whether there is a group of people “in common” with the member, who are affected by the proposed decision, in a similar way and to a similar magnitude. The most materially similar group should be considered (usually the smallest group, or the most significantly affected group); and
  - (b) whether the group can be considered the “public”, that is, whether the group is a fair proxy for the people of Auckland, and so it is legitimate for the elected member to act in the interest of this group to the exclusion of other groups?
- 2.7 If an elected member has a financial interest in a decision before the council, they must apply the test for a conflict of interest at clause 2.12 of this Policy to determine whether they may participate in decision-making on the matter.
- 2.8 Participating in a decision where an elected member has a financial interest may (as well as undermining the integrity of the council decision) also constitute an offence under the Local Authorities (Members’ Interests) Act 1968 (**LAMIA**), and this may have personal consequences for the individual elected member.

## Non-financial interest

- 2.9 An elected member has a non-financial interest in a matter being decided by Auckland Council, if they have a relationship, involvement or role with an individual or organisation, or a duty to an individual or organisation (usually separate to their role as an elected member), in circumstances where that individual or organisation is involved in or affected by a matter before the council.

- 2.10 The interest or duty arises from a pre-existing state of affairs. Common non-financial interests may arise from a personal relationship, such as with family, or friends. Other interests may arise from involvement or roles with organisations, such as community groups, clubs or churches.
- 2.11 If an elected member has a non-financial interest in a decision before the council, they must apply the test for a conflict of interest at clause 2.12 of this Policy to determine whether they may participate in decision-making on the matter.

### Test for conflict of interest

- 2.12 Once a financial or non-financial interest is identified, the test for whether that interest may constitute a conflict of interest is:<sup>1</sup>

Would a fair-minded observer reasonably think that a member of the decision-making body might not bring an impartial mind to the decision, **in the sense that they might unfairly regard with favour (or disfavour) a particular position due to their financial or non-financial interest?**

- 2.13 This question is not just limited to *actual* bias, but also the *appearance or possibility* of bias. This is because even the appearance of bias may undermine public trust and confidence in council decision-making.
- 2.14 When applying this test, fair-minded observers should be taken to understand the practicalities and political context of local government. Local authorities are different in nature to other decision-making bodies, such as courts and judges, and elected members are not required to be entirely impartial or removed from their communities. The democratic status of a local authority, the representative nature of members of a local authority, and the practice of decisions being made by a committee of members by majority vote must be recognised. So too must the type of decision being made. Some decisions, such as decisions under the Resource Management Act 1991 and those requiring a formal statutory process and hearing, require a higher degree of impartiality than decisions that are more high-level policy making, or where it is a recommendatory power only.
- 2.15 Where an elected member has a direct financial interest, a fair-minded observer will be quick to assume that they might not bring an impartial mind to the decision.

### Management of Conflicts of Interest

- 2.16 Elected members are required to evaluate their financial and non-financial interests to determine whether or not they have a conflict of interest in any matter being discussed or voted on.
- 2.17 If an elected member is concerned they may have a conflict of interest in a matter before the council (either financial or non-financial), they must consider and review this Policy and the flow chart (see Appendix 3 of this Policy), and/or seek advice from the chief executive. If it is a non-financial interest, elected members may also find

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<sup>1</sup> Derived from *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2010] 1 NZLR 35, [2010] 1 NZLR 76, and the OAG LAMIA Guidelines and OAG Managing conflicts of interest guide.

assistance from the Office of the Auditor General's Managing conflicts of interest: a guide for the public sector (**OAG Managing conflicts of interest guide**).

- 2.18 Additionally, if it is a financial interest, the elected member should review the Office of the Auditor-General's Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest (**OAG LAMIA Guidelines**), and should also consider seeking advice from the Office of the Auditor-General or independent legal advice.
- 2.19 If an elected member has a conflict of interest, they must not participate in discussion or voting on the matter. The elected member must:
- (a) declare that a conflict of interest exists at the beginning of the meeting;
  - (b) refrain from discussing or voting on the matter;
  - (c) leave the meeting table while the matter is being discussed or voted on (but may remain in the meeting room if appropriate);
  - (d) ensure that the declaration and abstention are recorded in the meeting minutes.
- 2.20 Reminders to elected members to declare any conflicts of interests are included as a standard item on meeting agendas. If they wish, elected members may also declare any interest (which the member has determined does not constitute a conflict of interest) at the beginning of a meeting, but are not required to do so.
- 2.21 In addition, in order to protect against conflicts of interest, elected members must not accept any gifts (including hospitality and entertainment) from parties to any regulatory process that the council is making decisions on, where the elected member is directly involved or interested in the governance or administration of the regulatory process itself. This requirement does not apply to regulatory decisions which concern the public generally, for example, decisions relating to the adoption or review of a Bylaw.
- 2.22 It is a breach of this Policy if an elected member has a financial or non-financial conflict of interest in a decision, and does not manage it in accordance with clauses 2.16 - 2.21 of this Policy.

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

- 2.23 In addition to this Policy, elected members must also comply with any other legal requirements relating to conflicts of interest. This includes the requirements set out in LAMIA. Of particular note:
- (a) it is an offence under LAMIA for an elected member to participate in discussion or voting on any matter before the council in which they have a direct or indirect financial interest, other than an interest in common with the public;<sup>2</sup> and
  - (b) an elected member is automatically disqualified from office, if they are "concerned or interested" in contracts with the council and the total payments

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<sup>2</sup> LAMIA, section 6.



made, or to be made, by or on behalf of the council exceed \$25,000 (inclusive of GST) in any financial year.<sup>3</sup>

- 2.24 For advice on compliance with LAMIA, elected members should review the OAG LAMIA Guidelines and/ or seek advice from the Office of the Auditor-General or independent legal advice.

### 3 Pre-determination

- 3.1 Pre-determination is concerned with “closed mind” decision-making and, unlike conflicts of interest, is not dependent on the relationships or interests of the decision-maker. It is generally based on the expression of a view or conduct; for example, an elected member making a statement that indicates their mind is made up about a particular matter before having heard all views, or refusing to read or listen to reports or submissions presented to the council on the matter.

#### Test for pre-determination

- 3.2 Pre-determination requires proof of “actual pre-determination or fettering rather than the appearance of the same”.<sup>4</sup> For an elected member to have pre-determined a matter, they must have an actual closed mind. This will be assessed based on evidence which is capable of objective assessment, such as things the elected member said or did prior to the decision, or other documentary evidence such as decision papers or advice. A mere statement by an elected member after the fact that they did not have a closed mind may not be sufficient to displace an allegation of pre-determination.
- 3.3 In a local authority context, elected members may approach their task with a legitimate predisposition to decide in accordance with particular views on certain issues that they have previously articulated. What is critical is that an elected member is “prepared, despite predisposition, honestly to consider whether to change its mind”.<sup>5</sup> This requirement is reinforced by statutory obligations to have an open mind. For example, a principle of consultation under s 82(1)(e) of the Local Government Act 2002 is that a local authority should receive views presented to it with an open mind, and in making a decision give those views due consideration.

#### Avoiding pre-determination

- 3.4 Elected members must approach decisions with an open mind. They must listen to and consider the views of others, staff reports and advice, and submissions and feedback presented to the council. They should avoid making statements or exhibiting behaviours that suggest that they have made up their mind before all views have been heard and deliberated on.
- 3.5 Where an elected member has pre-determined a matter, they must refrain from discussing or voting on the matter. In addition, elected members must not deliberate

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<sup>3</sup> LAMIA, section 3.

<sup>4</sup> *Travis Holdings Ltd v Christchurch City Council* [1993] 3 NZLR 32 (HC) at 47.

<sup>5</sup> *Friends of the Turitea Reserve Society Inc v Palmerston North City Council* [2008] 2 NZLR 661 (HC) at [102], per Baragwanath J.

on a public consultation process where that member has made a personal submission.

- 3.6 If an elected member is in doubt as to whether there is a risk of pre-determination, they must consider and review this Policy, and/or seek advice from the chief executive. The elected member may also find assistance from the OAG Managing conflicts of interest guide.
- 3.7 It is a breach of this Policy for elected members to discuss or vote on a matter if they did not approach the decision with an open mind.

## 4 Register of Members' Interests

- 4.1 Elected members must make a full and complete declaration of interests they hold each year (the **Annual Declaration**). Members must make their declarations by the following dates:
- (a) the day that is 120 days after the date on which the member comes into office under section 115 of the Local Electoral Act 2001
  - (b) the last day of February in each subsequent year.
- 4.2 The Annual Declaration must notify the council of the nature and extent of any interest as required under clause 4.5 below **for the 12-month period that ended on the day one month prior to the dates in 4.1.**
- 4.3 Elected members must also advise the Registrar as soon as practicable during the year if any new interests arise.
- 4.4 The Annual Declarations for all elected members are recorded in a Register of Members' Interests maintained by the council (the **Register**) and a summary is published on the council's website.

### Content of Return of Declaration of Members' Interests

- 4.5 Every Annual Declaration must notify the council of the nature and extent of any interest, including:
- (a) **Property interests:** location of, and general nature and extent of, any legal or beneficial interests in land in Auckland of the member or their spouse/partner;
  - (b) **Trusts (beneficiary):** general nature and extent of any interest in trusts for which the member or their spouse/partner is aware, or ought reasonably to be aware, that they are a beneficiary;
  - (c) **Companies and businesses:** name of any company or business, and general nature and extent of, any financial interest of the member or their spouse/partner in the company or business.;
  - (d) **Employment:** any employment for which the member receives remuneration, including the name of each employer of the member, a description of the main business activities of each employer, and the nature of the member's role and remuneration;

- (e) **Other sources of income:** any other role for which the member receives remuneration, and the nature of the remuneration, including for directorships, trusteeships, or other governance roles;
- (f) **Debtors:** any debtors of the member and their spouse/partner, including the name of the debtor, a description of the debt owed and the interest rate, and whether the debt is worth more or less than \$50,000;
  - (i) For the purposes of this clause, a member does not have to disclose:
    - (A) A relationship property settlement, where the member is a creditor in respect of the settlement;
    - (B) Any debt if the debtor is the member's spouse or domestic partner or any parent, child, step-child, foster-child or grandchild of the member; or
    - (C) Any debt if it is for the supply of goods or services and payment is required within 90 days of supply, or 90 days after the date of an invoice where the supply is continuous and periodic;
- (g) **Creditors:** any creditors of the member and their spouse/partner, including the name of the creditor, a description of the debt owed and the interest rate, and whether the debt is worth more or less than \$50,000;
  - (i) For the purposes of this clause, a member does not have to disclose
    - (A) Any home loan or mortgage from a registered bank;
    - (B) A relationship property settlement, where the member is a debtor in respect of the settlement;
    - (C) Any debt if the creditor is the member's spouse or domestic partner or any parent, child, step-child, foster-child or grandchild of the member; or
    - (D) Any debt if it is for the supply of goods or services and payment is required within 90 days of supply, or 90 days after the date of an invoice where the supply is continuous and periodic);
- (h) **Contracts:** any contracts with Auckland Council that the member or their spouse/ partner are involved in (or a company or business that the member or their spouse/ partner are interested in), and under which they receive payments from the council, including the general nature of the contract, the nature of the member's rights, and whether the combined value of payments by the council under the contracts is worth more or less than \$25,000 in any financial year;
- (i) **Trusts (trustee):** general nature of any trust for which the member is a trustee, and its activities and beneficiaries;
- (j) **Governance:** any governance roles in community organisations, including the name of the organisation and the nature of the member's role;
- (k) **Membership and patronage of community organisations:** any community or other organisation of which the member is a member or patron, including the name of the organisation and the nature of the role;

- (l) **Other appointments:** any appointment, except those made by the Governing Body or a local board, including the name of the organisation the member has been appointed to, and the nature of the appointment;
- (m) **Travel costs:** any contributions to travel costs of the member made by third parties, and the value of the contribution;
- (n) **Gifts:** a description of gifts received by the member over the value of NZD\$500, and the name of the donor of each of those gifts (if known or reasonably ascertainable by the member);
  - (i) For the purpose of this clause, **gift** –
    - (A) Includes hospitality (e.g. meals, corporate box) and donations in cash or kind other than donations made to cover expenses in an electoral campaign;
    - (B) Excludes gifts received from family members (that is, any of the following: the member’s spouse or domestic or any parent, child, step-child, foster-child or grandchild of the member.
- (o) Personal debts: description of personal debts of more than NZD\$50 that were owing by the member that were discharged or paid (in whole or part) by any other person and the names of each of those persons.

- 4.6 Except as otherwise provided, nothing in the Annual Declaration requires the disclosure of the actual value, amount or extent of any asset, payment, interest, gift, contribution or debt.

### Maintenance of the Register

- 4.7 The Register is maintained and updated on an ongoing basis, comprising all returns transmitted by elected members. Additional interests declared during the course of the year will be added to the Register as they occur.
- 4.8 The Register is maintained by the Registrar, or anyone who is authorised by the Registrar to act on their behalf. The Registrar is appointed by the chief executive, for the purposes of:
- (a) Compiling and maintaining the Register; and
  - (b) Providing advice and guidance to members in connection with their obligations under Section 4 of this Policy.
- 4.9 The Register (or a fair and accurate summary of its contents) is available for public inspection. The Register or the summary is published on the council’s website.

## 5 Further Information and Guidance

- 5.1 If an elected member has further questions about any matter covered by this Policy, they should:
- (a) Seek advice from the chief executive;

- (b) If they are concerned they may have a financial interest in a decision or may breach their obligations under LAMIA, consult the OAG Guidelines and/or seek advice from the Office of the Auditor-General;
- (c) Seek independent legal advice.

