



Code of Conduct

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Contents

1.0	INTRODUCTION	1
2.0	PRINCIPLES OF GOVERNANCE	1
3.0	ROLES AND RESPONSIBILITIES	2
3.1	ELECTED MEMBERS	2
3.2	THE MAYOR.....	3
3.3	THE DEPUTY MAYOR.....	4
3.4	COMMITTEE CHAIRPERSONS.....	4
3.5	THE CHIEF EXECUTIVE OFFICER	4
4.0	DECISION MAKING	5
4.1	PREDETERMINATION OR BIAS	5
4.2	DELEGATION	5
4.3	REQUIREMENTS IN RELATION TO DECISIONS.....	5
4.4	CONSULTATION	5
4.5	STAFF REPORTS.....	6
5.0	RELATIONSHIPS AND BEHAVIOURS	6
5.1	RELATIONSHIPS WITH OTHER MEMBERS.....	6
5.2	CONDUCT AT MEETINGS	6
5.3	RELATIONSHIPS WITH STAFF	7
5.4	RELATIONSHIPS WITH THE COMMUNITY	8
5.5	CONTACT WITH COUNCIL CONTROLLED ORGANISATIONS, COUNCIL ORGANISATIONS AND SHARED SERVICE PROVIDERS (CCO, CO AND SSP)	8
5.6	CONTACT WITH THE MEDIA	8
5.7	CONTACT WITH OTHER ORGANISATIONS.....	9
5.8	CONFIDENTIAL INFORMATION.....	9
6.0	GENERAL PROTOCOLS	10
6.1	ACCEPTING GIFTS/HOSPITALITY/EXPENSES.....	10
6.2	EXPENSES AND ALLOWANCES	10
6.3	DRESS CODE	10
6.4	USE OF FACILITIES.....	11
6.5	PROCEDURES FOR RAISING OPERATIONAL MATTERS	11
6.6	PROCEDURES FOR RAISING POLICY MATTERS.....	11
6.7	RESPONDING TO RATEPAYER APPROACHES REGARDING POTENTIAL OR ACTUAL LITIGATION AGAINST THE COUNCIL.....	11
7.0	LEGISLATIVE RESPONSIBILITIES	12
7.1	LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968.....	12
7.2	STANDING ORDERS.....	13
7.3	DISQUALIFICATION OF MEMBERS FROM OFFICE	14
7.4	DECLARATION OF BANKRUPTCY.....	14
7.5	LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS	14

8.0	COMPLIANCE AND REVIEW	14
8.1	COMPLIANCE	14
8.2	BREACHES OF LEGISLATION	15
8.3	COMPLIANCE WITH THIS CODE.....	15
8.4	CONSEQUENCES OF A BREACH	18
8.5	REVIEW OF THE CODE OF CONDUCT	18
APPENDIX A		20
	LOCAL GOVERNMENT ACT 2002 PURPOSE OF LOCAL GOVERNMENT AND ROLE OF LOCAL AUTHORITIES - DECISION MAKING AND CONSULTATION	20
APPENDIX B		23
	RULES FOR REIMBURSEMENT OF ELECTED MEMBERS' EXPENSES.....	23
APPENDIX C		23
	LEGISLATIVE RESPONSIBILITIES.....	23

1.0 Introduction

This Code has been adopted by the Waitomo District Council to comply with Section 40 (1) (e) and Clause 15 of Schedule 7 of Local Government Act 2002.

The Code of Conduct complements the Waitomo District Council's Standing Orders.

The Code of Conduct provides guidance on the standards of behaviour that are expected from elected members of the Waitomo District Council in their dealings with:

- each other
- the Chief Executive Officer
- staff employed by the Chief Executive Officer on behalf of the Council
- Contractors undertaking work or commissions on behalf of the Council
- the media
- the general public.

The objectives of this Code are to enhance:

- The effectiveness of the Waitomo District Council as an autonomous local authority with statutory responsibility for good local government in the Waitomo District.
- The credibility and accountability of the Waitomo District Council within its community.
- Mutual trust, respect and tolerance among elected members as a group, and those people with whom members may deal in the course of their duties as members.

