



CODE OF CONDUCT

Adopted on 23 November 2022

1. INTRODUCTION

This Code of Conduct (**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 the Selwyn District Council (**Council**) and the provision of good local government for the Selwyn District (**District**);
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of the Council to its communities; and
- develop a culture of mutual trust, respect and tolerance between the members of the Council and between the members and management.

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

Members' commitment

These commitments apply when conducting the business of the Council as its representative or the representative of an electorate, and communicating with other members, the media, the public or staff. By adopting this Code of Conduct members agree that they will:

1. not bully, harass, or discriminate unlawfully against any person;
2. treat all people fairly;
3. not bring the Council into disrepute;
4. not use their position to improperly advantage themselves or anyone else or disadvantage another person;
5. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the Council;
6. treat all other members, staff, and members of the public, with courtesy and respect;
7. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature;
8. share with the Council any information received that is pertinent to the ability of the Council to properly perform its statutory duties;
9. make it clear, when speaking to the media, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the Council;
10. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member; and
11. comply with the specific duties outlined below.

Please note, a failure to act in accordance with these commitments represents a breach of this Code.

2. SCOPE

The Code has been adopted in accordance with clause 15 of Schedule 7 of the Local Government Act 2002 (**LGA**) and applies to all elected members, including the members of any local boards as well as the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- each other;
- the chief executive and staff;
- the media; and
- the general public.

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

3. TE TIRITI O WAITANGI

The Council commits to operating in a manner that recognises and respects the significance of the Te Tiriti o Waitangi and acknowledges the following principles:

1. **Tino Rangatiratanga:** The principle of self-determination provides for Māori self-determination and mana motuhake. This requires local authorities to be open to working with mana whenua partners in the design and delivery of their work programmes.
2. **Partnership:** The principle of partnership implies that local authorities will seek to establish a strong and enduring relationship with Iwi/Māori, within the context of Iwi/Maori expectations.
3. **Equity:** The principle of equity requires local authorities to commit to achieving the equitable delivery of local public services.
4. **Active protection:** The principle of active protection requires local authorities to be well informed on the wellbeing of Iwi, hapū and whanau within their respective rohe.
5. **Options:** The principle of options requires local authorities to ensure that its services are provided in a culturally appropriate way that recognises and supports the expression of te ao Māori.

4. VALUES

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

1. **Public interest:** members will serve the best interests of the people within their 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 their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.
3. **Ethical behaviour:** members will act with honesty and integrity at all times and will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour. Members will respect the impartiality and integrity of officials.
4. **Integrity:** members should not act or take decisions to gain financial or other material benefits for themselves, their family, or their friends or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
5. **Tāria te wā and kaitiakitanga/stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on both past, current and future generations, have an inter-generational impact on collective well-being.
6. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts and

recommending individuals for rewards or benefits.

7. **Accountability:** members will be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
8. **Openness:** members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
9. **Honesty:** members should be truthful.
10. **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of officials.
11. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by this Code and act in accordance with the trust placed in them by the public.
12. **Equitable contribution:** members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events and participating in relevant training seminars.
13. **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 section 14 of the LGA and the governance principles of section 39 of the LGA.

5. BEHAVIOURS

To promote good governance and build trust between the local authority, its members and citizens, members agree to the following standards of conduct when they are:

- conducting the business of the local authority;
- acting as a representative of the local authority;
- acting as a representative of their electorate;
- communicating with other members, the media, the public and staff; and
- using social media and other communication channels.¹

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint made under the council's "Policy for alleged breaches of the Code of Conduct".

Bullying, harassment and discrimination

Members will:

- not bully any person
- not harass any person
- not discriminate unlawfully against any person; and
- treat all people fairly.

¹ Please refer to the Guidelines for the responsible use of social media in Appendix A.

For the purpose of this Code, bullying is defined as offensive, intimidating, malicious or insulting behaviour which represents an abuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying can be a regular pattern of behaviour or a one-off incident, occur face-to-face, on social media, in emails or phone calls, happen in the workplace, or at work social events, and may not always be obvious, or noticed by others.