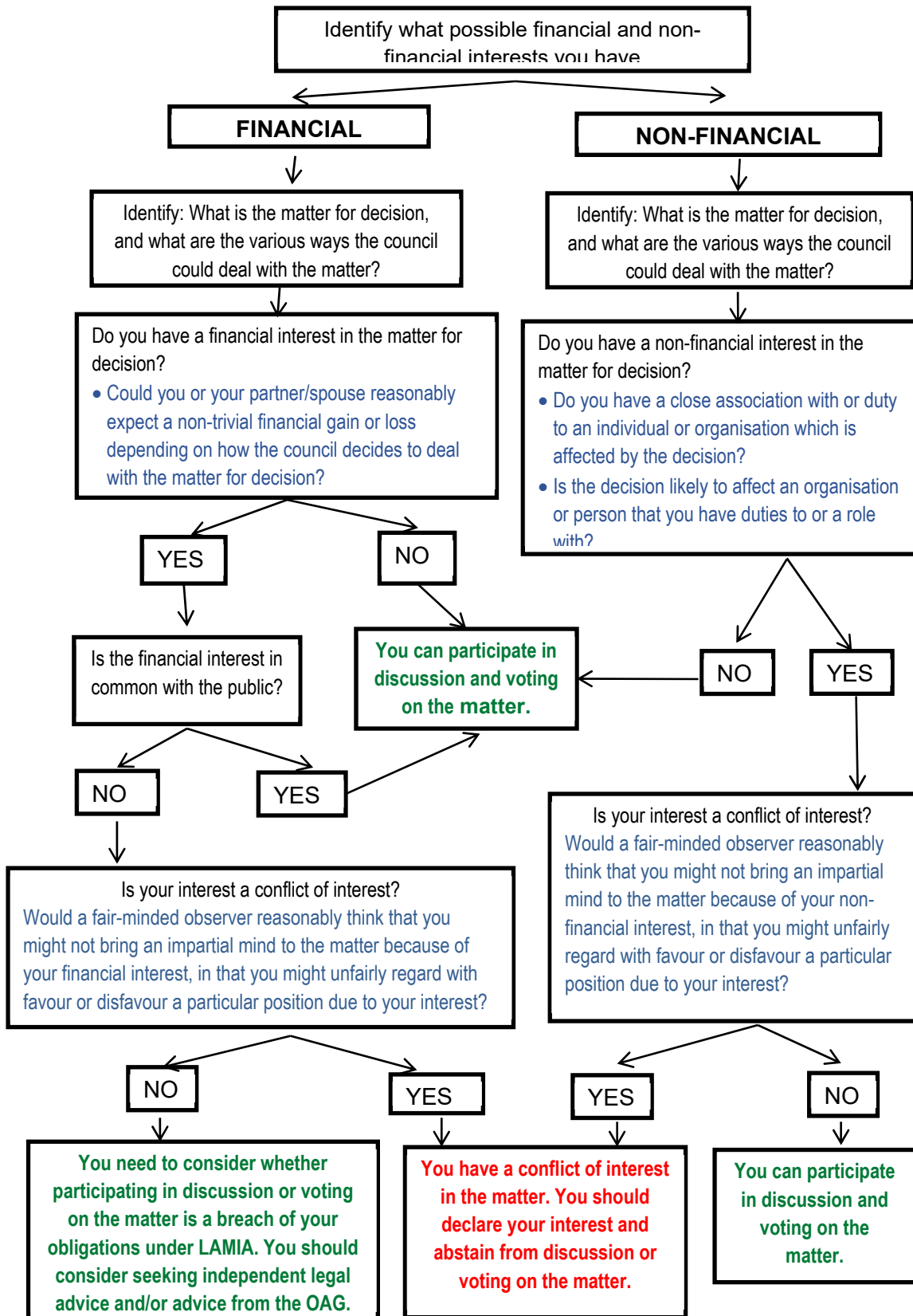
## Appendix 1: Types of financial interests which may give rise to a conflict of interest

Type of interest	Information that may be relevant in evaluating conflicts
<b>Land (legal interest)</b> – Legal interests in land in Auckland owned by the member or their spouse / partner.	Address or location of the land, the type and extent of interest, any formulated development plans for that land (e.g. a resource consent application).
<b>Trusts (beneficiary)</b> – Trusts for which the member or their spouse / partner is a beneficiary.	Name and type of the trust, the beneficiaries of the trust, the major assets of the trust in Auckland including any major interest in land in Auckland.
<b>Shares (public company)</b> – Any shares held by the member or their spouse / partner in a publicly listed company operating in Auckland.	Name of the company, the number of shares owned, the nature of the business.
<b>Private companies</b> – Any shares or ownership stake held by the member or their spouse / partner in a private company or other business (including as a sole trader, partnership or joint venture) operating in Auckland.	Extent of the ownership interest in the business, the nature of the business, the address of any sites it uses in Auckland (e.g. for trade or offices), the major assets of the company in Auckland.
<b>Land (other beneficial interest)</b> – Any other beneficial interest in land in Auckland owned by member or their spouse/ partner (e.g. a reversionary interest or a future interest).	Address or location of the land, the type and extent of interest, and any formulated development plans for that land (e.g. a resource consent application).
<b>Remuneration for governance roles</b> – Any directorships, trusteeships or other governance roles of the member or their spouse / partner for which they could receive remuneration.	Nature of the role, the nature of the remuneration that the member or their spouse /partner receives in this role and the major assets of the organisation in Auckland.
<b>Employment</b> – Any employment roles of the member or their spouse / partner.	Nature of the organisation, role and remuneration.
<b>Debtors</b> – Any person or organisation that owes money to the member or their spouse/partner.	The debtor and the amount owed.
<b>Creditors</b> – Any person or organisation that the member or their spouse/partner owes money.	The creditor and the amount owed.

## Appendix 2: Types of non-financial interests which may give rise to a conflict of interest

Type of interest	Information that may be relevant in evaluating conflicts
<b>Other duties and roles</b>	
<b>Trusteeships, directorships or other governance roles</b> – Organisations for which the member participates in the governance body.	Nature of the organisation, business, beneficiaries, the address of any sites it uses in Auckland (e.g. for trade or offices), its major assets in Auckland, the objects of the organisation, the nature of the member's role and duties (in particular, whether the member has fiduciary obligations or has access to confidential information).
<b>Other duties or obligations</b> – Any person or organisation that the member has a duty to, especially a fiduciary obligation, e.g. clients or power of attorney.	Nature of the person or organisation, their interests in Auckland, the objects of the organisation, the nature of the member's role and duties (in particular, whether the member has fiduciary obligations or confidential information).
<b>Close associations</b>	
<b>Memberships, patronage or close association with organisations</b> – Any organisation that the member belongs to, or has a close association with (for example because they are a patron).	Nature of the organisation, business, beneficiaries, the address of any sites it uses in Auckland (e.g. for trade or offices), its major assets in Auckland, the submissions and objects of the organisation, and the nature of the member's involvement in the organisation.
<b>Close relatives, business partners or other persons closely associated with the member</b> – Any person that the member is closely associated with, such that the member may be perceived to act in their interests.	The name of the person, the nature of their interests in Auckland, including any significant financial interests.

**Appendix 3: Do you have a conflict of interest in a council decision that means you should not participate in discussion or voting?**





## B Confidential information - policy and protocol

### Policy

#### 1 Purpose

- 1.1 This policy sets out the basis for managing confidential information including its disclosure.
- 1.2 The policy is followed by a protocol which provides a formal process for elected members to access confidential information relevant to their functions.
- 1.3 The protocol is one way, but not the only way, that elected members access confidential council information. Elected members obtain confidential information through a variety of channels such as agenda reports, discussion or correspondence with council staff and other elected members.
- 1.4 For avoidance of doubt, if there is any conflict between the policy and the protocol, the protocol prevails.

#### 2 Principles

- 2.1 All information held by the council is available to the public on request unless there are legal reasons for withholding it.<sup>6</sup>
- 2.2 **Confidential information** is information that could be withheld from the public if requested. Information can only be withheld from the public under grounds in the Local Government Official Information and Meetings Act 1987 (**LGOIMA**).
- 2.3 Elected members should be provided with and able to access information they need to know in order to properly discharge their duties as elected members, whether that information is confidential or not.
- 2.4 Staff have a duty to provide such information when advising<sup>7</sup> elected members and on request.
- 2.5 Elected members have a duty to ensure any confidential information held by them remains confidential.

#### 3 Nature of confidential information

##### Confidential information needs to be managed

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<sup>6</sup> LGOIMA 1987 s 5

<sup>7</sup> The chief executive has a responsibility to provide advice to members – LGA 2002 s 42

- 3.1 Confidential information (which could be withheld from the public if requested under LGOIMA) is confidential because it would cause harm, to the council or to someone else, if disclosed. Confidential information therefore needs to be managed.
- 3.2 Examples of types of harm that constitute good legal reason for withholding information<sup>8</sup>:
- Prejudice to maintenance of the law
  - Danger to personal safety
  - Breach of personal privacy
  - Disclosure of a trade secret
  - Prejudice to commercial position
  - Offence to tikanga Maori (for specific RMA matters – eg resource consent applications)
  - Breach of an obligation of confidentiality where such a breach would affect provision of information into the future or damage public interest
  - Prejudice to measures to protect health and safety, or prevent or mitigate material loss, to members of the public
  - Preventing the free and frank exchange of opinion by, to or between members and officers
  - Exposing members and officers to improper pressure or harassment
  - Breach of legal professional privilege (it being necessary to be able to seek legal advice without that advice needing to be disclosed – maintaining lawyer-client confidentiality)
  - Prejudice to the council's commercial position or its ability to carry out negotiations
  - The information would be used for an improper gain or advantage.

### How confidential information is managed

- 3.3 Because of the potential to cause harm, confidential information needs to be managed<sup>9</sup> to reduce risks.
- 3.4 Key practices to reduce risk include:
- limiting its distribution
  - managing requests for confidential information through a central point (such as dealing with requests from the public through the LGOIMA process)
  - labelling the information as confidential (however, the council holds a lot of information which is intended for internal use only and is not marked confidential)
- 3.5 The protocol following this policy sets out a formal mechanism for elected members to access confidential information.

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<sup>8</sup> LGOMIA 1987 s 6, 7

<sup>9</sup> For example, the inadvertent release by Government Departments of clients' personal details has received media attention.

## 4 Provision of confidential information

### An elected member's need for information

- 4.1 Where members make decisions and perform their governance role as a body, it is the responsibility of each individual member to be properly informed when taking part in discussions. Some of the information that elected members need in order to perform their governance role is confidential information.
- 4.2 Members also have an individual role of assisting people in their electorate. Often this is by way of being a conduit to accessing information or making service requests and complaints. This role is separate to members' governance role.

### Responsibility to provide information

- 4.3 It is the responsibility of the chief executive to provide advice to members.<sup>10</sup> This includes providing reports to meetings, through staff with expertise, together with attendance at such meetings in order that members have sufficient information to perform their governance responsibilities.
- 4.4 Members also have access to senior staff with responsibility for particular matters or issues.
- 4.5 The Governance Division provides additional support for members, which includes assisting members with obtaining information they need for making decisions at meetings and performing their role.
- 4.6 Staff have a responsibility to ensure that elected members have the information they need to know in order to properly discharge their duties as elected members. Staff fulfil this responsibility through the provision of information proactively in advising elected members, and in responding to elected member questions and requests.

### Trust and good faith

- 4.7 It is important to maintain a climate of trust between elected members and staff so that information is provided freely and in good faith, and confidentiality is observed.

## 5 Requirement in relation to disclosure of information

- 5.1 The Local Government Act 2002 requires a code of conduct to set out understandings and expectations in relation to disclosure of information that an elected member obtains in their capacity as a member and which relates to the ability of the council to give effect to provisions in that Act.

### Duty to maintain confidence

- 5.2 Elected members must not disclose confidential information to any person unless that disclosure is appropriately authorised.

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<sup>10</sup> LGA 2002 s 42

- 5.3 Failure to observe these provisions will impede the performance of the council by inhibiting information flows and undermining public confidence in the council. Failure to observe these provisions may also expose the council to liability under the Privacy Act 1993, other legislation and/or civil proceedings.
- 5.4 The unauthorised use or disclosure of confidential information is a breach of the Code of Conduct, and, depending on the type of confidential information disclosed and how it is used, may also result in loss of office.<sup>11</sup>

### Discussion at workshops

- 5.5 Elected members' obligations to maintain the confidence of information include maintaining the confidentiality of those workshops which are closed to the public. To enable the free and frank expression of views, elected members may not disclose to a member of the public the identity of the source of any comments made by another elected member at a non-public workshop without the express consent of the comment maker<sup>12</sup>.
- 5.6 This does not prevent the disclosure of any information that is not confidential.

## 6 Managing the disclosure of confidential information

### Role of chief executive

- 6.1 The chief executive will indicate to members what information is confidential and the reasons why, when such information is presented at meetings and workshops. A member who is uncertain whether information is confidential should seek advice from staff.

### Preventing unauthorised disclosure of confidential information

- 6.2 When the public are excluded from a meeting for reasons under LGOIMA, members should clearly understand which information cannot be disclosed following the meeting.
- 6.3 Electronic access to confidential information is managed and limited to those who need access to the information:
- Meeting agendas and minutes on Nexus and Infocouncil, accessed by Governing Body members, local board members and IMSB members, may be limited to members of the respective meetings.
- 6.4 When information is provided to members in workshops, confidential information may be clearly indicated by:
- marking it 'confidential'
  - the workshop chair stating the confidential status of an item before it is presented
  - clearly describing what harm might be done if the information became public
  - stating when 'confidential' information becomes public following a workshop.

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<sup>11</sup> See, for example, s105 A Crimes Act, corrupt use of official information

<sup>12</sup> Based on the Chatham House Rule.

- 6.5 Depending on the degree of confidentiality and the particular circumstances, additional precautions may be taken at meetings:
- Physical copies of confidential documents are handed back when members leave the meeting
  - Personal devices are not brought into the meeting room
  - A non-disclosure agreement is signed (for example when dealing with a matter that could impact the stock market).

### Investigating an unauthorised disclosure of confidential information

- 6.6 The chief executive has discretion to investigate an unauthorised disclosure of confidential information. In deciding whether to investigate, the chief executive may take into account, given the circumstances of the breach:
- (a) The significance of the breach
  - (b) The likelihood of determining the cause
  - (c) The cost of the investigation.

## 7 Access to non-confidential information

- 7.1 Where a member has good reason to access non-confidential information as defined in 11.1 and 11.2 of the protocol that information will be provided in accordance with the timeframe set out in 12.5 to 12.7.
- 7.2 Where a member does not have good reason to access non-confidential information the member may request the information under LGOIMA as provided in 12.13.

## 8 Council-controlled organisations

- 8.1 **Part 6 Managing the disclosure of confidential information** applies as follows:
- (a) “Chief executive” means CCO chief executive for the purpose of ensuring a clear understanding of which information is confidential information (6.1 to 6.6)
  - (b) “Chief executive” means the Auckland Council Chief Executive for the purpose of investigating the unauthorised disclosure of CCO confidential information by an Auckland Council elected member on behalf of the CCO chief executive.
- 8.2 Elected members in receipt of confidential CCO information must protect the confidence of that information. Elected members must adhere to any restrictions properly placed on the use or disclosure of confidential CCO information by the relevant CCO.