The Code can also be of value as:

- An orientation tool for new Councillors;
- A guide to prospective candidates;
- A resource support for existing Councillors;
- An aid for the public to enable them to evaluate appropriate behaviour in any interaction with the Council.

2.0 Principles of Governance

In the exercise of their governance responsibilities elected members will observe the following principles:

- **Public Interest** - Members must serve the interests of the District as a whole. Their primary duty is to the interests of the entire district, not just the ward that elected them. Members should never improperly confer an advantage or disadvantage on any one person.
- **Honesty and Integrity** - Members must not place themselves in situations where their honesty and integrity may be questioned or is in doubt.

- **Objectivity** - Members must make decisions on merit, including making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability** - Members must be accountable to the public for their actions and the manner in which they carry out their responsibilities.
- **Openness** - Members must be open about their actions and those of the Council, and be prepared to justify their actions.
- **Conflicts of Interest** - Members are responsible for disclosing conflicts of interest.
- **Personal Judgment** - Members can and will take account of the views of others, but must reach their own conclusions on the matters before them.
- **Respect for Others** - Members must promote equality by treating people with respect, regardless of ethnicity, nationality, age, religion, gender, sexual orientation, or disability.
- **Duty to Uphold the Law** - Members must uphold the law, and on all occasions act in accordance with the law and the trust the public places in them.
- **Stewardship** - Members must ensure that the Council uses its resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations to both present and future generations.
- **Leadership** - Members are leaders in their community and must at all times provide leadership by example.

3.0 Roles and Responsibilities

3.1 ELECTED MEMBERS

Members, acting as the Council, are responsible for:

- The development and adoption of Council policy;
- Determining the expenditure and funding requirements of Council through the processes for developing the Annual Plan, the Long Term Plan and the Revenue and Financing Policy;
- Monitoring the performance of the Council against its stated objectives, policies and identified community outcomes;
- Prudent stewardship of Council resources;
- Employment and appraisal of the Chief Executive Officer's performance and monitoring the implementation of policy by him/her;
- Representing the interests of the residents and ratepayers of the entire Waitomo District, not just those within the Ward of election;
- Ensuring overall compliance by the Council with its obligations and responsibilities under the Local Government Act 2002 and all other legislation which prescribe statutory duties for territorial authorities;
- Promoting good relationships with neighbouring local authorities.

Members, as individuals, must:

- Comply with the requirements of this Code of Conduct.
- Ensure they are informed about the roles, functions and processes of the Waitomo District Council;
- Ensure that they become aware of the statutory obligations imposed on elected members and on councils;
- Comply with those enactments and other rules of law applicable to the conduct of members. (Note - extracts from, or brief explanations of, those enactments are set out in Appendix C on legislative responsibilities).
- Be adequately prepared for meetings, including reading agendas and other relevant material prior to attendance, and if appropriate and where possible putting forward questions to the relevant officer in advance;
- Undertake appropriate professional development;
- On entering into a term of office, declare whether the member is an undischarged bankrupt;
- Recognise that they have no personal power to commit Council to any particular policy or course of action unless they have delegated authority from council or the appropriate committee to do so;
- Ensure the privacy of individual staff members is preserved and not comment publicly on the management or staff of the Council by identification or by general reference;
- Ensure that any public statement giving a point of view contrary to a Council decision is identified as a personal, minority view.

Members, in fulfilling their role, will focus on:

- Acting in a proper manner in accordance with the legislative framework and statutory requirements for Local Government;
- Providing community leadership;
- Consulting with, facilitating discussions with and representing the community;
- Contributing to the collective decision making of Council;
- Ensuring accountability and sound financial management;
- Reporting Council to the community.

3.1.1 Statutory Declaration

The Mayor and Councillors declare the following oath on taking office:

"I, AB, declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interest of the District of Waitomo, the powers, authorities, and duties vested in, or imposed upon, me as (Mayor or Member) of the Waitomo District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 or any other Act."

