
Elected Member Code of Conduct

Adopted on 24 August 2023





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1. Introduction

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

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

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

2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all elected members. The Code is designed to deal with the behaviour of members towards:

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

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

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

3. Values

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

1. **Public interest:** members will serve the best interests of the people within the Whangarei district and discharge their duties conscientiously, to the best of their ability
2. **Public trust:** members, in order to foster community confidence and trust in Council, will work together constructively in an accountable and transparent manner
3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits
5. **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability
6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public
7. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars
8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

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

Te Tiriti o Waitangi

In alignment with relevant legislation Council will take appropriate account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi):

1. **Partnership:** The principle of partnership requires local authorities to maintain strong and enduring relationships with mana whenua, whānau, hapū and iwi to govern, design, deliver and monitor services that are culturally appropriate for Māori and seek to improve outcomes for Māori. Partnership is underpinned by mutual good faith and reasonableness.
2. **Active protection:** The principle of active protection requires local authorities to conduct themselves honourably; use fair processes; and consult fully and, where appropriate, make decisions with mana whenua, whānau, hapū and iwi, whose interests are to be protected, that enhance Māori self-determination.
3. **Participation:** The principle of participation requires local authorities to identify opportunities, and develop and maintain ways, for mana whenua, whānau, hapū and iwi to contribute to council decisions, and consider ways council can help build Māori capacity to contribute to council decision-making.



4. Roles and responsibilities

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

4.1 Members

The role of the governing body includes:

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

4.2 Chief Executive

The role of the Chief Executive includes:

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

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

5. Relationships

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

5.1 Relationships between members

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

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

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

5.2 Relationships with staff

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

- raise any concerns about employees, officers or contracted officials with the Chief Executive
- raise any concerns about the performance or behaviour of the Chief Executive with the Mayor or the chairperson of the Chief Executive Performance Review Committee (however described)
- make themselves aware of the obligations that Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer
- treat all employees with courtesy and respect and not publicly criticise any employee
- observe any protocols put in place by the Chief Executive concerning contact between members and employees.

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

5.3 Relationship with the public

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

- ensure their interactions with citizens are fair, honest and respectful
- be available to listen and respond openly and honestly to citizens’ concerns
- represent the views of citizens and organisations accurately, regardless of the member’s own opinions of the matters raised
- ensure their interactions with citizens and communities uphold the reputation of Council.



6. Media and social media

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

1. In dealing with the media elected members must clarify whether they are communicating a view endorsed by Council or are expressing a personal view.
2. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
 - comments shall be consistent with the Code
 - comments must not purposefully misrepresent the views of Council or the views of other members
 - social media pages controlled by members and used for making observations relevant to their role as elected members should be open and transparent, except where abusive or inflammatory content is being posted
 - social media posts about other members, council staff or the public must be consistent with section five of this Code. (See Appendix A for guidelines on the personal use of social media).



7. Information

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

7.1 Confidential information

In the course of their duties members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

7.2 Information received in capacity as an elected member

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



8. Conflicts of interest

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

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

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

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



9. Register of interests

Members shall, at least annually, make a declaration of interest. These declarations are recorded in a public Register of Interests maintained by the Council.

The declaration must include information on the nature and extent of any interest, including:

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

Under the Local Government (Pecuniary Interests Register) Amendment Act 2022, Council must now also keep a register of certain specified pecuniary interests of their members (SEE Appendix B). Declarations under this Act must be made annually in February.

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

10. Ethical behaviour

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

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of Council developed in accordance with that determination
- not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families, personal or business interests
- only use Council's resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$500 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of gifts.

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



11. Creating a supportive and inclusive environment

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

- attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council's vision, goals and objectives and the manner and operating style by which members will work
- taking part in any assessment or evaluation of Council's performance and operating style during the triennium
- taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the Whangarei District Council.



12. Breaches of the Code

Members must comply with the provisions of the Code (LGA 2002, schedule 7, cl. 15(4)). Any member, member of the public or the Chief Executive, who believes that the Code has been breached by the behaviour of a member may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles:

12.1 Principles

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

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach, with priority being given to finding a mediated settlement
- that the processes of complaint, investigation, advice, and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, directly affected parties:
 - have a right to know that an investigation process is underway
 - are given due notice and are provided with an opportunity to be heard
 - have confidence that any hearing will be impartial
 - have a right to seek appropriate independent advice and be represented and, if they choose, be accompanied by a support person throughout the process
 - have their privacy respected.

12.2 Complaints

All complaints made under this Code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.

Members, and the Chief Executive and members of the public may make a complaint under this Code.

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

12.3 Materiality

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or Council into disrepute or, if not addressed; reflect adversely on another member of Council. An alleged breach under this Code is non-material if, in the opinion of the independent investigator, any adverse effects are minor, and no investigation or referral is warranted.