# Protocol

## 9 Purpose

- 9.1 This protocol establishes a formal mechanism for elected members to access confidential council information in order to perform their functions and duties as members of the council.
- 9.2 This protocol provides that elected members have a **legal** right to access confidential council information in certain circumstances. However, this protocol is not the only way that elected members can access confidential council information. Elected members can continue to obtain confidential council information through a variety of channels such as agenda reports, discussion or correspondence with council staff and other elected members, and under LGOIMA.
- 9.3 The purposes of this protocol are –
- (a) To give effect to the legal principle that elected members have a right, in certain circumstances, to access confidential council information where reasonably necessary to enable them to properly perform their statutory functions as democratically elected local decision-makers.
  - (b) To facilitate elected members in fulfilling their representative duties as members of the council, to promote democratic and effective local government.
  - (c) To provide elected members with better and more efficient access to confidential council information than is provided for in the Local Government Official Information and Meetings Act 1987 (LGOIMA), by reducing the number of withholding grounds that can apply to the information and the timeframes for response.
  - (d) To provide for transparent and impartial decision-making on elected member requests to access confidential council information under this protocol, and for the decisions to be made by the chief executive.
  - (e) To provide a mechanism to reconsider the decisions of the chief executive made under this protocol.
  - (f) To provide that confidential council information will be made available to elected members in a manner that reflects the council's legal duty to protect the confidentiality of the information and does not prejudice the interests protected by sections 6 or 7 of LGOIMA.

## 10 Interpretation

- 10.1 **“Council information”** means any information held by the council and includes information held by:
- (a) the chief executive and council staff;
  - (b) elected members;

- (c) the Office of the Mayor; or
- (d) a statutory officer of the council;

in the capacity as an officer, member or employee of the council.

- 10.2 “**Council information**” does not include information held by a council-controlled organisation. The application of this protocol to confidential CCO information is set out in 13.
- 10.3 “**Confidential Council information**” means any council information that is **not** publicly available and that the council could **withhold from a member of the public** under LGOIMA.

## 11 Elected members’ right to council information under the “good reason” principle

### Council information that a member has good reason to access

- 11.1 An elected member is entitled to access confidential council information if they have a good reason to access that information.
- 11.2 Such a good reason will exist if access to the confidential council information is reasonably necessary to enable the elected member to properly perform:
- (a) their statutory functions as a local decision-maker (“**required for statutory functions**”); or
  - (b) their representative duties as a member of the council (“**required for representative duties**”).

**unless**, in either case, the withholding grounds in clause 11.7 or 11.8 of this protocol apply.

### Information required for statutory functions under clause 11.2(a)

- 11.3 The statutory functions of an elected member (except in the case of the mayor) are only performed through the Governing Body and local boards as **collective decision-making bodies**, unless an elected member has received delegations. The mayor has distinct **individual** statutory functions, which are defined in section 9 of Local Government (Auckland Council) Act 2009 (**LGACA**).
- 11.4 Unless a withholding ground under clause 11.7 of this protocol applies, a good reason to access the information will exist where:
- (a) for any **elected member**, the information is relevant to any business reasonably expected to be transacted at a meeting of a decision-making body of which the member is a part such as the Governing Body, a local board or a council committee;
  - (b) for an elected member with **delegated decision-making powers**, the information is relevant to any decision that they will make under a delegated function; or

- (c) for the **mayor** only, the information is relevant to the mayor's distinct statutory functions in section 9 of LGACA.

### Confidential information required for representative duties under clause 11.2(b)

- 11.5 Unless a withholding ground under clause 11.8 of this protocol applies, a good reason to access confidential information will exist to perform the elected member's representative duties where the elected member seeks, in good faith, to access the information in order to represent their constituents, or the people of Auckland, in matters of Auckland's local government.
- 11.6 For the avoidance of doubt, it will not be reasonably necessary for an elected member to access confidential council information to properly perform their representative duties under clause 11.2(b) if the information is sought by an elected member on behalf of a constituent. In such cases, the information should be sought by the elected member under LGOIMA.

### Grounds for withholding information

- 11.7 Information that an elected member would otherwise have a good reason to access under clause 11.2(a) (required for statutory functions) **may be withheld** if:
- (a) Section 6 of LGOIMA (conclusive reasons for withholding information) applies. This will be the case when making the information available to the elected member or mayor would be likely to—
    - (ii) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
    - (iii) endanger the safety of any person.
  - (b) The information is generated by or on behalf of an elected member, the mayor **or** the Office of the Mayor, **and** a good reason to withhold the information under section 7(2)(f)(i) of LGOIMA exists. That will be the case when withholding the information is necessary to maintain the effective conduct of public affairs by protecting the free and frank expression of opinions.
- 11.8 Information that an elected member would otherwise have a good reason to access under clause 11.2(b) (required for representative duties) **may be withheld** if a good reason to withhold the information under section 6 or 7 of LGOIMA exists.
- 11.9 In all circumstances, information may not be withheld from the elected member under clauses 11.7 or 11.8 if the information could be made available to the elected member confidentially (under clauses 11.10 - 11.11 of this protocol) in a manner that:
- (a) mitigates prejudice to the interests protected by the applicable withholding ground under section 6 or 7 of LGOIMA; **and**
  - (b) reasonably serves the elected member's good faith reasons for seeking access to the information.



### Manner in which access to confidential information is provided

- 11.10 For any request made under this protocol, where confidential council information is to be made available, the information shall be made available in the following manner:
- (a) providing a copy of the information, with or without a distinguishing mark and /or a requirement that the copy be returned within a specified period;
  - (b) providing access to the information through an electronic portal;
  - (c) furnishing oral information about the information;
  - (d) giving the elected member or mayor a reasonable opportunity to inspect the information; and/or
  - (e) giving an excerpt or summary of the information; and / or
  - (f) in all cases, if required to protect the privacy of natural persons, by providing the information with personal information redacted.
- 11.11 Any conditions placed on access to information in accordance with Clause 11.10 above must be reasonably necessary to protect the interest that renders the information confidential, and take into account the circumstances and the nature of the confidentiality.

## 12 Requests for confidential information under the “good reason” principle

### Making a request

- 12.1 Elected members may seek access to confidential council information under this protocol by making a request **in writing** to the chief executive.
- 12.2 An elected member making a request for access to confidential council information must state **in writing**:
- (a) whether the information is sought for the member to properly perform either:
    - (i) their statutory functions as a local decision-maker; (under clause 11.2(a)); **or**
    - (ii) their representative duties as a member of the council (under clause 11.2(b)); **and**
  - (b) the circumstances that mean the information is reasonably necessary for that purpose.
- 12.3 By making a request under this protocol, an elected member agrees to abide by any restrictions regarding access to confidential council information that are required by the chief executive
- 12.4 The following template may be used for making a request:
- To: [Chief executive]
- From: [Name of member]

Subject: Formal request for confidential information under the Code of Conduct Confidential Information – Policy and Protocol

Information requested: [Describe the confidential information]

Function being performed:

[Either:] - statutory function as a decision-maker

[Or:] - representative duties as a member

Why the confidential information is reasonably necessary to perform this function:

[Explanation of why the confidential information is required]

Whether it is intended to share the information:

[Explanation of whether the member intends to share the confidential information, for example with other elected members at a meeting.]

### Timeframe for response

- 12.5 After receiving a request under this protocol, the chief executive must **make a decision** as soon as reasonably practicable and in no case later than **5 working days**.
- 12.6 In either case, the chief executive may **extend the time for decision** and response on a request by a **further 5 working days** if:
- (a) consultations are necessary to make a decision on the request; or
  - (b) meeting the original time limit would unreasonably interfere with the operations of the council.
- 12.7 If a request relates to business to be transacted at a council meeting then the chief executive's decision should, to the extent possible, be provided at least one working day before the meeting.

### Consultations

- 12.8 If the information requested is held by an elected member, the Office of the Mayor or a statutory officer of the council, the chief executive must consult with the person who holds the information before making a decision.
- 12.9 Where an elected member, the Office of the Mayor or a statutory officer of the council holds information requested under this protocol, that person must provide that information to the chief executive to enable the chief executive to make a decision on the request.

### Decision and response

- 12.10 The chief executive must make a decision and notify the elected member whether the confidential information requested will be withheld or provided.
- 12.11 The chief executive's response must inform the elected member of:

- (a) whether any of the information requested is held as council information and whether it is confidential council information;
- (b) the chief executive's decision on whether access to the information is reasonably necessary for the elected member under clause 11.2(a) (required for statutory functions) or clause 11.2(b) (required for representative duties); and
- (c) any withholding grounds that apply to the information requested;
- (d) any conditions that will apply to the provision of confidential council information.

12.12 If the confidential information is to be provided to the elected member, the chief executive must enable the member to access the information in accordance with this protocol.

12.13 If the chief executive considers the member does **not** have a good reason to access the confidential information, the chief executive should ensure that the request is subsequently considered by the council in accordance with LGOIMA. In these circumstances, the request must be treated by the council as having been made under LGOIMA on the date that it was first made to the chief executive.

### Challenging a decision of the chief executive

12.14 If any elected member is dissatisfied with a decision of the chief executive under this protocol, the elected member may complain to the Ombudsman.

## 13 Council-controlled organisations

13.1 Each council-controlled organisation is subject to the information requirements of LGOIMA including the principle that information shall be made available unless there is good reason under LGOIMA for withholding it.

13.2 **“Confidential CCO information”** means any information held by a CCO that is not publicly available and that the CCO could withhold from a member of the public under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

13.3 **Part 11 Elected members right to confidential council information under the good reason principle** applies as if “confidential council information” means “confidential CCO information”.

13.4 **Part 12 requests for confidential council information under the good reason principle** applies as if “confidential council information” means “confidential CCO information” and “chief executive” means “CCO chief executive”.



## C Working with staff policy

### 1 Role and responsibilities of staff

- 1.1 The Local Government Act requires the governing body to appoint a chief executive and cannot delegate the decision to a smaller group. The chief executive is the only employee directly appointed by the governing body. All other employees are appointed by the chief executive.
- 1.2 A healthy and productive relationship between governance and management, and between decision-making by elected representatives and operational activity, is essential to an authority's effectiveness. Problems in this relationship can have a significant effect on all levels of the organisation.<sup>13</sup>
- 1.3 The chief executive, who is appointed and employed by the governing body, is responsible for employing council staff, implementing governing body and local board decisions, and providing advice to the governing body and local boards.
- 1.4 Elected members and the chief executive need to have a clear and shared understanding of their different roles and responsibilities. In broad terms, the elected members have a governance role and the chief executive is responsible for managing the organisation and implementing governance decisions. However, in practice it is not always easy to identify where the line falls.
- 1.5 The Auditor-General has commented on the difference between local authority governance and operational roles:

*"[Having a] representational role and connection with the community is part of the role of an elected member, but so is the responsibility for steering and governing a substantial organisation with complex responsibilities."*

*"The governance role is about maintaining the broad view. It is about setting direction and policy, making significant decisions, testing advice to ensure that it is sound, monitoring the activities of management to ensure that what is being implemented will achieve the objectives, keeping an eye on risks of all kinds, and safeguarding the overall quality of the relationship between a council and its community. When members of a governing body become too involved in operational matters, the risk is that nobody maintains the broad view for the organisation and checks that the overall direction is still appropriate..."*

- 1.6 Elected members should not play too limited a role or leave too much to managers, nor should they get too involved in day-to-day managing. Both situations create risks.<sup>14</sup>

### 2 Our Charter

- 2.1 The chief executive and the executive leadership team have adopted a charter, "Our Charter", which forms a basis for staff conduct.

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<sup>13</sup> Governance Manual 3.2.8

<sup>14</sup> Governance Manual 3.2.9

- 2.2 Our Charter consists of six principles.
- We honour te Tiriti o Waitangi.
  - We make this a great place to work.
  - We look after our money and assets.
  - We look after people we serve.
  - We look after our information.
  - We look after our safety and wellbeing.
- 2.3 The charter's principles have associated guidelines which provide more detail.
- 2.4 "Our Charter" has been adopted in a context of "Speaking Up". Speaking up is:
- asking for advice
  - asking questions
  - suggesting improvement
  - sharing a concern
  - reporting wrongdoing.
- 2.5 Staff are expected to speak up about any observed wrong-doing.

### 3 Conduct

- 3.1 Elected members need to be aware that, as a result of their position, there is a power imbalance between them and members of staff, especially more junior staff<sup>15</sup>. Sensitivity to the power and authority attaching to their role as an elected member should be taken into account in all dealings with staff. As governors, elected members should interact mainly with senior staff or designated staff providing them with advice or support.
- 3.2 Auckland Council aims to create a positive a rewarding workplace and work culture for elected members and workers where risks to people's mental health are eliminated or minimised and their mental well-being is prioritised.
- 3.3 Elected members will:
- treat all employees with courtesy and respect. This means that elected members will not bully, harass, intimidate, abuse or otherwise behave in an aggressive, offensive or unreasonable manner towards employees
  - help create and demonstrate behaviours that foster a positive workplace culture
  - observe any guidelines that the chief executive puts in place regarding contact with employees
  - not do anything which compromises, or could be seen as compromising, the impartiality of an employee

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<sup>15</sup> Governance Manual 3.2.8:  
<https://governance.aucklandcouncil.govt.nz/3-elected-members/conduct-roles-and-personal-interests/relationship-with-the-chief-executive-and-council-staff/>

- avoid disagreements over policies or proposals becoming a personal criticism of any employee in ways that reflect on the competence and integrity of the employee, and avoid public criticism of individual employees
- raise concerns about employees only with the chief executive, and concerns about the chief executive only with the mayor or the committee which reviews the chief executive's performance
- not seek to improperly influence staff in the normal undertaking of their duties.

3.4 All elected members must comply with clause 3.3 of this policy. Not doing so constitutes a breach of this policy and the Code of Conduct.