3.2 THE MAYOR

The Mayor is elected by the District as a whole. In addition to those matters contained in 3.1, the Mayor is the ceremonial head of the Council and is often the first and/or only point of contact for ratepayers and interest groups on political matters. The Mayor is also responsible for:

- Providing leadership to the other members of the territorial authority; and the people in the district of the territorial authority;
- Leading the development of the territorial authority's plans (including the long term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority;
- Appointing the deputy mayor;
- Establishing committees of the territorial authority;
- Appointing the chairperson of each committee and may appoint himself or herself as chairperson of a committee;
- Presiding at Council meetings and ensuring the conduct of meetings is in accordance with standing orders;
- Keeping Council informed of matters brought to his/her attention and formally presenting to Council those matters that need to be considered;
- Advocacy on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- Providing leadership and feedback to other elected members on teamwork, information sharing and chairmanship;
- Assuming the role of Justice of the Peace (while the Mayor holds office).

3.3 THE DEPUTY MAYOR

The Deputy Mayor is appointed by the Mayor at the first meeting of the Council.

The Deputy Mayor exercises the same role as any other members. If the Mayor is on a leave of absence or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties of the Mayor, and may exercise the powers of the Mayor. The Deputy Mayor may be removed from office by resolution of the Council.

3.4 COMMITTEE CHAIRPERSONS

A Committee Chairperson exercises the same role as any other member, but has responsibility to preside over all meetings of the relevant Committee and to ensure that the Committee acts within the powers delegated to it by the Council.

3.5 THE CHIEF EXECUTIVE OFFICER

The Chief Executive Officer is appointed by the Council in accordance with section 42 of the Local Government Act 2002. The Chief Executive Officer is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 42 of the Local Government Act 2002 the responsibilities of the Chief Executive Officer are:

- Implementing the decisions of the Council;
- Providing advice to the Council and community boards;
- Ensuring that all responsibilities, duties and powers delegated to him or her, or to any person employed by the local authority, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;
- Managing the Council's activities effectively and efficiently;
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- Providing leadership for the staff of the Council;

- Employing staff on behalf of the Council (including negotiation of the terms of employment for the staff of the local authority)

Under section 42 of Local Government Act 2002, the Chief Executive Officer employs all other staff on behalf of the local authority.

4.0 Decision Making

4.1 PREDETERMINATION OR BIAS

The Council must apply the principles of administrative law and natural justice when making decisions. In decision-making, the Council must act within lawful authority, according to lawful procedure and produce rational results. This includes decisions of the Council, whether made by the elected members in a formal meeting of the Council or its Committees and also decisions of officers of the Council to whom the power of decision making has been delegated. The overriding obligation is to act in accordance with the law and to act in a fair and reasonable manner.

Elected members are expected to approach decision making with an open mind ("faithfully and impartially"). This process requires elected members to listen carefully to competing advice and to weigh up the pros and cons before making their decision. Where Council or a Standing Committee is hearing formal submissions at a hearing, elected members should carefully avoid prior public comments, which may indicate a predetermined bias or non flexible attitude.

4.2 DELEGATION

Decisions are made at various levels within the Council. Effective governance occurs when an organisation's structure and operating principles recognise, through effective delegation, the empowerment of both elected members and staff to make decisions at levels appropriate to their role.

The legal provisions that apply to delegation are set out in Clause 32 of Schedule 7 of Local Government Act 2002.

4.3 REQUIREMENTS IN RELATION TO DECISIONS

The Local Government Act 2002 sets out the purpose of local government and the role of local authorities. Refer to Appendix A of this Code for details of the legislation.

Every decision made by a local authority must be made in accordance with sections 77, 78, 80, 81 and 82 of the Local Government Act 2002. Refer to Appendix A for the process the Council must follow during the course of the decision making process.

4.4 CONSULTATION

The Council is required to make decisions that take into account and balance the various needs and preferences of its residents. Section 82 of the Local Government Act 2002 sets out the principles of consultation, which Council must undertake in relation to any decision. Section 82 is set out in Appendix A of this Code.

4.5 STAFF REPORTS

Given the obligations on the Council in regard to decision-making, the Council should only make decisions at Council meetings on those matters that are accompanied by staff reports as appropriate.