Harassment means conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person. Unlawful discrimination is where someone is treated unfairly or less favourably than another person because of their:²

<i>Age</i>	<i>colour</i>	<i>race</i>
<i>disability</i>	<i>employment status</i>	<i>ethical belief</i>
<i>ethnic or national origin</i>	<i>family status</i>	<i>marital status</i>
<i>political opinion</i>	<i>religious belief</i>	<i>gender identity</i>
<i>Sex</i>	<i>sexual orientation.</i>	

Disrepute

Members will not bring the local authority into disrepute.

As a member, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You need to be aware that your actions might have an adverse impact not only on yourself and colleagues but also on your local authority and may lower the public's confidence in your local authority.

Behaviours that can bring your local authority into disrepute and diminish its ability to fulfil its statutory role, include behaviours that are dishonest and/or deceitful. Adhering to this Code does not in any way limit your ability to hold the local authority and fellow members to account or constructively challenge and express concern about decisions and processes undertaken by the local authority.

Use of position for personal advantage

Members will not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member may be subject to the provisions of the Secret Commissions Act 2010.

See further discussion of conflicts of interest, interest register requirements and ethical behaviour requirements 12 below.

² See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

Impartiality

Members will not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try to influence officials to change their advice, or alter the content of a report, other than in a meeting or workshop, if doing so would prejudice their professional integrity.

Members should:

- make themselves aware of the obligations that the local authority and chief executive have as employers and always observe these requirements, such as the obligation to be a good employer; and
- observe any protocols put in place by the chief executive concerning contact between members and employees, and not publicly criticise individual staff.

If you have concerns about the behaviour of an official, whether permanent or contracted, you should raise your concerns with the local authority's chief executive, or, if the concerns are to do with the chief executive, the Mayor, the council chairperson or CEO performance committee.

Respect

Members will treat all other members, staff and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech and in the written word. Debate and having different views are all part of a healthy democracy. As a member of a local authority you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, your local authority. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.

Further discussion of relationships between members, staff and members of the public is set out below.

Confidentiality and information

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless:

- they have the consent of a person authorised to give it;
- they are required by law to do so;
- the disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person; or
- the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.

Members will share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties.

Occasionally members will receive information, in their capacity; as members of the governing body, which is pertinent to the ability of their council to properly perform its statutory duties. Where this occurs members will disclose any such information to other members and, where appropriate the chief executive. Members who are offered information on the condition that it remains confidential will inform the person making the offer that they are under a duty to disclosure such information, for example, to a governing body meeting in public exclusion.

Further guidance on the receipt and handling of confidential information is set out below.

Media

Members will make it clear, when speaking to the media, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority.

The media play an important role in the operation and efficacy of our local democracy and need access to accurate and timely information about the affairs of the local authority to fulfil that role. Members are free to express a personal view to the media at any time, provided the following rules are observed:

- they do not purport to talk on behalf of the local authority, if permission to speak on behalf of the authority has not been given to them;
- comments shall be consistent with the Code, for example, they should not disclose confidential information or criticise individual members of staff; and
- comments must not purposefully misrepresent the views of the local authority or other members.

Further details about media relations are set out below.

Members will abide by the social media protocols described in Attachment A, LGNZ's Good Governance Guide, available at <https://www.lgnz.co.nz/assets/Induction/The-Good-Governance-Guide.pdf>

Equitable contribution

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them.

Being a member is a position of considerable trust, given to you by your community to act on their behalf. To fulfil the expectations of your constituents and contribute to the good governance of the District it is important that you make all reasonable efforts to attend meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.

The local government workload can be substantial, and it is important that every member "pulls their weight". Achieving good governance and leaving your community in a better state than when you were elected requires members to often work as a team and avoid situations where the majority of the work undertaken by the local authority falls on the shoulders of a small number of members.

6. ROLE AND RESPONSIBILITIES

The Code is designed to strengthen the good governance in the District. Good governance requires clarity of roles, respect and understanding between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of Council decisions. The key roles are:

6.1 Members

The role of the governing body includes:

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

6.2 Chief executive

The role of the chief executive includes:

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

Under section 42 of the LGA the chief executive is the only person *directly* employed by the Council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the chief executive.