## D Election year policy

### 1 Summary

- 1.1 In an election year, elected members standing for re-election 'wear two hats'. They continue to make the decisions of the Auckland Council and, as candidates, campaign for re-election.
- 1.2 If an incumbent elected member is standing for re-election, they must clearly and transparently differentiate between council 'business as usual' and campaigning for re-election. This policy will assist elected members to manage this important distinction, particularly during any year in which a local government election is held.
- 1.3 Resources owned by the Auckland Council and made available to elected members should only be used for Auckland Council purposes. This applies at all times.
- 1.4 During an election year, the use of council resources for re-election purposes is unacceptable and possibly unlawful.
- 1.5 This policy is based on guidance published by Taituarā and Local Government New Zealand (LGNZ)<sup>16</sup>.

### 2 Who does this policy apply to?

- 2.1 The policy applies to all Auckland Council elected members and advisory panel members.
- 2.2 The Independent Māori Statutory Board (IMSB) and the boards of Council-Controlled Organisations are requested to note the relevant principles in this policy and apply them, as appropriate, to their boards.

### 3 Complaints about potential breaches of this policy

- 3.1 Complaints about potential breaches of this policy must be made in writing to Auckland Council's chief executive who will consider each complaint on a case-by-case basis with reference to this and other relevant policies. A complaint lodged under this paragraph will not be considered to be a complaint alleging a breach of the Code of Conduct; the intention being to investigate the allegation with speed with a view to correcting any misuse of council resources as soon as possible.
- 3.2 Complaints about the conduct of the elections are made to the electoral officer. If any complaint involves the use of council resources the electoral officer will bring the complaint to the attention of the chief executive.

### 4 Principles

- 4.1 This policy is based on two complementary principles:

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<sup>16</sup> "Communications in the Pre-election Period" (Taituarā/LGNZ, 2021)  
<https://www.lgnz.co.nz/assets/Uploads/Pre-election-communications-2021.pdf>

**Principle 1: Resources owned by the Auckland Council and made available to elected members should only be used for Auckland Council purposes.**

This applies at all times, not just during an election year.

**Principle 2: The use of council resources for re-election purposes is unacceptable and possibly unlawful.<sup>17</sup>**

- 4.2 This is consistent with the guide published by Taituarā / LGNZ and is specific to election year.
- 4.3 Elected members standing for re-election should clearly and transparently differentiate between council 'business as usual' and campaigning for re-election.

## **5 General business of council continues during pre-election period**

- 5.1 The normal business of council continues during an election year, including during the pre-election period and elected members continue to have the right and responsibility to govern and make decisions.
- 5.2 During the pre-election period a heightened level of media and public scrutiny about council's decisions and business can be expected. To assist elected members and council staff during this period, the governing body and each local board may choose to adopt certain limited restraints on business as usual. For example:
  - as far as is reasonably possible, make significant decisions and provide direction to officers on any major issues prior to the pre-election period
  - decide not to make major policy decisions or changes which will significantly impact on the incoming council during the pre-election period.
- 5.3 Choosing to adopt limited restraints on normal business during the pre-election period assists elected members and employees to manage any potential confusion which may occur between council's business as usual and candidates' campaign manifestos.
- 5.4 It is important to note that not all decisions should, or can, be made prior to the start of the pre-election period. The general principle is that business can continue as normal.

## **6 Use of council resources**

- 6.1 If a sitting elected member is seeking re-election a clear and transparent distinction will be made between that member's business-as-usual activities and the member's campaigning activities.
- 6.2 Elected members can use council resources and technology only in their capacity as an elected member of Auckland Council and should use their own resources and technology in their capacity as an election candidate.

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<sup>17</sup> Principle 3, "Communications in the Pre-election Period" (Taituarā/LGNZ, 2021).

- 6.3 Council's policy on the use of technology may allow limited personal use of council resources such as mobile phones, by elected members on the basis of reimbursing the council for any actual cost to the council.
- 6.4 In an election, the council does not supply any candidate<sup>18</sup> with technology resources. Having access to a council resource could create an electoral advantage, regardless of whether there is an actual cost to the council. All candidates, including sitting members, should use their own resources for electioneering.
- 6.5 Mileage allowances will not be paid for any travel relating to electioneering<sup>19</sup>.

## 7 Use of mayoral resources

- 7.1 Council resources provided for mayoral use should not be used for any electioneering activities associated with any candidate.
- 7.2 If an incumbent mayor is seeking re-election a clear and transparent distinction will be made between that mayor's business-as-usual activities and the mayor's campaigning activities. An incumbent mayor seeking re-election will, at his or her own expense, establish a separate office, with separate staff, for any campaigning activities.
- 7.3 The incumbent mayor's office will establish systems and protocols to ensure that any information or other requests from the public, media, other elected members or council employees during the pre-election period are identified as either business as usual or campaign related and to ensure that these are kept separate and responded to appropriately.

## 8 Elected members correspondence

- 8.1 During the pre-election period normal day-to-day elected members' official correspondence with their constituents on appropriate matters should not be inconsistent with the general principle that Auckland Council must not promote, nor be perceived to promote, the re-election prospects of a sitting member or any candidate for election.
- 8.2 Correspondence relating to any sitting member's campaign for re-election should not utilise an Auckland Council email address, Auckland Council stationery or Auckland Council business card.
- 8.3 Business cards will not be renewed during the pre-election period.

## 9 Council communications

- 9.1 The use of Auckland Council communication resources for re-election purposes is unacceptable and may be unlawful<sup>20</sup>.

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<sup>18</sup> 'Candidate' meaning any candidate whether an incumbent member or not.

<sup>19</sup> Refer also to the Elected Members Expense Policy as attached to the Elected Members Code of Conduct.

<sup>20</sup> Principle 3, "Communications in the Pre-election Period" (Taituarā/LGNZ, 2021).

- 9.2 Criticism of an elected member or candidate for election by a sitting elected member is unacceptable in any council-funded communication.
- 9.3 Critical comment by a member in a council-funded communication should focus on issues and policies and not on personalities. Derogatory comments are unacceptable.
- 9.4 Auckland Council's Communications Policy and the policies referred to in that document apply at all times.
- 9.5 Particular care will be exercised in the use of council resources for communications to ensure that they do not unreasonably raise, or could have the effect of unreasonably raising, the personal profile of any elected member or candidate for election in the community. This will include careful consideration of the tone, content and style of any communication to ensure that it is factual, accurate, complete, fairly expressed, and politically neutral.
- 9.6 During the pre-election period, the following communications must be authorised by Auckland Council's chief executive, or their delegate:
- council-funded communications
  - communications by or about elected members, in their capacities as spokespersons for council
  - events and speaking invitations.
- 9.7 Council-funded communications will include reference to the relevant council decision to which they relate. Communications from the mayoral office will include reference to the relevant council decision to which they relate where such a resolution exists.
- 9.8 Photographs of elected members and content authored by elected members in council publications and advertising will be suspended during the pre-election period.<sup>21</sup>

## 10 Council support staff for elected members

- 10.1 Councillor Support Advisors provide dedicated support to councillors and Local Board Services staff provide dedicated support to local board members through local board offices. Such support continues for the purpose of assisting elected members to fulfil their responsibilities in conducting the business of Auckland Council.
- 10.2 Support staff will not provide any assistance relating to electioneering activities.

## 11 Neutrality of public servants

- 11.1 A major characteristic of New Zealand's constitutional arrangements is that public servants are apolitical. This applies to public servants in local and central government.

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<sup>21</sup> Principle 3, "Communications in the Pre-election Period" (Taituarā/LGNZ, 2021).

- 11.2 Having a heightened awareness of the need for public servants to be seen to act with political neutrality does not mean the work of council is disrupted. All staff continue to support elected members in performing their role.
- 11.3 It does mean however, that during an election year and particularly during the pre-election period, additional care must be taken to ensure that activities are not seen, in any way, to support or preference one candidate over another.
- 11.4 This is particularly important with respect to activities such as media relations, advertising campaigns, responding to Local Government Official Information and Meetings Act 1987 requests, interaction with electoral candidates, public speaking engagements, appointment processes, programme and strategy launches and promotions, and the release of discussion documents.
- 11.5 The chief executive is responsible for setting appropriate election year protocols for staff.

## 12 Definitions

- 12.1 **Council resources** means: council's human resources; budgets; and council-owned, or controlled, property and other resources; including information technology and telecommunications devices. Auckland Council's Elected Members Technology Policy applies during the pre-election period.
- 12.2 **Electioneering** means activity that relates exclusively to the campaign for the election of a candidate, and occurs solely in the candidate's capacity as a candidate, and not in their capacity as a member of the governing body or local board<sup>22</sup>.
- 12.3 **Pre-election period** means the three months prior to election day<sup>23</sup>.

## 13 Related policies

- 13.1 The following policies continue to apply during an election year and should be read in conjunction with this policy:
- Auckland Council's Elected Members Code of Conduct and attached policies
  - Auckland Council's Elected Members Technology Policy

## 14 Operational protocols

- 14.1 This policy may be supplemented by more detailed operational protocols for the mayor's office, local board members and council employees.

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<sup>22</sup> Adapted from Local Electoral Act 2001, section 104.

<sup>23</sup> Local Electoral Act 2001, section 104.

## 15 FAQ

### 1. What if I receive an election-related call on my council mobile phone?

You should use a personal phone for election-related activities. Using a council mobile phone for all election communication is not appropriate. It will require you to list the council mobile phone number as your contact on your campaign material and this is also not appropriate. However, spending five minutes taking the call is not likely to affect the course of the election, give you an electoral advantage or be a cost to the council, but you should advise the caller to use your personal number in the future.

### 2. Some of the opportunities that I have for attending to campaign activities occur between meetings at the council. It is not feasible for me to travel home to use my personal computer in order to draft a speech.

The underlying principle is that of electoral advantage. The issue is whether, by having access to a computer that you do not have to pay for, you are at an advantage over other candidates. You should use your own resources for election related activity. You may need to carry two laptops during the electoral campaign.

### 3. The council provides local boards with Facebook pages. Am I able to make critical comments on these?

Yes. During the course of the term, some posts on council-provided Facebook pages are in the name of the local board. Other people may make personal comments and posts. If members continue to make personal comments during the election period, there is no electoral advantage. Any member of the public, including any candidate, has the same opportunity.

### 4. What are the key dates for local government elections?

Wednesday 2 March 2022 – Saturday 30 April 2022	Ratepayer roll enrolment confirmation forms issued (reg 16, LER)
Wednesday 2 March 2022 – Wednesday 6 July 2022	Preparation of ratepayer roll (reg 10 LER)
May 2022	National ratepayer roll qualifications and procedures campaign (Sec 39, LEA)
Friday 1 July 2022	EC enrolment update campaign commences
Wednesday 13 July 2022	Public notice of election, calling for nominations, roll open for inspection (sec 42, 52, 53 LEA)
<b>Friday 15 July 2022</b>	<b>Nominations open/roll open for inspection</b>

	(sec 42 LEA)
<b>Friday 12 August 2022</b>	<b>Nominations close (12 noon)/ roll closes</b> (sec 5 LEA, reg21 LER)
Wednesday 17 August 2022	Public notice of day of election, candidates' names (sec 65,LEA)
By Monday 12 September 2022	Electoral officer certifies final electoral roll (sec 51, LEA, reg22, LER)
<b>Friday 16 September – Wednesday 21 September 2022</b>	<b>Delivery of voting documents</b> (reg 51, LER)
Friday 16 September – Saturday 8 October 2022	Progressive roll scrutiny (sec 83, LEA) Special voting period (sec 5, LEA, reg 35, LER)Early processing period (sec 80 LEA)
By Friday 7 October 2022	Appointment of scrutineers (sec 68, LEA)
<b>Saturday 8 October 2022</b>	<b>Election day</b> (sec 10, LEA) Close of voting (12 noon) – (sec 84, LEA) Progress/preliminary results available as soon as practicableafter close of voting (sec 85, LEA,)
Saturday 8 October (pm) – Thursday 13 October 2022	Official count (sec 84, LEA)
Friday 14 October – Wednesday 19 October 2022	Declaration of result/public notice of results (sec 86, LEA)
Mid December 2022	Return of election donations and expenses forms (sec 112A,LEA)

The pre-election period is three months prior to the election: 8 July 2022

## 5. Can I keep using articles or publications in Our Auckland as a way of communicating with my constituents in the run-up to the election?

This is explained in some detail in the “Pre-election communications” guidance by Taituarā/LGNZ. Council-owned communications channels such as Our Auckland constitute a council resource and as such cannot be used for electioneering purposes. This is to ensure that they do not raise the profile of any elected member that is candidate for re-election

While normal council business continues during the pre-election period, it can be challenging for current members to keep the balance between legitimate council communications and campaigning. This is a line that can be crossed easily and sometimes unintentionally.

Careful consideration needs to be given to the tone, content and style of any communication to ensure that it is factual, accurate, complete, fairly expressed, and politically neutral. The pre-election communications approval panel, convened by Local Communications Manager Chris Baldock, will be in charge of approving any communications involving elected members during the pre-election period.



## E Communications policy

### 1 Definition of Communications<sup>24</sup>

- 1.1 Communications means any communication by an elected member, the council, or an employee or office holder of the council, where:
- the council meets the cost (wholly or in part), or
  - the person making the communication does so in an official capacity on behalf of the council.
- 1.2 Communications include:
- mandatory and discretionary communications
  - communications in the council's own publications and the news media generally
  - council-funded advertisements and other forms of publicity
  - electronic (including website, e-mail, texting and social media) and hard copy publication
  - speaking engagements, events and programme launches on behalf of council
  - communications undertaken for the purpose of research and community consultation and engagement.
- 1.3 This policy does not apply to communications by elected members using their own resources and making the communication in their personal capacity.

### 2 Provision of communications

- 2.1 Auckland Council will fund communications to meet the needs of Auckland's communities for information about the council's role and activities.
- 2.2 Auckland Council's communications will be consistent with the statutory purpose of local government and any other relevant statutory provisions.
- 2.3 Auckland Council will fund communications to consult and engage with Auckland's communities. Auckland Council will provide fair and meaningful opportunities for Aucklanders to communicate their opinions to council to support democratic decision-making.
- 2.4 Auckland Council's communications resource and support will be provided to divisions and departments of council to meet the needs of communities for information, consultation and engagement on council's role and activities.