While the Council may hear submissions and depositions, and, within the limits of the legislation, discuss matters raised from the meeting, no decisions should be made unless the matter is accompanied by a written staff report.

While the Council is ultimately accountable, its function is not to make detailed decisions on operational matters. The Council, Committee structures and members day to day dealings with the Chief Executive Officer should recognise the statutory responsibilities of the Chief Executive Officer for the effective management of the staff and for implementing the decisions of the Council.

Elected members who have questions relating to staff reports contained in Agendas, should seek clarification and answers prior to the meeting to which the report relates, by way of email to the Chief Executive and/or the Executive Assistant.

5.0 Relationships and Behaviours

5.1 RELATIONSHIPS WITH OTHER MEMBERS

All elected members shall in their dealings with each other, management, the public and the media, show respect and behave in a manner consistent with the dignity of their office. Elected members should act in good faith (that is, honestly, for the proper purpose and without exceeding their powers) in the interests of the Council and the community.

Successful teamwork is a critical element in the success of any organisation. No team will be effective unless mutual respect exists between members. Members must conduct their dealings with each other in ways that:

- Maintain public confidence in the office to which they have been elected;
- Are open and honest;
- Focus on issues rather than personalities;
- Avoid conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behaviour (including sexual harassment).

5.2 CONDUCT AT MEETINGS

In order to develop and maintain an atmosphere of mutual respect and to facilitate good decision making, the following conduct is expected at meetings:

- Members should aim to be punctual so that meetings start on time;
- Members must be prepared to discuss issues at meetings;
- Members are encouraged, whenever practical, to make requests for additional information or clarification of items prior to the meeting so that staff have time to undertake the necessary research and prepare answers;
- All discussions at meetings are to be directed through the Chairperson;
- Silence when someone else is speaking;

- Debate policies, not personalities;
- If any Members conduct is deemed to be unacceptable, the Chairperson will invoke provisions contained in Standing Orders;
- Standing Orders and the Code of Conduct will be observed;
- Members are expected to vote on every issue unless they have declared a conflict of interest;
- Members who have declared a Member's Interest must leave the meeting for the duration of the item in which they have declared an interest;
- Members should endeavour to attend all meetings for the full duration of the meeting;
- Members who are aware that they will be unable to attend meetings of the Council are encouraged to seek leave of absence in advance.

5.3 RELATIONSHIPS WITH STAFF

An effective working relationship between elected members and officers is critical to the success of any Council. Mutual respect between employees of the Council and elected members is essential to good government.

To ensure that the required level of co-operation and trust is maintained, Members must:

- Recognise that the Chief Executive Officer is the employer (on behalf of Council) of all staff. Only the Chief Executive Officer may hire or dismiss, or instruct or censure, an employee;
- Make themselves aware of the obligations that Council and the Chief Executive has as employers and observe those requirements at all times;
- Understand that employees have a statutory right to a safe work environment free from both physical harm and mental harm caused by work related stress;
- Acknowledge that any actions (or statements) by elected members which may in any way harm an employee (including mental harm) may result in the Council being liable under the Health and Safety in Employment Act 1992;
- Treat all staff with courtesy and respect, avoiding conduct which is aggressive, offensive or abusive or may constitute unlawful or inappropriate harassment;
- Observe any guidelines the Chief Executive puts in place regarding contact with employees;
- Not do anything which compromises or could be seen to be compromising the impartiality of an employee;
- Avoid personal criticism of a staff member in public in any way that reflects on the competence and/or integrity of the staff member;
- Preserve the anonymity of individual officers and not comment publicly on the management of staff of the Council;
- Raise concerns about staff only with the Chief Executive Officer;
- Raise concerns regarding management or operational matters with the Chief Executive for discussion and resolution;
- Raise concerns about the Chief Executive Officer only with the Mayor.
- Should an elected member have a concern and not be satisfied with the response of the Chief Executive, the matter should be raised with Council to address the concern.

Elected Members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions, and individual elected members being exposed to responsibility for loss under section 46 of the Local Government Act 2002.