7. RELATIONSHIPS

This section of the Code sets out agreed standards of behaviour between:

- members;
- members and staff; and
- members and the public.

7.1 Relationships between members

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

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

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

7.2 Relationships with staff

An important element of good governance involves the relationship between the Council and its chief executive and 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;
- make themselves aware of the obligations that the Council and the chief executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;
- observe any protocols put in place by the chief executive concerning contact between members and employees; and
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

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

7.3 Relationship with the public

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

- ensure their interactions with members of the public are fair, respectful and conducted in an equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- represent the views of citizens and organisations accurately and consider all points of view or interests when participating in debate and making decisions, regardless of the member's own opinions of the matters raised;

- treat members of the public in a courteous manner; and
- ensure their interactions with citizens and communities uphold the reputation of the Council.

8. CONTACT WITH THE MEDIA

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

From time to time individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.

When responding to the media members must be mindful that operational questions should be referred to the chief executive and policy-related questions referred to the mayor or the member with the appropriate delegated authority.

When speaking to the media more generally members will abide by the following provisions:

8.1 Media contact on behalf of the Council

- The mayor is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the mayor is absent requests for comment will be referred to the deputy mayor or relevant committee chairperson or member appointee.
- The mayor may refer any matter to the relevant committee chairperson or to the chief executive for their comment.
- No other member may comment *on behalf of* the Council without having first obtained the approval of the mayor.

8.2 Media comment on a member's own behalf

Elected members are free to express a personal view in the media or social media, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of the Council;
- Comments must not purposefully misrepresent the views of the Council or the views of other members;
- media comments which are contrary to a Council decision or policy must clearly state that they do not represent the views of the majority of members;
- media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticize, or compromise the impartiality or integrity of staff; and
- media comments must not be misleading and should be accurate within the bounds of reasonableness.
- Social media pages controlled by members and used for making observations relevant to their role as an elected members should be open and transparent, except where abusive or inflammatory content is being posted; and
- 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).

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

9. INFORMATION

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

9.1 Confidential information

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

9.2 Information received in capacity as an elected member

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

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

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

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

10. 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 or partner contracts with the authority or has a pecuniary interest. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

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

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

11. REGISTER OF INTERESTS³

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

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

12. ETHICAL BEHAVIOUR

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

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

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

³ These requirements now mandated under Part 4, Subpart 3 of the LGA following the commencement of the Local Government (Pecuniary Interests Register) Amendment Act 2022.

12.1 Undischarged bankrupt

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

13. CREATING A SUPPORTIVE AND INCLUSIVE ENVIRONMENT

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

- attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council’s vision, goals and objectives and the manner and operating style by which members will work;
- taking part in any assessment of the Council’s overall performance and operating style during the triennium⁴; and
- taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the district.

14. BREACHES OF THE CODE

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

14.1 Principles:

The following principles will guide any processes for investigating and determining whether a breach under this Code has occurred:

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

⁴ A self assessment template is provided in the Guidance to this Code

14.2 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 the Mayor or, where the Mayor is a party to the complaint, an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation⁵.

Only members and the chief executive may make a complaint under this Code.

14.3 Complaint referred to Mayor

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

- Interview the complainant to assess the full extent of the complaint.
- Interview the member(s) subject to the complaint.
- Assess the complaint to determine materiality.
- Where a complaint is assessed by the Mayor to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.
- Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor, to the Council or an adjudicative body established by the Council to assess and rule on complaints made under the Code.⁶

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

14.4 Complaint referred to Independent Investigator

On receipt of a complaint from a member which concerns the Mayor, or from the Mayor after initial consideration, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or an adjudicative body for assessing and ruling on complaints.⁷

14.5 Investigation, advice and decision

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

14.6 Materiality

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

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

⁵ On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his or her Council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators, such as Equip.

⁶ Advice on establishing adjudication bodies can be found in the Guide to the Code of Conduct.

⁷ On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor or Chairperson, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his or her Council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators, such as Equip.