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<sup>24</sup> Refer "Good Practice for Managing Public Communications by Local Authorities" (2004) by the Auditor-General

### 3 Protocols

- 3.1 Auckland Council's communications will reflect decisions from meetings of the governing body, local boards, council committees and CCOs and will support Auckland Council's strategic direction, brand and reputation.
- 3.2 Auckland Council's communications resource and support will be provided to elected members on issues where they have a mandated responsibility to communicate on behalf of the council. This may be on behalf of the governing body, a local board or as official council spokesperson for a particular issue.
- 3.3 In respect of events and speaking engagements, Auckland Council's communications resource and support will be provided to the relevant elected members according to the scale and nature of the event or speaking invitation.
- 3.4 Auckland Council's communications will comply with any applicable council policies and guidelines as to process, authorisation, style and content and be clearly attributed to Auckland Council as the publisher.
- 3.5 Auckland Council's chief executive has overall responsibility for decisions on strategies and resourcing for communications in accordance the above and to meet the needs of Auckland communities for information, consultation and engagement on council's role and activities.
- 3.6 Auckland Council's communications will present information in an accurate, complete, fair, and politically neutral manner. Factual and explanatory information will be provided to foster understanding of issues.
- 3.7 Critical comment by a member in a council-funded communication should focus on issues and policies and not on personalities. Derogatory comments are unacceptable.
- 3.8 Auckland Council communications will not promote, or be perceived to promote, the re-election prospects or personal profile of a sitting member or candidate for election. The use of council resources for election purposes is unacceptable.

### 4 Auckland Council's Council Controlled Organisations

- 4.1 This policy is provided for the reference of Auckland Council's substantive Council Controlled Organisations (CCOs). CCO boards are requested to consider adopting a similar policy.

## F Media protocols

### 1 Responding to media

1.1 The media naturally has a keen interest in many aspects of council decision-making and service delivery. To fulfil its role it needs access to accurate, timely information. All elected members will receive approaches from the media for comment and should follow the following protocols:

- The mayor is the first point of contact for the official view of the governing body on any issue. When the mayor is absent matters will be referred to the deputy mayor or relevant committee chair. The mayor can also refer matters to the relevant committee or local board chairs.
- The local board chair (or their delegate) may comment on behalf of the local board in relation to local matters where decision-making, public consultation or advocacy is the responsibility of the local board.
- No other member of the governing body or local board may comment on behalf of the council unless they have first obtained the approval of the mayor or local board chair (depending on whether the matter relates to the governing body or a local board).

1.2 Elected members may choose to respond immediately to media inquiries and assistance from the council's communications team is available to ensure that media releases and responses are accurate.

1.3 Elected members can express a personal view to the media at any time. It should be made clear, however, that:

- they are not representing the views of the governing body or local board
- statements do not represent the majority view if they are contrary to a governing body or local board decision or council policy
- any media comment made in a personal capacity must also observe other requirements of the Code of Conduct, e.g. not disclosing confidential or legally privileged information, compromising the impartiality or integrity of staff, or denigrating other elected members.

1.4 Comments made by members in their personal capacity are not covered by the qualified privilege of those made during business meetings.<sup>25</sup>

### 2 Speeches

2.1 Help is available to elected members speaking on behalf of the council. This support may include drafting speeches or speaking notes. These will present information in a fair and politically neutral manner. Council communications assistance will not promote or be perceived to promote a sitting member's re-election prospects or personal profile.<sup>26</sup>

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<sup>25</sup> Governance Manual 3.2.14

<sup>26</sup> Governance Manual 3.2.14



## G Social Media Guidelines

### 1 Social media

- 1.1 Social media are internet-based tools that help people connect and interact with people, brands or organisations online. They can be used to create and publish content, discover news, and share information, ideas, or other forms of expression.
- 1.2 Common social media platforms include Facebook, Twitter, YouTube, Instagram, LinkedIn, Neighbourly, TikTok, Messenger and Snapchat.
- 1.3 Aucklanders use social media to stay connected with friends, family and the things that matter to them including the things that we, as a council do or influence.
- 1.4 Social media can be a powerful tool for engaging with and informing the communities elected members serve, providing constituents with greater access to local government decision-making.
- 1.5 On the other hand, platforms can be misused to spread misinformation and abuse, which threatens the ability of people to take part in the democratic process.
- 1.6 Abusive online interactions can also negatively affect the wellbeing of people who are targeted. Online abuse targeted at elected members or staff may undermine their ability to serve Aucklanders effectively.
- 1.7 These guidelines are designed to protect members of the public, elected members and staff while interacting with others online in relation to council issues.

### 2 Dealing with online abuse

- 2.1 The role of an elected member is public facing and criticism is to be expected. Interactions will inevitably be robust, but they must be respectful.
- 2.2 Policy differences are acceptable, personal attacks are not. Intimidation, abuse, bullying, threats or violence against elected members or staff should not be tolerated.

#### Set the terms of engagement.

- 2.3 Prominently displaying terms that users must comply with in order to engage with social media profiles is best practice. These can assist against allegations of political discrimination (which could arise from blocking someone).
- 2.4 Auckland Council includes the following moderation policy on its social media pages. Members may adapt this template for their own purposes:
  - We openly welcome your comments and encourage discussion. We ask that you are polite and respectful with your comments and views.
  - We reserve the right to hide or remove harmful posts or comments from this page. This includes any post or comment containing disrespectful, rude or abusive language; direct personal attacks or disclosure of private information or details of elected members or staff, other users or individuals; objectionable material; and unsolicited advertising marketing or spam.

- If your contributions fail to comply with this site's terms and/or the above rules, then you may be blocked from posting to this page.

### Take action against harmful digital communications.

- 2.5 Abuse comes in different forms and levels of severity, so some judgment is required when determining an appropriate response.
- 2.6 Under the Harmful Digital Communications Act 2015 (**HDCA**), it is a criminal offence to cause serious emotional distress by posting a 'digital communication' intended to cause harm. The HDCA also sets out ten communication principles (couched in terms of what a communication should not do) and complaints about breaches of the principles can be referred to Netsafe.
- 2.7 Where possible, take a screenshot of the abuse and record the URL of the web page where it appears.
- 2.8 Abuse comes in different forms and levels of severity, so some judgment is required when determining an appropriate response. Elected members may consider whether any of the following responses are appropriate when responding to abuse online:

#### Low level abuse

- Call out inappropriate comments, making it clear that the language being used is unacceptable and inappropriate. Publicly challenging inappropriate behaviour can be a powerful tool in stopping it.
- Be firm, factual and polite to avoid escalation and retaliatory comments.
- De-escalate negative situations by acknowledging a person's frustrations, assuring them that they have been heard, and committing to follow up where appropriate.

#### Mid-level abuse

- Report abusive comments using the social media platform's reporting functions, and mute or block repeat offenders.
- Let the social media team know of any false claims being spread online, so that they can counter misinformation with facts.
- Refuse to engage with aggressive comments by either not replying or by hiding the comments.

#### High-level abuse

- An elected member who receives an immediate physical threat should contact Police first. Contact Auckland Council security team on +64 21 517 810 or [securityservices@aklc.govt.nz](mailto:securityservices@aklc.govt.nz) to let them know.
- Report threatening or offensive material to NetSafe.
- Record all instances of threatening or offensive communications in Risk Manager.

### 3 Elected member conduct on social media

#### The distinction between acting in private and official capacities.

- 3.1 Consider using separate accounts for public and private use.
- Most members already have a separation between their official publicly available postal, email and telephone contact information and their personal addresses. Members could consider using separate social media profiles for public and private roles.
  - Using separate accounts will help to keep a clear distinction between a member's position as a private citizen and a public official.
- 3.2 Be conscious that information posted online in an elected member's official capacity is subject to the same rules as other public information, and that when an elected member is using social media in their capacity as an elected member they must comply with the Code of Conduct.
- Any official information a member shares is subject to official information requests, regardless of whether that information is shared on social media or on other platforms (such as by email or text).
  - Requests for official information must be responded to in the same way as if the request came via any other channel.

#### Online behaviour: lead by example.

- 3.3 The Code of Conduct applies to your online interactions when acting in your official capacity.
- 3.4 Elected members can set the tone by modelling good online behaviour and calling out inappropriate behaviours.
- 3.5 Members should moderate comments from the public on their posts.
- 3.6 A good rule of thumb for a member is to only post what the member would be prepared to say in person: making a comment in a social media post that can be viewed by anyone is similar to making a statement in a public gathering and the member should not say anything in the post that they would not say to a public gathering.
- 3.7 If in doubt, do not post. Once a member posts content online, they lose control of it: it can be copied or shared out of context.
- 3.8 Focus on the issue rather than the person and encourage others to do the same.
- 3.9 Counter misinformation with facts.
- 3.10 If a member finds interactions upsetting, they should consider logging off. Council provides assistance for emotional distress and can also facilitate dispute resolution services when required.

### Be security conscious.

- 3.11 Social media profiles are actively targeted by cyber criminals, journalists, foreign intelligence services and others. Maintaining good online security practices can help mitigate the risks involved in using social media. Members should:
- Choose a strong password (preferably a passphrase) and never share it.
  - Use two-factor authentication where it is offered.
  - Keep operating systems and apps up to date as they will contain the latest security improvements.
  - Be careful about locations for accessing social media: public wi-fi networks (such as in cafes, airports, hotels etc) put members at greater risk of being hacked.
  - Only install trusted apps and avoid granting them access to contacts, camera, photos, files etc.
  - Avoid posting information about their location by disabling location-sharing.

### Complaints about council services.

- 3.12 Members should refer complaints about council services to the appropriate advisor in their support team.

## 4 Staff support

- 4.1 Council staff cannot support, maintain or create content for personal social media profiles.
- 4.2 Staff may assist members with:
- setting up a public social media profile page for use as an elected member
  - providing content where this relates to the role as an elected member
  - providing advice on dealing with a request or complaint from a member of the public about a council service
  - providing advice on responding to official information requests
  - provide training on effective social media best practices
  - managing abusive content on any social media pages managed by Auckland Council by removing the post/comment.
  - providing details for the Employee Assistance Programme (EAP), which offers professional counselling at no cost. EAP services are also available to members' immediate family members.
- 4.3 Staff are unable to assist elected members with social media content related to election campaigning.



## H Governance roles and responsibilities<sup>27</sup>

### 1 Mayor of Auckland

- 1.1 The mayor is responsible for articulating and promoting a vision for Auckland and providing leadership to achieve this vision. Auckland's mayoral role also involves:
- leading the development of region-wide council plans, policies and budgets (including the annual plan and long-term plan)
  - ensuring effective engagement between Auckland Council and the people of Auckland
  - appointing the deputy mayor
  - establishing committees of the governing body and appointing the chairperson for each of those committees. (The mayor is a member of the governing body and each of its committees).
- 1.2 The mayor is supported by the mayoral office and has a budget allocated for this.

### 2 Role of governing body

- 2.1 The governing body comprises the mayor and 20 members elected by voters from 13 wards. It focuses on the big picture and Auckland-wide strategic decisions.
- 2.2 Section 17 of the Local Government (Auckland Council) Act 2009 requires the governing body to allocate decision-making responsibilities for non-regulatory activity to either the governing body or local boards.
- 2.3 The role of the governing body includes:
- making decisions on Auckland-wide activities (such as regional facilities and events)
  - regulatory activities of Auckland Council (such as the Unitary Plan, resource and building consents, and bylaws)
  - setting regional strategies, policies and plans (such as the Auckland Plan, Auckland's Economic Development Strategy, and the Waste Management and Minimisation Plan)
  - emergency management, including rural fire services.
  - ensuring compliance with the financial management requirements of the Local Government Act 2002 (including the annual plan, the long-term plan, financial policies and rating)
  - making decisions about the capacity to provide services and facilities (including local activities)
  - governance of council-controlled organisations (CCOs)
  - appointing the chief executive
  - setting transport objectives and transport funding for Auckland.

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<sup>27</sup> Summary of role descriptions of Auckland Council elected members as developed by Kura Kāwana

### 3 Role of local boards

3.1 The 21 local boards represent the communities of Auckland, with between five and nine members elected to each board. They are responsible for decision-making on local issues, activities and services, and provide input into regional strategies, policies and plans.

3.2 Local boards also:

- adopt local board plans every three years in consultation with their communities
- agree annual local board agreements (with the governing body)
- agree and oversee annual work programmes
- engage with and represent their communities.

### 4 Role of elected members

4.1 Elected members have different roles and responsibilities. They are elected to represent communities in their area and make decisions for and on behalf of those communities. In practice, this can include dealing with queries and issues from constituents, exploring the impacts of a particular proposal, developing policy and plans, reviewing council decisions, working with other elected members, chairing committees, representing the council's view to central government, engaging with the public, iwi, other stakeholders, making decisions on the use of council land, and agreeing on budgets and council priorities.

4.2 Members are active within the communities they represent. This includes belonging to community organisations and owning property. When making decisions as elected members, they must take care that they are acting, and are perceived to be acting, in the interests of their community and the public, not their own interests.<sup>28</sup>

4.3 Elected members have two key roles, and at times they will need to carefully balance these:

- as a member of the governing body or local board - making decisions on a range of matters
- as a representative of the community - elected members represent Auckland's diverse communities as a region and in local board areas.

#### Role of councillors<sup>29</sup>

4.4 The following provides an outline of the councillor role:

- provide regional strategic leadership and direction
- make decisions on regional matters that take into account social, cultural, environmental and economic matters for the benefit of all Aucklanders, both now and in the future

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<sup>28</sup> Governance Manual 3.1

<sup>29</sup> The governing body has resolved that the term 'councillor' is applied only to governing body members (minute GB/2017/122)

- make financially responsible decisions that ensure Auckland Council has a sound financial future
- act in the interests of the whole region while at the same time representing their ward. Where there is a conflict, the councillor is required to act in the best interests of the region, which is what councillors promise to do when they make their statutory declarations
- work collaboratively with other councillors, the mayor's office, the local boards, the Independent Māori Statutory Board and the advisory panels and create a strong working relationship with council's executive leadership team and the council-controlled organisation executive teams and board members
- engage with communities, be aware of and interested in ward issues, including attend local events, meetings and local board meetings and respond to requests from constituents.

### Role of the committee chair

#### 4.5 In addition to the above:

- provide leadership and inspire the committee to achieve its priorities
- encourage an environment of collaboration and respectful debate
- represent the committee, and the wider Auckland Council, on the committee's work
- develop a strong working relationship with key stakeholders and senior council staff
- chair committee meetings efficiently and in accordance with standing orders, terms of reference, and the elected members' code of conduct
- promote and support the principles of good governance
- ensure committee members understand what is expected of them, monitor their performance and hold them to account (noting that the mayor plays this leadership role for the governing body as a whole).