5.4 RELATIONSHIPS WITH THE COMMUNITY

- Members must not act so as to bring unfair criticism upon Council in the Community.
- Members must act in a manner that encourages and values community involvement in local democracy.
- The views of members of the public must be accorded respect with members listening to and deliberating on concerns carefully and patiently.
- Members must avoid aggressive or abusive behaviour towards members of the public.

5.5 CONTACT WITH COUNCIL CONTROLLED ORGANISATIONS, COUNCIL ORGANISATIONS AND SHARED SERVICE PROVIDERS (CCO, CO and SSP)

Council is concerned to ensure that its various relationships with CCOs, COs and SSP are maintained in a professional and responsible manner.

Council will from time to time establish formal arrangements for the maintenance of those relationships. Those arrangements include the appointment of elected members to oversee relationships and delegation of that role through the Chief Executive.

Elected members must observe and comply with those agreed points of contact and lines of communication, and must not engage with or seek information or services from individual staff or appointed members of the CCOs, Cos and SSP.

If an elected member has an issue to address, or requires information or has any other need in respect of Council related CCOs, COs or SSP then that issue or information request is to be taken up with the Mayor or Chief Executive.

5.6 CONTACT WITH THE MEDIA

The media plays an important role in the effective operation of local government. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council.

The following rules apply for media contact on behalf of Council:

- Elected members remain free to express a personal view in the media at any time BUT any comments made must observe all requirements of this Code and must state that:
 - (a) the comments represent a personal view only; and
 - (b) (if the comment is contrary to a Council decision or Council policy) the comment is a minority view.
- The Mayor is the first point of contact for the Council view on any policy issue. The Mayor is authorised to make statements accurately reporting decisions of Council meetings. If the Mayor is absent, or unable to act, a matter may be referred to the Deputy Mayor or to the relevant committee chairperson for a response.
- The Mayor may refer any matter to the relevant committee chairperson, a member or to the Chief Executive Officer for comment.

- Committee Chairpersons are authorised to make statements accurately reporting decisions of their committees
- The Chief Executive Officer is responsible for reporting to the media on operational matters.

Elected members public statements expressing their opinion on matters before the Council shall not criticise the conduct of the Council, other elected members or officers of the Council.

The Mayor may deal with the news media and make public statements relevant to the non-statutory role as a community leader. Where the views expressed are the Mayor's own and are not made on behalf of the Council, this must be clearly stated. No statements made in this capacity shall undermine any existing policy or decision of the Council.

5.7 CONTACT WITH OTHER ORGANISATIONS

- Council is concerned to ensure that its various relationships with community organisations are maintained in a professional and responsible manner.
- Members must not act so as to bring unfair criticism upon Council.
- If Council has a formal arrangement for the maintenance of a relationship with any community organisation, elected members must observe and comply with those agreed points of contact and lines of communication.
- Elected members remain free to express a personal view at any time BUT any comments made must observe all requirements of this Code and must state that:
 - a. The comments represent a personal view only; and
 - b. If the comment is contrary to a Council decision or Council policy – the comment is a minority view.

5.8 CONFIDENTIAL INFORMATION

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

Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Member. Any failure to observe these provisions may affect the Council's performance, by inhibiting information flows and undermining public confidence in the Council.

The disclosure of confidential information also pertains to the Council's rates records. Section 38 of the Local Government (Rating) Act 2002 provides details of those limited persons who may legally inspect the rates record for a rating unit.

Failure to observe these provisions may expose the Council to prosecution under the Privacy Act 1993 or civil litigation, and may expose individual members to responsibility for loss under section 46 of the Local Government Act 2002.

From time to time elected members may become aware of personal information about members of the community. It is vital that elected members respect the confidentiality of such information.

Occasionally an elected member may believe that there is genuine public interest in a public excluded item. A member holding such a belief may:

- Firstly move at the appropriate Council meeting that the matter be moved into public business.
- Secondly, if the elected member is unsuccessful with that motion and still believes that the information should be made public, then the correct process is to seek release under the Local Government Official Information and Meetings Act 1987 as follows:
 - (a) The elected member makes an official information request to the Chief Executive Officer seeking the release of that information.
 - (b) If the Chief Executive Officer declines to release the information, then the elected member can apply to the Office of the Ombudsman for that information to be released.
 - (c) If the Chief Executive Officer decides to release information at the request of an elected member, the Chief Executive Officer would advise the Mayor and Councillors of the release.