13. Penalties and actions

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

Any actions taken against a member found to be in breach of the Code should be consistent with the following principles:

- actions should be commensurate with the seriousness of the breach
- actions should be applied in a manner that is culturally appropriate and safe for the members involved
- actions should, to the degree practical, contribute to an inclusive culture in the local authority by focusing on constructive mediation, learning, and member improvement.

13.1 Material breaches

In the case of material breaches of the Code, Council may require one or more of the following:

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

Council may decide that instead of a penalty, one or more of the following may be required:

- attend a relevant training course



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

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in section 48 of the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

13.2 Statutory breaches

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

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



14. Review



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

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



Appendix A: Guidelines on the personal use of social media

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

1. **Adhere to the Code of Conduct and other applicable policies:** Council policies and legislation, such as LGOIMA and the Privacy Act 2020, apply in any public setting where you may be making reference to Council or its activities, including the disclosure of any information online
2. **You are responsible for your actions:** Anything you post that can potentially damage Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense
3. **Be an "advocate" for compliments and criticism:** Even if you are not an official online spokesperson for Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about Council or its activities online that you believe are important you are encouraged to share them with the governing body
4. **Let the subject matter experts respond to negative posts:** Should you come across negative or critical posts about Council or its activities you should consider referring the posts to Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding
5. **Take care mixing your political (Council) and personal lives:** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views
6. **Never post sensitive and confidential information:** provided by Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code

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7. **Elected Members’ social media pages should be open and transparent:**
When commenting on matters related to Council no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.
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Appendix B: Legislation bearing on the role and conduct of elected members

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

The Local Authorities (Members’ Interests) Act 1968

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

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

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

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

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

Determining whether a pecuniary interest exists

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

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

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

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

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

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

The contracting rule

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

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

Non-pecuniary conflicts of interest

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

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

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

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

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

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

The Local Government (Pecuniary Interests Register) Amendment Act 2022

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members. The purpose of the register is to record members' interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers must comprise the following:

- the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the 30 main business activities of each of those companies
- the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities
- if the member is employed, the name of each employer or their employer(s) and a description of the main business activities of those employers
- the name of each trust in which the member has a beneficial interest
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the member has been elected
- the title and description of any organisation in which the member holds an appointment by virtue of being an elected member
- the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property
- the location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust (disclosed under subclause 20) or a retirement scheme whose membership is open to the public.

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Each council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

Local Government Official Information and Meetings Act 1987

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

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

See Standing Orders for more detail.

Secret Commissions Act 1910

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

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

Crimes Act 1961

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

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

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

Financial Markets Conduct Act 2013

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

The Local Government Act 2002

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

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

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

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

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

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

Appendix C: Process where a complaint is referred to an independent investigator

Step 1: Chief Executive receives complaint

On receipt of a complaint under this Code the Chief Executive will refer the complaint to an independent investigator. The Chief Executive will also:

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

Step 2: Investigator makes preliminary assessment

On receipt of a complaint the investigator will undertake a preliminary assessment to determine the relative merit and seriousness of the complaint and the nature of the subsequent process that will be followed. The investigator will consider whether:

- the complaint is trivial, vexatious, frivolous or politically motivated and should be dismissed
- the complaint is outside the scope of the Code and should be re-directed to another agency or process
- the complaint is minor or non-material
- the complaint is material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties.

Outcomes of preliminary assessment

1. Where an investigator determines that a complaint is trivial, vexatious, frivolous, or politically motivated, the complaint may be dismissed. The Chief Executive will advise both the complainant and the respondent of the investigator's decision.
2. In cases where the investigator finds that the complaint involves a potential legislative breach and/or is outside the scope of the Code, they may recommend that it should be re-directed by the Chief Executive to another agency or process. The Chief Executive will advise both the complainant and the respondent of the investigator's decision.
3. If the complaint is not dismissed or redirected, the independent investigator may initiate any of the following processes:

- **Referral to Mayor**

If the subject of a complaint is found to be non-material (not serious) and not amenable to mediation the investigator will inform the Chief Executive and suggest that the respondent is referred to the Mayor for advice and guidance¹. A meeting or meetings with the Mayor will be regarded as sufficient to resolve the complaint. The investigator may also recommend a course of action appropriate to the breach for the Mayor's consideration, such as:

- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint
- that the respondent work with a mentor for a period
- that the respondent tenders an apology.

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

The outcomes of any referral to the Mayor will be confidential and, other than reporting that a complaint has been resolved through referral to the Mayor for guidance, there will be no additional report to council

- **Mediation**

If the complaint concerns a dispute between two members, or between a member and another party, the investigator may recommend mediation. The investigator will contact the parties and seek their agreement to independently facilitated mediation.

¹ Excluding any complaints against or directly involving the Mayor.

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If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required. The outcomes of any mediation will be confidential and, other than reporting that a complaint has been resolved through mediation, there will be no additional report to council unless the complaint is referred for further investigation due to a failure of the mediation process.

If the parties do not agree to mediation, or mediation is unsuccessful in resolving the matter, the investigator will inform the Chief Executive that the matter should be referred for full investigation.