### Role of local board members

#### 4.6 The following provides an outline of the local board member's role:

- provide civic leadership locally; make a positive difference to communities and shape local places
- make decisions without bias on local matters, for the benefit of the whole community (not just particular groups) and for both current and future generations
- work with the community to set local direction and deliver priorities
- provide views to the governing body to inform their regional decisions, including input to regional strategies, policies and plans
- build relationships and work collaboratively with other local boards, the governing body and the mayor, and with the council family, including council staff and council-controlled organisations

- promote strong, resilient and engaged communities; develop relationships and work with the local communities, including mana whenua, mataawaka and the range of people, groups, organisations and businesses in the area.

### Role of the local board chair and deputy chair

4.7 The chair and deputy chair collectively form the leadership team for the local board.

4.8 In addition to the local board member role, the local board chair has the following roles:

- provide strong leadership and inspire the local board
- build and maintain relationships to develop a collegial local board that is able to work effectively together and reach consensus to deliver the local board's vision and priorities
- be accountable for the local board relationship with iwi (chief-to-chief)
- develop a strong working relationship with key stakeholders and senior council staff
- chair local board meetings effectively abiding by standing orders and the code of conduct
- represent the local board, and the wider Auckland Council as appropriate, including in a civic and community role (such as citizenship ceremonies) and as the spokesperson to the media
- promote and support the principles of good governance
- work with the governing body and council committees to provide local board input to regional decisions and to regional strategies, policies and plans
- ensure local board members understand what is expected of them, monitor their performance and hold them to account.

4.9 In addition to the local board member role, the local board deputy chair has the following roles:

- assume leadership responsibility for chairing local board meetings and workshops (in the absence of the chair, or as agreed with the chair).
- work with the chair to provide strong and inspiring leadership to the local board.
- promote the principles and processes of good governance and decision-making.
- share the leadership responsibility for representing the local board at civic, community and council events and with the media (in the absence of the chair, or as agreed with the chair).
- undertake specific decision-making roles and activities as delegated by the local board.

## 5 Protocols for working together

### Respecting each other's roles and the Auckland Council governance model

- 5.1 All elected members are the unified face of the council in public and celebrate local and regional successes together. Governing body members and local board members respect the roles that each undertakes within the shared governance arrangement and maximise opportunities to build relationships and work together where appropriate.
- 5.2 All elected members accept that local board and governing body decisions are decisions of Auckland Council, and will only make decisions on matters that are within their respective decision-making responsibilities.
- 5.3 Elected members agree meeting procedures and give each other opportunities to speak and give input at each other's meetings, they acknowledge and respect each other when attending meetings. Joint workshops, working parties and briefings between governing body and local board members are encouraged.
- 5.4 Elected members are well informed of and are open about issues with each other. They keep each other in the loop on relevant constituent issues for information and as a matter of courtesy. To better inform regional decision-making, local board members support governing body members to engage with local communities and learn about areas of the region other than their ward.
- 5.5 Elected members earn community respect by showing respect to each other in public and engaging with the community together, including sending joint communications where possible.

## 6 Protocols for engaging with the public

- 6.1 Traditionally members interact with the public in two ways.
  - Governance decision-making - many governance decisions require consideration of the views of those affected or interested in the decision. This can include giving the public the opportunity to comment on council proposals and ensuring those comments are carefully considered prior to a decision being taken. More detail on how the council consults its communities can be found in the Council's Significance and Engagement Policy.
  - Constituency role - members of the public are free to contact an elected member with questions, queries or complaints. Depending on the issue, the public could contact a local board member, a ward councillor or the mayor. In general, if an issue is purely local it is best to approach a local board member; if an issue is of regional consequence it may be more appropriate to approach a ward councillor or the mayor.
- 6.2 Elected members should act in a manner that encourages and values community involvement in local democracy.
- 6.3 The mayor has an important statutory role in leading council engagement with the public. In addition to the role shared with all other elected members, the mayor is charged with ensuring there is effective engagement between the council and the

people of Auckland (including those too young to vote, of different ethnicities, cultures, interests and location).

- 6.4 Local boards have a statutory role to engage with their communities as part of their role to make decisions on local matters, provide local leadership and support strong local communities.

# I Expense policy

- July 2020
- Adopted by the Governing Body on 30 July 2020

## **Version control**

V1.0 - Presented to and approved by the Governing Body on 30 July 2020.

V1.1 - Comments received from Remuneration Authority on 19 August 2020 and minor changes made as a result (the Authority noted it is only required to approve remuneration, allowances and expenses and that the policy includes items which are not related to these and so the words “approved by the Remuneration Authority” should be removed).

V1.2 – Minor changes made to department names and job titles following a restructure of the Governance Division.

## 1 Purpose and scope

1.1 The purpose of this policy is to:

- identify elected members' allowances and entitlements
- explain the approval process for reimbursement of expenses incurred by elected members whilst undertaking their duties.

1.2 Auckland Council's Governance Services Department administers this policy. For queries on the policy please contact:

Jo Iles

Manager Governance System Solutions

Mobile: 027 207 0893

[jo.iles@aucklandcouncil.govt.nz](mailto:jo.iles@aucklandcouncil.govt.nz)

1.3 Other Auckland Council documents containing information relevant to this policy include the:

- elected members' code of conduct
- elected members' technology policy
- catering guide
- vehicle use guide

1.4 This policy may be reviewed regularly and is current until superseded.

## 2 Overarching principles

2.1 The guiding principles for expenditures are those contained in the Office of the Controller and Auditor-General good practice guide "Controlling sensitive expenditure: Guidelines for public entities". The expenditure should be subject to standards of probity and financial prudence that are to be expected of a public entity and able to withstand public scrutiny, both perceived and actual.

2.2 Elected members may incur expenses while on council business, for which they can be reimbursed. Reimbursement and use of council-supplied resources apply only to elected members personally, and only while they are acting in their official capacity as elected members.

2.3 To be reimbursable, expenses must:

- have a justifiable council-related business purpose; council business includes such activities as representing the council at formal council meetings, committee meetings, workshops, seminars, statutory hearings, training courses, site visits, meetings with staff, meetings with community groups and meetings with members of the public. It does not include events where the primary focus is on social activity or electioneering
- be moderate and reasonable having regard to the circumstances, i.e. able to pass the test of being prudent use of ratepayers' money under public scrutiny
- be actual and justified by an original tax receipt



- be approved by the relevant authoriser
  - be within relevant budget provisions
  - be presented on the approved Auckland Council claim form and signed as true and correct
  - be consistent with the rules set by the Remuneration Authority, who has responsibility under the Local Government Act 2002 to determine remuneration, expense and allowance rules for local authority members.
- 2.4 Transparency and accountability guide the reimbursement of elected members' expenses. The council's internal audit work programme includes regular testing of expense claims and allowances paid to elected members and staff. External auditors also regularly review elected members' expenses. To ensure transparency, Governance Services publishes elected members' remuneration, expenses, mobile technology and professional development costs on the council's website on a quarterly basis. The information is located at:  
<https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/elected-members-remuneration-declarations-interest/Pages/elected-members-remuneration.aspx>

### 3 Allowances and benefits

#### General provisions

- 3.1 Each year, the Remuneration Authority sets the base remuneration, allowances and expense payable to all Auckland Council elected members. The Remuneration Authority Determination can be found at:

<https://www.remauthority.govt.nz/clients-remuneration/local-government-elected-officials/>

#### Communication technology

- 3.2 Members who choose not to use council communication technology may receive the communications allowance set out in the Remuneration Authority Determination. These will be automatically paid pro rata in the elected members' fortnightly payment cycle.
- 3.3 The council will not pay the communications allowance if an elected member's private hardware and software are outdated and/or incompatible with Auckland Council's systems. This is because in this case Auckland Council cannot provide the information and support needed for the elected member to perform their duties.
- 3.4 Rules governing the use of council equipment are set out in the Auckland Council Elected Members' Technology Policy.

#### Childcare allowance

- 3.1 The Remuneration Authority has provided for a childcare allowance at the discretion of the council. The council has not yet implemented this provision.

## **4 Health, Safety and Well-being**

- 4.1 Elected members have access to the following services which are important to their health, safety and well-being.

### **Flu vaccinations**

- 4.2 Elected members are entitled to the flu vaccination employee benefit. Elected members can book this service through the intranet when it is made available to staff every autumn.

### **Ergonomic assessments**

- 4.3 An elected member experiencing discomfort, pain, or injury in the workplace, may arrange an ergonomic assessment through their support staff.

### **Personal support**

- 4.4 The Employee Assistance Programme (EAP) is a confidential counselling and advice service that can provide short-term support for personal or work-related issues that are impacting a member and their work life.
- 4.5 Manawa Rahi is a conflict resolution service which focuses on resolving an issue by equipping the member to make decisions.
- 4.6 The well-being portal, Re:NEW, is a centralised location help members achieve goals, whether it be fitness, healthy eating or building great relationships.

## **5 Travel rules and processes**

### **Booking travel**

- 5.1 All business-related bookings are arranged via support staff in the Governance Division.
- 5.2 Travel should be booked as far as practical in advance of the actual travel date to enable best price to be obtained.

### **Mixing business and private travel**

- 5.3 The council will pay for the mayor's partner to accompany the mayor when their partner is also taking part in council business.
- 5.4 The council will not pay for any other elected member's partner or family member to accompany them on council-related travel.
- 5.5 Support staff in the Governance Division can arrange bookings for family members of an elected member if they are travelling together provided a personal credit card is given for payment at the time of booking.
- 5.6 Elected members can have a stop-over or undertake private travel before, during or at the end of travel paid for by the council provided there is no additional cost to the

council. They can also vary their route for private travel at their own expense. They must pay the cost of any private travel before travel is undertaken.

- 5.7 If the duration of the business trip extends over a weekend, elected members may return home for the weekend, provided the cost of doing so is less than the cost of staying.

## **6 Land and sea transport**

- 6.1 In accordance with the Remuneration Authority determination the mayor can be provided with a vehicle for business and private use.

### **Parking at home office**

- 6.2 Parking is provided at no cost to elected members at their main place of work: for Governing Body members at the Te Wharau o Tāmaki / Auckland House 135 Albert Street, for Local Board members at their Local Board office.

### **Travel around Auckland**

- 6.3 Auckland Council promotes public transport and cycling as the preferred ways of moving around Auckland. Elected members are expected to use public transport in the first instance but may also use their private car or council vehicles when on council business.
- 6.4 For public transport, including ferry, elected members are encouraged to use a HOP card, then print their account statement from the HOP card website and highlight any transaction for which they are seeking reimbursement.
- 6.5 Road tolls and parking fees incurred when on council business will be reimbursed.
- 6.6 If elected members use their private car, mileage allowances will be reimbursed according to the rules set out in the Remuneration Authority Determination, at the maximum rate. To satisfy the Inland Revenue Department's requirements, mileage payments are subject to deduction of tax at the appropriate rate.
- 6.7 Elected members' use of private vehicles on council business is not covered by the council's insurance.
- 6.8 For the avoidance of doubt an elected member is not required to be a member of a committee or sub-committee to claim mileage for attendance.
- 6.9 Mileage expenses for elected members conducting District Licensing Committee business are subject to the rules for District Licensing Committee members set up by central government.

### **Taxis and rental cars**

- 6.10 Taxis are not the preferred mode of transport around Auckland due to cost. However, a taxi or a car sharing, or pooling scheme can be used for safety/security reasons or if other means of travel are more costly, impractical or an inefficient use of time. Elected members who choose to use a taxi or a car sharing, or pooling scheme must pay for the fare and claim the cost, detailing the reason for use.

- 6.11 A rental or private car can be used by elected members for work-related travel outside the Auckland region if other means of travel are more costly, impractical or an inefficient use of time. The class of the car should be the most economical considering the requirements of the trip (e.g. length of journey, number of passengers).
- 6.12 Rental cars hired for council business are not to be used for personal travel.
- 6.13 The council's insurance policy provides insurance for the use of rental cars anywhere within New Zealand. It is not necessary to purchase further insurance from the rental agency.
- 6.14 Rental cars must be refilled with fuel before returning them to avoid the high refuelling charges of hire companies.

## 7 Air travel

- 7.1 Elected members can fly with any airline provided the flight booked is at best value for the council and scheduled to best meet the business needs of the elected member. Flight choice will not be influenced by the elected members' own airline loyalty memberships.
- 7.2 All travel is economy class. An elected member can upgrade to business class in instances when they will fly more than six hours continuously and will be engaged in council business within 24 hours of arrival. If upgraded, the elected member must not convert the whole, or part of, the ticket into cash or any other benefit and travel on a cheaper ticket class.
- 7.3 The council will pay one airline club membership for the mayor and deputy mayor given their frequent travel needs. The council will not pay for any other airline frequent flyer or club membership.

## 8 Accommodation

- 8.1 Auckland Council can procure preferential public sector rates at many New Zealand and Australian hotels. These rates are significantly lower than standard rates offered to business customers and are often lower than rates offered through conference organisers. For this reason, all accommodation, including that for conferences must be booked through support staff in the Governance Division.
- 8.2 Accommodation reserved should be of the standard business range. Staff will advise about options.
- 8.3 Elected members' responsibilities include:
- checking the accuracy of the accommodation account when checking out
  - signing the account to indicate it is correct
  - retaining a copy of the accommodation account for reconciliation purposes
- 8.4 When travelling on council business an elected member may stay in private accommodation. When this occurs, the elected member can be paid an allowance of NZ\$60 including GST per night to cover accommodation, breakfast and dinner

expenses. This allowance is intended to be paid to the accommodation provider to cover at least a portion of the costs they may incur.

- 8.5 Elected members sometimes attend evening events as official representatives of Auckland Council. If the event will conclude after 10.30pm and travel back to the elected member's residence is impractical, the council will reimburse the cost of overnight accommodation at a standard business range hotel or motel.
- 8.6 Whenever practical the elected member should obtain prior written approval.

## 9 Travel expenses

### Travel expenses reimbursed

- 9.1 The business-related travel expenses outlined in the table below will be reimbursed by Auckland Council when an elected member is away from their home for one night or more.
- 9.2 Expenses are only payable for days the member is on official business, including a weekend if official business requires this.
- 9.3 For overseas travel, reimbursable expenses are subject to the daily expense guideline rates for the country of travel. Guideline rates are published on the council intranet. The council uses the [guideline rates of Ministry of Foreign Affairs and Trade](#).