15. PENALTIES AND ACTIONS

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

15.1 Material breaches

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

1. a letter of censure to the member;
2. a request (made either privately or publicly) for an apology;
3. a vote of no confidence in the member;
4. removal of certain Council-funded privileges (such as attendance at conferences);
5. Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
6. restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
7. limitation on any dealings with Council staff so that they are confined to the chief executive or identified senior manager only;
8. suspension from committees or other bodies; or
9. an invitation for the member to consider resigning from the Council.

A Council or adjudicative body with delegated authority may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

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

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

15.2 Statutory breaches

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

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

16. Review

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

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

Appendix A: Guidelines on the personal use of social media

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

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
2. **You are responsible for your actions.** Anything you post that can potentially damage the Council’s image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense.
3. **Be an “advocate” for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.
4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council’s authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.
5. **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
6. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.

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

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.

Local Authorities (Members' Interests) Act 1968

The LAMIA regulates situations where a member's personal interests impinge or could be seen as impinging on their duties as a member.

The LAMIA provides that a member is disqualified from office if that member or that member's spouse or partner is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 (inclusive of GST) in any financial year.

Additionally, members are prohibited from participating in any Council discussion or voting on any matter in which they or their spouse or partner has a pecuniary interest, other than an interest in common with the general public. This includes where a member, or their spouse or partner, are involved in a company or trust that is "concerned or interested" in a contract or decision or where the company or trust has a pecuniary interest in the decision.

Members may contact the Office of the Auditor-General for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

The Chief Executive may seek approval from the Office of the Auditor-General for contractual payments to members, their spouses or partners or their companies that exceed the \$25,000 annual limit in special cases.

Failure to observe these requirements could leave the member open to prosecution under the LAMIA. In the event of a conviction members will be removed from office.

The website of the Office of the Auditor General contains further guidance on the LAMIA: www.oag.govt.nz.

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, 2010)

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 Office of 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 they have a 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).

From November 2022, Part 4, Subpart 3 of the LGA requires local authorities to maintain a register of members' pecuniary interests and members to make an annual declaration in relation to such matters.

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:

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 he or she might unfairly regard with favour (or disfavour) the case of a party. (OAG, 2010)

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

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

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

Local Government Official Information and Meetings Act 1987 (LGOIMA)

The LGOIMA has three main purposes that can be summarised as follows:

- increase the availability of official information to the public and promote the open and public transaction of business at meetings of local authorities;
- provide for proper access by each person to official information relating to that person; and
- protect official information and the deliberations of local authorities to the extent consistent with the public interest and preservation of personal privacy.

Generally, information held by the Council is to be made available unless there is a good reason for withholding (the main grounds for withholding information are set out in sections 6 and 7 of the LGOIMA).

The LGOIMA also sets out a list of meeting procedures and requirements. Meetings are to be publicly notified and open to the public, unless there is good reason for withholding information and excluding the public. Of particular importance for the roles and conduct of members is the fact that the Chair has the responsibility to maintain order at meetings, but all members should accept a personal responsibility to maintain acceptable standards of address and debate and should comply with the Council's Code.

No member should:

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

The website of the Office of the Ombudsman contains further guidance on the LGOIMA: www.ombudsman.parliament.nz.

Secret Commissions Act 1910 (SCA)

Under the SCA it is unlawful for a 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 invoices/documentation to the Council.

If convicted of any offence under the SCA a person can be imprisoned for up to seven years. A conviction therefore would trigger the disqualification provisions in clause 1 of Schedule 7 of the LGA and will result in the removal of the member from office.

Crimes Act 1961

Under the Crimes Act it is unlawful for a member (or officer) to:

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

These offences are punishable by a term of imprisonment of seven years or more. A conviction therefore would trigger the disqualification provisions in clause 1 of Schedule 7 of the LGA and will result in the removal of the

member from office.

Financial Markets Conduct Act 2013

The FMCA governs the offer, promotion, issue and sale of financial products, which includes shares, debt securities and derivatives.