- **Referral for full investigation by independent investigator**

If the subject of a complaint is found by the investigator to be material (serious) or no resolution can be reached through mediation and/or mediation is refused, the investigator will inform the Chief Executive that the matter should be referred for full investigation and the Chief Executive will inform the complainant and respondent.

Step 3: Independent investigator to undertake full investigation

Where a complaint is referred for full investigation the investigator will undertake an investigation appropriate to the scale of the seriousness of the alleged breach and then prepare a report for Council on the seriousness of the breach and recommend actions commensurate with the breach. In preparing that report, the investigator may:

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

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



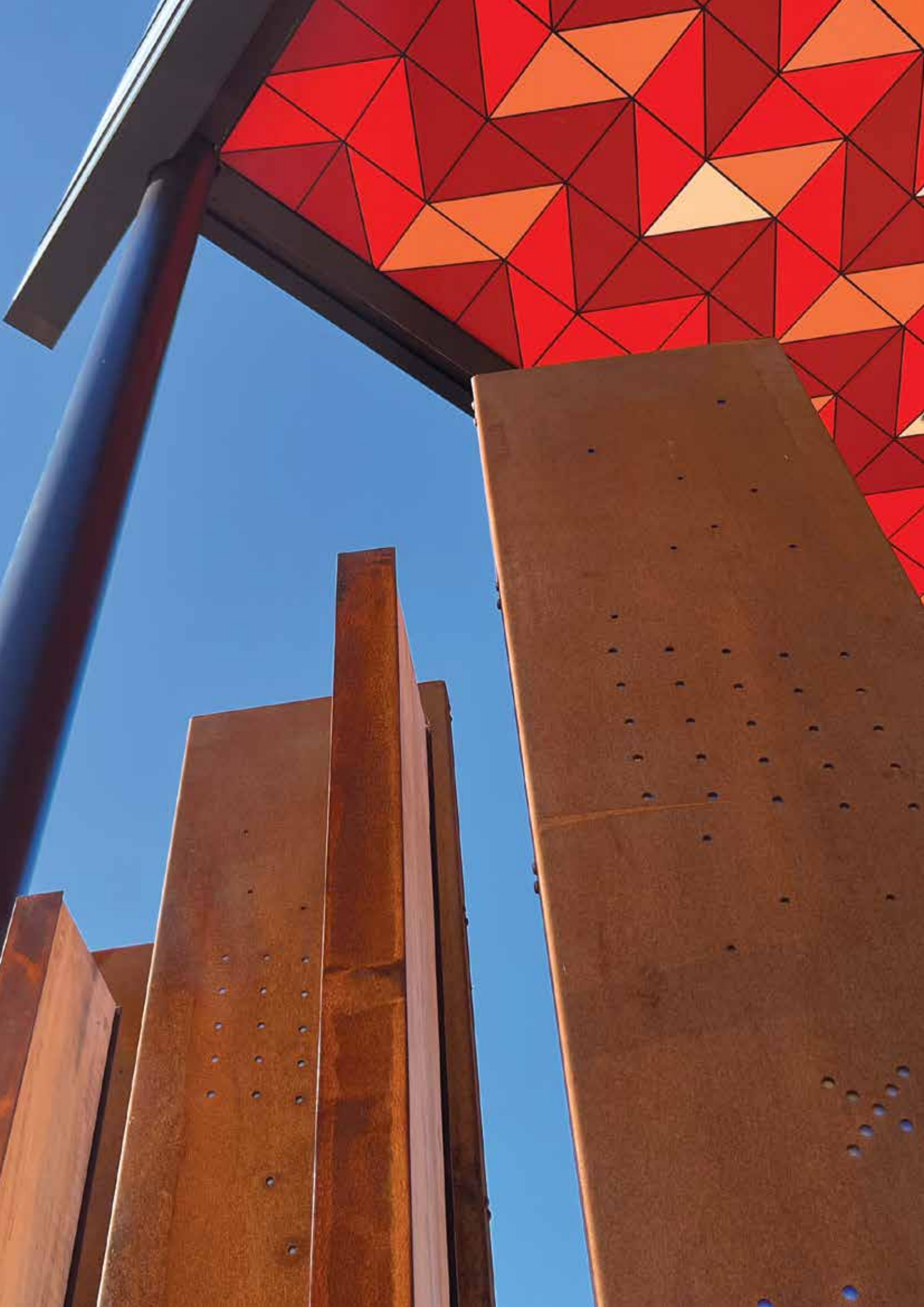
Step 4: Process for considering the investigator’s report

The investigator’s report will be considered by Council or the adjudicative body established by Council for considering the complaint, noting that the process will meet the principles set out in section 12.1 of the Code.

The Council, or adjudicative body, will consider the Chief Executive’s report in open meeting, except where the alleged breach concerns matters that justify, in accordance with section 48 LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the relevant body will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

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







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