Expense	Details
<b>Meals</b>	<ul style="list-style-type: none"> <li>On the basis of actual and moderate expenditure, or according to the daily rates for international travel</li> </ul>
	<p>Meal expenses cannot be claimed if:</p> <ul style="list-style-type: none"> <li>a complimentary meal is provided by an airline</li> <li>a meal is prepaid through an accommodation package (e.g. hotel breakfast)</li> <li>the cost of the meal is included in the cost of a seminar or conference</li> <li>Elected members are entertained by their hosts</li> </ul>
<b>Entertainment</b>	<ul style="list-style-type: none"> <li>Before travel, any anticipated entertainment events must be specified on the travel booking form and must at all times, be directly related to council business – see section 12</li> </ul>
<b>Alcohol</b>	<ul style="list-style-type: none"> <li>The council will not pay for any alcohol, except for the approved entertainment of third parties – see paragraph 12.9. However, such expenditure is regarded as sensitive expenditure and accordingly should be at a moderately-priced level to avoid any perception of lavishness</li> </ul>
<b>Car parking</b>	<ul style="list-style-type: none"> <li>Airport parking if it is more economical for the elected member to leave their car at the airport rather than take a taxi or using car sharing and pooling schemes.</li> <li>Council's preference is for members to use public transport.</li> </ul>
<b>International driver's licence fee</b>	<ul style="list-style-type: none"> <li>If a rental car is used as part of the trip</li> </ul>
<b>Telephone and data expenses</b>	<ul style="list-style-type: none"> <li>Short calls home from overseas</li> <li>Prudent data usage to access emails and the internet overseas</li> <li>Calling from overseas can be expensive from hotels or roaming cell phones and should be kept to a minimum. Governance Systems Solutions staff will advise on the most cost-effective way to call home, which may include a calling card</li> </ul>
<b>Laundry</b>	<ul style="list-style-type: none"> <li>Actual and required laundry expenses <ul style="list-style-type: none"> <li>for trips in excess of three days</li> <li>if an accident necessitates it</li> </ul> </li> </ul>
<b>Tips (gratuities) – International travel</b>	<p>In some countries tipping airport baggage handlers, taxi drivers, hotel porters and waiters/waitresses is expected. The council will reimburse moderate tips only where tipping is local custom. It is accepted that the elected member will not have receipts for these, but a record should be kept to accompany any claim</p>
<b>Visa and vaccination fees</b>	<ul style="list-style-type: none"> <li>If needed for travel to some international countries</li> </ul>

## Travel expenses not reimbursed

- 9.4 The council will not reimburse any of the expenses listed in the table below.

Expense	Details
<b>Mini bars</b>	<ul style="list-style-type: none"> <li>Any alcohol items consumed from mini bars</li> </ul>
<b>Movies</b>	<ul style="list-style-type: none"> <li>Any in-room movies</li> </ul>
<b>Traffic infringements</b>	<ul style="list-style-type: none"> <li>Any speeding fines and any other traffic infringement notices incurred while on council business</li> </ul>
<b>Passport application fees</b>	<ul style="list-style-type: none"> <li>Elected members are responsible for obtaining or renewing their passport and ensuring that it will not expire within six months following the return date of travel</li> </ul>

## Other international travel expenses

- 9.5 Elected members undertaking international travel should use their personal credit card and submit an expense claim on their return. However, in countries where credit cards are not widely accepted, and cash is needed for incidental expenses (e.g. taxi fares), foreign exchange (cash advances) can be issued. Support staff will coordinate these requests on the elected member's behalf.
- 9.6 Cash advances are kept as low as possible to ensure compliance with Auckland Council's cash handling procedures, which aim to minimise risks of theft and loss. In any event the maximum cash advance cannot exceed the expected total cost of daily meals and incidentals.
- 9.7 On return all cash advances and foreign exchange must be reconciled within 10 working days. The reconciliation, together with all receipts and unspent cash, should be returned to support staff.

## Upgrades

- 9.8 If an elected member accepts airline, accommodation or any other upgrades while travelling on council business, they must declare them in accordance with the Elected Members' Code of Conduct.

# 10 Travel insurance

## Coverage

- 10.1 The council's travel insurance policy covers all travel in New Zealand and overseas. It covers an elected member who travels to represent the council for periods not exceeding three months and performs 'low risk' work activities such as marketing and representation functions. The insurance also covers the mayor's partner if they are approved to travel with the mayor – see paragraph 4.3. Partners accompanying the elected member in a private capacity are not covered.
- 10.2 The primary travel purpose must be council business. The travel insurance extends to provide cover for normal tourist and holiday activities that form part of or are added

to the business trip, provided the council business-related portion of the travel is substantially larger than the portion allocated to personal or holiday activities.

- 10.3 The travel insurance certificate details the types of cover provided and the monetary limits of the cover. Auckland Council's travel coordinator, upon request, can provide detailed information on any aspect of the insurance cover. There is no cover under this travel insurance for any loss or event or liability which is covered under any other insurance policy, Act of Parliament or reciprocal health agreement between governments.
- 10.4 The council's insurance policy provides cover for the use of rental cars both in New Zealand and overseas.

### Provisions for pre-existing medical conditions

- 10.5 The travel insurance may not provide cover for medical expenses incurred for the treatment of an injury or sickness the traveller is suffering prior to the departure date of travel. Should elected members suffer from a serious condition or be aware of a pre-existing injury or sickness that may necessitate treatment whilst overseas, specific arrangements must be made with the insurer to confirm whether or not cover for treatment will be provided.

### Claims procedure

- 10.6 If an event gives rise to a claim, the traveller must immediately follow these steps:
- Do as much as they can to prevent any further loss or expense.
  - If the traveller is to be hospitalised, evacuated or repatriated, or has lost their luggage or money, they must contact the "Overseas Emergency Assistance" number provided on their itinerary, advising they are on Auckland Council business.
  - As soon as possible after suffering injury or sickness, obtain and follow proper medical advice from a legally qualified medical practitioner.
  - Lodge a claim with the insurance company providing all medical certificates, accounts, receipts and information required by the insurance company to support the claim (original documents must be produced).
  - Forward a written claim against any person, party, hotel or transporter who may be legally liable for the loss, injury or sickness.
  - Provide full particulars of any claim made against the traveller or Auckland Council by any other person and all legal documents served on the traveller or the council.

## 11 Professional development programmes and conferences

- 11.1 Auckland Council recognises the need for elected members to broaden their knowledge and experience through specialised development programmes. Any professional development activity paid for by Auckland Council must be relevant to council business. It can include conferences, internal and external courses or workshops. Because related travel and expenditure such as accommodation and meals are classified as sensitive expenditure, the policy aims to balance elected



members' development needs with prudent use of ratepayer funds and to provide transparency and confidence to the public through publication of expenses.

- 11.2 Auckland Council has a professional development programme, Kura Kāwana for its elected members, for which the budget is set annually. The purpose of this programme is to support elected members in the delivery of their governance role. Bookings to attend the activities included in this programme can be arranged via support staff without the need for additional approval.
- 11.3 If an elected member wants to undertake domestic professional development activities outside the council professional development programme for elected members, they must complete the Kura Kāwana external training approval form and submit to the Governance Support Manager (if you are a governing body member) or your Local Area Manager (if you are a local board member). Your request will be processed and forwarded onto the General Manager Democracy & Engagement or General Manager Local Board Services for approval. The request must detail the business benefit, cost and location of the activities, and confirm that the activities comply with the policy principles outlined in section 2.
- 11.4 Once approved, support staff will organise the necessary registrations, bookings and payments.
- 11.5 If the professional development activity requires international travel a business case must be prepared and approved as outlined in paragraph 12.5.

## 12 Catering, hospitality and entertainment

### Principles

- 12.1 These rules cover expenditure incurred by all elected members on council business while entertaining members of the public, official visitors to Auckland Council, attendance at conferences, workshops, meetings and functions. Entertainment and hospitality can cover a range of items including, but not limited to, tea, coffee, biscuits, catering such as meals and alcohol, and gifts.
- 12.2 Any expenses claimed for alcohol when entertaining must be moderate and conservative in terms of quantity and price and satisfy the principles set out in paragraph 2.3.
- 12.3 There may be occasions where the proposed expenditure is not specifically covered by these rules. If this situation arises, elected members must discuss the proposed expenditure with either the General Manager Democracy & Engagement, the General Manager Local Board Services, the Governance Director or the Chief Executive, and obtain written approval prior to entering into any arrangement or incurring expenditure.

### Catering

- 12.4 If there is a justifiable business purpose, catering may be provided for a meeting or event. Catering includes tea and coffee for morning and afternoon tea and meals if the event or meeting must take place over usual mealtimes.

- 12.5 The catering guide applies when catering is required for a meeting or event. The policy specifies that all catering within any council premise must be provided by Auckland Council Catering Services, unless it is not practical for them to do so.
- 12.6 Elected members are welcome to use the council cafes at their personal cost. Catering may be provided in these venues from time to time to support formal meetings and events.

### **Civic receptions/functions and official delegations**

- 12.7 To minimise costs, it is likely most civic events and hosting of official delegations will be held at council premises. Use of the council's committee and meeting rooms for such events are subject to the approval of either the Manager Governance Services, General Manager Democracy & Engagement, General Manager Local Board Services, Governance Director or Chief Executive.
- 12.8 Relevant staff will make the arrangements in accordance with these rules on behalf of elected members.
- 12.9 Serving alcohol may be permissible at some council events. The expenditure on alcohol must be approved by the General Manager Democracy & Engagement or General Manager Local Board Services, after they are satisfied that:
- the costs relating to alcohol are moderate and conservative
  - the ratio of alcohol to food is sensible
  - the event meets the requirements of the Sale and Supply of Alcohol Act 2012
  - the purpose of serving refreshments at the event is to extend hospitality
- 12.10 Only the Catering Manager has the authority to purchase alcohol. Alcohol will be supplied at functions and events in accordance with the provisions of the Sale and Supply of Alcohol Act 2012.

### **Hosting official visitors**

- 12.11 Elected members may occasionally host official visitors. In most circumstances this will be managed via the International Relations or Civic Events teams.
- 12.12 If an elected member is required to host a guest at a dinner or purchase a gift in recognition of an event, this expenditure can be claimed back and reimbursed provided prior approval has been obtained. For councillors prior approval is to be obtained from the General Manager Democracy & Engagement. For Local Board Members prior approval is to be obtained from the General Manager Local Board Services or the relevant Local Area Manager.

### **Flowers and gifts**

- 12.13 Generally, council will not contribute to flowers, gifts, gift vouchers or cards for birthdays, weddings, bereavements, births and farewells. The Mayor, Deputy Mayor, Chief Executive, Governance Director, General Manager Democracy & Engagement or General Manager Local Board Services may give prior approval for an elected member's contribution in specific circumstances.

- 12.14 When approved, the gifts and expenditure should be moderate and conservative. Whenever possible, the purchase of gifts should reflect sustainable procurement.

## 13 Approval process

### Approval for local and domestic travel including expense claims

- 13.1 A business case is not required for routine local and domestic travel (including mileage and expenses) undertaken for council business. Travel is booked as described under section 4.
- 13.2 Pre-approval may be given for a schedule of travel arrangements on an annual basis. An example is a commitment to attend scheduled Local Government New Zealand meetings in Wellington due to the member's appointment to the National Council.
- 13.3 The list of authorised approvers for local and domestic travel and expense claims is as follows:

Elected member	Approver
<b>Mayor</b>	<ul style="list-style-type: none"> <li>The Chair of Audit and Risk Committee*</li> </ul>
<b>Deputy Mayor</b>	<ul style="list-style-type: none"> <li>The Chair of Audit and Risk Committee*</li> </ul>
<b>Councillors</b>	<ul style="list-style-type: none"> <li>The Governance Director or the General Manager Democracy &amp; Engagement</li> </ul>
<b>Local Board Members</b>	<ul style="list-style-type: none"> <li>The Governance Director or the General Manager Local Board Services</li> </ul>

\* Or, in the absence of the Chair, another independent member of Audit and Risk Committee

- 13.4 The relevant staff from the Mayor's Office, or Governance Division will check the documentation for completeness and adherence to the policy and then forward it to the relevant approver for sign-off.

### Approval for international travel

- 13.5 Activities involving international travel require a business case. Staff can prepare the business case on behalf of the elected member. The business case must outline:
- the purpose of the trip
  - who wishes to attend
  - why the elected member is an appropriate attendee
  - expected benefits
  - demonstrated prudent use of ratepayer's money
  - itinerary
  - all anticipated costs
  - which budgets will meet the costs
  - how the outcomes of the trip should be reported back on return (for instance a written summary or a presentation at a political meeting)

13.6 The list of authorised approvers for international travel is as follows:

Elected member	Approver
<b>Mayor</b>	<ul style="list-style-type: none"> <li>The Chair of Audit and Risk Committee* and the Chief Executive</li> </ul>
<b>Deputy Mayor</b>	<ul style="list-style-type: none"> <li>The Chair of Audit and Risk Committee* and the Chief Executive</li> </ul>
<b>Councillors</b>	<ul style="list-style-type: none"> <li>The Mayor or Deputy Mayor or the Chair of a Committee of the Whole</li> <li>and the Chief Executive or Governance Director</li> </ul>
<b>Local board members</b>	<p>If the travel is financed from the local board's budget:</p> <ul style="list-style-type: none"> <li>The whole local board, by way of a public report and resolution</li> <li>and the Chief Executive or Governance Director</li> </ul> <p>If the travel is financed by Local Board Services or from another central budget:</p> <ul style="list-style-type: none"> <li>The Mayor or Deputy Mayor or the Chair of a Committee of the Whole</li> <li>and the Chief Executive or Governance Director</li> </ul>

\* Or, in the absence of the Chair, another independent member of Audit and Risk Committee

### Approval of expense claims post international travel

13.7 If expenses are in line with current policy and the approved business case, the list of authorised approvers is as follows:

Elected member	Approver
<b>Mayor and Deputy Mayor</b>	<ul style="list-style-type: none"> <li>The Chief Executive or Governance Director</li> </ul>
<b>Councillors</b>	<ul style="list-style-type: none"> <li>The Governance Director or the General Manager Democracy &amp; Engagement</li> </ul>
<b>Local board members</b>	<ul style="list-style-type: none"> <li>The Governance Director or the General Manager Local Board Services</li> </ul>

13.8 If expenses are outside of these parameters, they need to be approved by the business case approvers - see paragraph 12.6.