If Council does issue financial products or, in certain cases, sells financial products that it holds, members will be potentially subject to personal liability for breaches of the offer and other provisions of the FMCA. For example, if investment documents such as a prospectus contain untrue statements.

Health and Safety at Work Act 2015 (HSWA)

The HSWA and its associated regulations comprise New Zealand's key work health and safety legislation. The guiding principle under the HSWA is that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from work risks as is reasonably practicable.

The HSWA places obligations on Members as 'officers' of the Council (who is a 'person conducting a business or undertaking' or PCUB for the purposes of the HSWA) to exercise due diligence to ensure that the Council is meeting its obligations under the HSWA. While Members are not required to be directly involved with the day-to-day management of health and safety, they are required to take reasonable steps to understand Council's operations and health and safety risks and to ensure that the Council has the appropriate resources and processes to ensure that it is managed in accordance with the HSWA.

This duty does not extend to ensuring that a Council-controlled organisation complies with the HSWA, unless the Member concerned is also an 'officer' (i.e. a director or trustee) of that organisation.

Most officers can be convicted of an offence for failing to meet their due diligence obligations. However, Members (and members of local boards and community boards), when acting in their capacity as elected members, are expressly exempted from prosecution under section 52 of the HSWA.

The Local Government Act 2002

The LGA sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to this Code include:

Personal liability of members

Generally speaking, members are indemnified in respect of their actions as a member. Section 43 of the LGA provides for this indemnity by the Council in relation to:

- civil liability (both for costs and damages) if the member is acting in good faith and in pursuance of the responsibilities or powers of the Council; and
- costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.

However, there is a theoretical personal exposure on the part of members following a report from the Auditor-General under section 44 of the Act, if it is found that one of the following applies:

- money belonging to, or administrable by, the Council being unlawfully expended; or

- an asset being unlawfully sold or otherwise disposed of by the Council; or
- a liability being unlawfully incurred by the Council; or
- the Council intentionally or negligently failing to enforce the collection of money it is lawfully entitled to receive.

If the Auditor-General has made such a report, then that loss is recoverable as a debt due to the Crown (which in turn must be paid back to the Council) from each member jointly and severally. However, a member has a defence to such a claim if he or she can prove that the act or failure giving rise to the loss occurred:

- without the member's knowledge; or
- with the member's knowledge but against his or her protest made at or before the time when the loss occurred; or
- contrary to the way the member voted on the issue at a meeting of the Council; or
- in circumstances where, although being a party to the act or failure to act, the member acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any Council officer or professional advisor in relation to matters which the member believed on reasonable grounds to be within that person's competency.

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

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, whether from a member (because the complaint involves the Mayor) or from the Mayor after an initial assessment, the chief executive will refer the complaint to an investigator selected from a panel agreed at the start of the triennium. The members of the panel will be:

- mayor
- deputy mayor
- chief executive
- the alternate – where required – may be the Chair of Council's Audit and Risk Subcommittee.

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; and
- inform the respondent that a complaint has been made against them, the name of the investigator and refer them to 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 assess whether:

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

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

On receiving the investigator's preliminary assessment, the chief executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the investigator's decision; and/or
2. in cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the chief executive who will inform the complainant, the respondent and members of the action.

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

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

- that the respondent seeks guidance from the mayor; and/or
- that the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

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

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

If the subject of a complaint is found to be material the investigator will inform the chief executive, who will inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach.

In preparing that report the investigator may:

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

On receipt of the investigator's report the chief executive will prepare a report for the Council or adjudicative body with delegated authority, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The chief executive's report will include the full report prepared by the investigator.

Step 5: Process for considering the investigator's report

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full Council, excluding the complainant, respondent and any other 'interested' members, or a committee established for that purpose.

In order to avoid any suggestion of bias, a Code of Conduct Committee may often be the best mechanism for considering and ruling on complaints. Committees should be established at the start of a triennium with a majority of members selected from the community through either an application process or by invitation.

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

Before making any decision in respect of the investigator's report the Council or committee will give the member against whom the complaint has been made an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set

out in clause 13.1 of this Code.

In accordance with this Code the Council will agree to implement the recommendations of a Code of Conduct Committee without debate.