### Claiming expenses

13.9 All reimbursements to elected members are made via the payroll system. To be reimbursed, elected members must submit their expense claims monthly. Before the end of each financial year Governance Services will inform all elected members of the cut-off date to submit claims for that financial year.

13.10 For financial reporting and transparency purposes claims need to be accounted for within the financial year that they are incurred, which ends on 30 June. The cut-off

date for submitting claims at year end will be early July so that elected members can claim all expenses to 30 June of that financial year.

- 13.11 On election years, at the end of the electoral term, Governance Services will inform all elected members of the final cut-off date by which expense claims must be submitted.
- 13.12 Governance Services will not accept claims after the cut-off date. If elected members miss the cut-off date they can claim relevant expenses through their tax returns.

### **Role of approver**

- 13.13 The role of an approver is to verify that the expenditure is consistent with the applicable principles in section 2.

## **14 Breach of expense and reimbursement rules**

- 14.1 If an elected member breaches this policy, they must reimburse the council for any costs the council may have wrongfully incurred.
- 14.2 A breach of the policy may lead to an investigation pursuant to the Elected Members' Code of Conduct.



## J Legislation relevant to the conduct of members

### 1 Introduction

- 1.1 This section summarises the core legal requirements that are applicable to elected members and to collective decision-making.
- 1.2 In addition to these core legal requirements, there are many other statutes relevant to certain council decisions (for example the Resource Management Act 1991 and the Reserves Act 1977).

### 2 Local Government Act 2002

- 2.1 The Local Government Act 2002 (**LGA 2002**) is the main Act that establishes the general legal framework for all local authorities in New Zealand, including Auckland Council. The LGA 2002 underpins a great deal of what the council does.
- 2.2 Clauses 14 to 17 of Schedule 7 of the LGA 2002 require elected members to:
- make a declaration before acting as a member
  - comply with a Code of Conduct
  - abide by Standing Orders.
- 2.3 Under the council's two-tiered governance structure, the Governing Body and local boards share decision-making and are responsible and democratically accountable for the decision-making of the council. In making its decisions, the council must give effect to the statutory purpose of local government, as set out in the Local Government Act:
- (a) to enable democratic local decision-making and action by, and on behalf of, communities
  - (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future
- 2.4 The role of a local authority is to give effect to the purpose of local government and to perform the duties and exercise the rights, conferred on it by or under the Local Government Act and any other enactment. When performing its role, the council must act in accordance with the principles set out in section 14 of the Act. If any of the principles, or any aspects of well-being, are in conflict in any particular case then the local authority should resolve the conflict in an open, transparent and democratically accountable manner.
- 2.5 The LGA 2002 gives the council its power of general competence, which broadly allows the council to make decisions that an ordinary person or body corporate could make, while carrying out the council's role and purpose, within any statutory limits.

### 3 Local Government (Auckland Council) Act 2009

- 3.1 The Local Government (Auckland Council) Act 2009 (LGACA) establishes and applies uniquely to Auckland Council. It sets out matters in relation to the council's structure, functions, duties and powers that differ from the general provisions under the Local Government Act. If there is ever any conflict between LGACA and the LGA 2002, LGACA takes precedence.
- 3.2 LGACA creates Auckland Council as a unitary authority, with decision-making responsibilities shared between the governing body (the mayor and 20 councillors) and 21 local boards.
- 3.3 The Governing Body is responsible and democratically accountable for the decisions it is responsible for in accordance with section 15 of LGACA.
- 3.4 The governing body focuses on the region-wide strategic decisions, making the most of the council's size and ability to deliver regionally. There are some decisions that only the governing body can make, including setting rates, appointing the chief executive, making bylaws or adopting the council's ten-year budget (the long-term plan).
- 3.5 Decisions made regionally by the governing body will inevitably have local impacts, and when making decisions, the governing body will consider views and preferences expressed by local boards.
- 3.6 Local boards are responsible and democratically accountable for the decisions local boards are responsible for in accordance with section 16 of LGACA.
- 3.7 The 21 local boards represent their local communities and make decisions on local issues, activities and facilities. Local boards are established for the purposes of:
- (a) enabling democratic decision-making by, and on behalf of, communities within the local board area; and
  - (b) better enabling the purpose of local government to be given effect to within the local board area.
- 3.8 The governing body and the local boards collectively comprise Auckland Council, and together with council-controlled organisations, comprise the Auckland Council group.
- 3.9 LGACA also sets out the responsibilities of Auckland Transport, Watercare (as an Auckland water organisation) and the Independent Maori Statutory Board.

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

- 4.1 The Local Authorities (Members' Interests) Act 1968 (**LAMIA**) deals with financial conflicts of interest.
- 4.2 It prohibits elected members from taking part in discussion or voting in situations where an elected member has a direct or indirect financial interest, other than an interest in common with the public. LAMIA also provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.



- 4.3 The same rules also apply where the member's spouse, partner, company (depending on shareholding levels or the member's position in the company) and possibly family trust, contracts with the authority or has a financial interest.
- 4.4 In some cases the Office of the Auditor-General can consider providing an exemption to an elected member so they may participate in a decision in which they have a financial interest or enter into a contract with the council valued at over \$25,000.
- 4.5 Failure comply with LAMIA could result in an elected member being prosecuted and disqualified from office.
- 4.6 For advice on compliance with LAMIA, elected members should review the Office of the Auditor General Guidance for members of local authorities about the LAMIA and/or seek advice from the Office of the Auditor General or independent legal advice.

## 5 Local Government Official Information and Meetings Act 1987 (LGOIMA)

- 5.1 The Local Government Official Information and Meetings Act 1987 (**LGOIMA**) determines how council meetings are conducted (including in relation to excluding the public from meetings), and how the council uses and releases the information that it holds.
- 5.2 LGOIMA provides for:
  - access by the public to information held by the council, with limited grounds on which the council can decline a request
  - transparency and accountability in decision-making through providing for public admission to meetings of local authorities (unless there is good reason to restrict public access for a particular agenda item or items)
  - establishment of procedures for the achievement of these purposes
  - a process for members of the public to complain to the Ombudsman if they are dissatisfied with the council's response to a LGOIMA request.

## 6 Health and Safety at Work Act 2015

- 6.1 The purpose of the Health and Safety at Work Act 2015 (**HSAW Act**) is to protect the health and safety of workers at their workplaces. It sets out key health and safety duties for the council and for people in positions of leadership, influence, or responsibility in the workplace and for workers and for other people. The HSAW Act sets out some compulsory health and safety requirements, and creates offences and penalties for failing to meet those requirements.

### Due diligence

- 6.2 Elected members have a personal and individual duty of due diligence to ensure that the council complies with its obligations under the HSAW Act. This is analogous to what might be expected of a company director with a company's financial statements. An elected member cannot delegate the exercise of this duty to anyone else. There are six aspects to the due diligence duty:

- to be familiar and keep up to date with health and safety knowledge and matters for the council
- understand the council's operations and the associated hazards and risks
- ensure that the council has appropriate resourcing and processes to eliminate or minimise risks to health and safety
- ensure the council has appropriate processes for receiving and considering information regarding incidents, hazards, and risk and for responding to the information in a timely way
- ensure the council has and implements processes for complying with its duties
- verify the provision and use of resources and processes through reviews and audits.

6.3 Staff support elected members to comply with their duty of due diligence. Part of that support includes training and regular health and safety information reporting at governing body committee meetings and local board meetings.

## 7 Secret Commissions Act 1910

7.1 Under the Secret Commissions Act 1910 it is unlawful for an elected member (or officer) to take bribes, or to use their position for improper gain. It is also an offence for an elected member not to disclose a direct or indirect financial interest he or she has in a council contract. A conviction under this Act would result in the member being disqualified from office and could also lead to a fine or imprisonment.

## 8 Crimes Act 1961

- 8.1 Under the Crimes Act 1961 it is unlawful for an elected member (or officer) to:
- (a) corruptly seek or accept a bribe or reward (for themselves or for anyone else) for doing, or not doing, something in their official capacity as an elected member
  - (b) use information gained in the course of their duties for their, or another person's, monetary gain or advantage.
- 8.2 A conviction for either of these offences under this Act would result in an elected member being disqualified from office and could lead to imprisonment.

## 9 Financial Markets Conduct Act 2013

- 9.1 Auckland Council currently has a number of bonds quoted on the New Zealand, Singapore and Swiss Debt Markets. As a result, Auckland Council is subject to obligations, which it must comply with under the listing rules of the NZX (Listing Rules), the listing rules of other exchanges and the Financial Markets Conduct Act 2013 (FMCA).
- 9.2 The FMCA aims to promote a fair, efficient and transparent financial market. It imposes a number of responsibilities on those who offer, deal and trade in financial products (including bonds issued by the council), especially in relation to what sort of

information must be provided to potential investors when investment offers are made. An elected member may be personally liable when approving council documents relating to offers of securities if the documents contain false and materially misleading statements and the member knew this, or was reckless in approving any such documents.

- 9.3 As an issuer of quoted securities on the NZX Debt Market, council is subject to continuous disclosure obligations, which it must comply with under the Listing Rules and the FMCA. Council's continuous disclosure obligations under the Listing Rules require that once it becomes aware of any material information relating to it, it must:
- (a) promptly and without delay release that material information to the NZX; and
  - (b) not disclose any material information to the public, any other stock exchange or any other party without first releasing the material information to the NZX. Auckland Council has implemented a Continuous Disclosure Policy to ensure that it complies with its continuous disclosure obligations. The Continuous Disclosure Policy also provides further guidance regarding what constitutes material information.
- 9.4 The FMC Act places limits on elected members using confidential information relating to certain proposed council transactions. For example, where council debt securities are listed on a registered stock exchange, then elected members cannot use (or benefit from) information that is not generally available to the public. This applies to the council's bonds listed on the NZX Debt Market. Elected members must consider the risks of insider trading and the failure to disclose relevant interests in the council's bonds. Failure to comply with the FMC Act could lead to a criminal conviction, and therefore disqualification from office.

## 10 Public law decision-making principles

- 10.1 There are public law principles that elected members must keep in mind when making decisions. These principles are upheld by the High Court by way of judicial review. Broadly, public decision-makers are required to act lawfully, fairly, and reasonably.
- 10.2 The concept of acting lawfully includes:
- having the necessary power to make the decision
  - acting in accordance with the purpose of the power being exercised, and within the scope of the discretion granted to the decision-maker
  - taking into account all relevant considerations and ignoring any irrelevant considerations
  - exercising independent judgement in making the decision rather than “rubber-stamping” the recommendation of another person.

- 10.3 The concept of acting fairly includes:
- ensuring a proper process is followed, including consulting where appropriate
  - being unbiased and free from conflicts of interest
  - fairly considering all relevant views put forward and not predetermining the decision (that is, making a decision before considering all relevant views or considerations)
  - complying with the public's legitimate expectations (for example, keeping a promise to do something in a particular way that has been relied on)
  - complying with any applicable principles of natural justice.
- 10.4 The concept of acting reasonably includes:
- ensuring the decision is rational, based on legitimate reasons and is one that a reasonable decision-maker could make
  - ensuring the decision is proportionate to the purpose being served by the decision.
- 10.5 These obligations vary according to the context and the nature of the decision being made.
- General public law rule against financial and non-financial conflicts of interest and predetermination*
- 10.6 In addition to the requirements of LAMIA referred to above, elected members have additional obligations to carefully manage conflicts of interest and matters of pre-determination. These obligations are reflected in the Code of Conduct and standing orders; and upheld by the High Court.
- 10.7 A conflict of interest is concerned with public perceptions as to impartial decision-making based on the interests (financial or non-financial) or relationships of the decision maker. The test for a conflict of interest is whether a fair-minded observer would reasonably think that a member of the decision-making body might not bring an impartial mind to the decision, in the sense that he or she might unfairly regard or favour or disfavour a particular position due to his or her nonfinancial or financial interest.
- 10.8 Predetermination is concerned with closed-mind decision-making and is not dependent on the interests or relationships of the decision maker. The test for predetermination is whether the member has an actual closed mind.

## 11 Council decision-making requirements

- 11.1 The LGA 2002 and LGACA set out the basic procedural decision-making requirements applying to council decision-making. For each decision, the governing body and local boards can decide how to fulfil these requirements. The more significant a decision is, the stricter the compliance should be.
- 11.2 These requirements are (in summary):
- to identify all reasonably practicable options for achieving the decision's purpose and assess the advantages and disadvantages

- to consider the views and preferences of people likely to be affected by, or have an interest in, the decision (this does not require the council to undertake consultation)
- to conduct any consultation in accordance with the principles outlined in the legislation
- to identify any significant inconsistency between the decision and any of the council's policies or plans, and to provide reasons for the inconsistency
- to establish processes to provide opportunities for Maori to contribute to decision-making, including providing relevant information for that purpose
- for the governing body to consider the views and preferences of local boards if the decision may affect their responsibilities or operation or the well-being of their communities
- for local boards to cooperate with each other when the interests of their areas are better served by doing so.

## 12 Personal liability of elected members

12.1 Members of the council (including local board members and appointees to council committees or other subordinate decision-making bodies) are indemnified by the council for the following:

- costs and damages for any civil liability, as long as the member was acting in good faith and was carrying out responsibilities or powers of the council (or relevant committee or other subordinate decision-making body)
- costs arising from any successfully defended criminal action relating to acts or omissions in their capacity as a member.

### Personal liability for losses incurred

12.2 Elected members may be liable (jointly and separately) for the losses of the council where the governing body or local board has:

- unlawfully spent money
- unlawfully sold or disposed of an asset
- unlawfully incurred a liability
- intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

12.3 Members are only liable for these types of losses if the Auditor-General issues a report on the loss to the Minister of Local Government.

12.4 An elected member will have a defence (and will not be liable) if they can prove the act (or failure to act) that resulted in the loss occurred:

- without their knowledge
- with their knowledge but against their protests made at or before the time when the loss occurred
- contrary to the manner in which they voted on the issue at a meeting

- in circumstances where they acted in good faith and relied on reports, information, or professional / expert advice given by a council staff member or a professional adviser or expert on matters that the elected members reasonably believed were within the person's competency.

12.5 A local board member can be liable only in respect of a matter that is the responsibility of their local board.