By following this process, elected members will ensure that the rights of all parties potentially affected by the release of confidential information have been given proper consideration.

6.0 General Protocols

6.1 ACCEPTING GIFTS/HOSPITALITY/EXPENSES

There is the possibility that the acceptance of gifts, favours or hospitality could be construed as a bribe or perceived as undue influence. Elected members need to treat with caution any offer, gift, favour or hospitality made to them personally, to avoid the risk of damage to public confidence in local government.

Sister City gift exchanges can be considered differently. Gifts made to the Mayor from a Sister City are accepted as gifts made to the Office of the Mayor and remain as property of the Council. It is also appropriate for elected members to accept small gifts made to them personally, for example, in appreciation for home hosting delegates from a Sister City.

The Council has a register of gifts made to the Council. When an elected member receives a gift in their official capacity, the gift should be reported to the Chief Executive Officer for recording in the Gift Register.

6.2 EXPENSES AND ALLOWANCES

An elected member is entitled to claim expenses and allowances in connection with their duties. Rules for reimbursement of elected members' expenses as approved by the Remuneration Authority are attached to this Code. (Refer Doc No.s 109403 and 143305)

6.3 DRESS CODE

Elected members should maintain an appropriate standard of dress at meetings of Council and Council Committees. It is recognised that the standard of dress will be in accordance with the level of formality of the meeting they are attending. Some principles for guidance are:

- Casual dress is appropriate at workshops;
- Committee meetings involve engaging with members of the public, therefore a neat and tidy standard of dress is appropriate;

- Council meetings are a formal occasion therefore a more formal standard of dress is appropriate (for example, jacket, tie and dress trousers for men and more formal attire for women). No jeans for either men or women.

6.4 USE OF FACILITIES

- The Mayoral Suite (excluding the Mayor's Office) is primarily intended for the use of elected members.
- Pool cars are available for travelling to seminars and conferences.
- Photocopying in relation to Council business will be provided by the Executive Assistant. Personal photocopying is to be paid for by the Member.
- Members may not use Council resources for personal business (including campaigning).

6.5 PROCEDURES FOR RAISING OPERATIONAL MATTERS

Elected members may be contacted by the public regarding routine service requests, eg, leaking water tobies. These service requests need to be forwarded to the customer service officers. Alternatively the elected members could relay operational matters directly to the Chief Executive Officer or Departmental Manger.

Council officers recognise that when an elected member has been asked by a member of the public to deal with a matter that the outcome of the matter needs to be reported back to the elected member. This is so that the elected member is aware of what action has been taken when next approached by the member of the public.

While elected members should refrain from getting involved in the "hands on" role of staff, they should approach the Chief Executive Officer if they have concerns that matters they have drawn to staff attention are not attended to promptly or properly.

6.6 PROCEDURES FOR RAISING POLICY MATTERS

The options for raising a policy matter for consideration by the Council are as follows:

- (a) Liaise with the Mayor or with the Chairperson of the appropriate Committee. If it is agreed that the matter is one for political consideration, then the Mayor or Chairperson will request the Chief Executive Officer to have the appropriate report compiled.
- (b) Follow the procedure for submitting a Notice of Motion. The procedure is outlined in the Council's Standing Orders.

6.7 RESPONDING TO RATEPAYER APPROACHES REGARDING POTENTIAL OR ACTUAL LITIGATION AGAINST THE COUNCIL

When responding to approaches from citizens or the media on such matters, elected members should:

- Listen to concerns.
- Seek clarification.
- Refer the person to the appropriate agency, e.g. Chief Executive Officer, Solicitor, Consultants, Disputes Tribunal, etc.
- Relay information to the Chief Executive Officer of the Council.

- Notify the Chief Executive Officer where notice of intention to make a claim against the Council is given, or there are facts present that involve the assertion of action against the Council.

Elected members should take care not to:

- Admit liability.
- Settle or make or promise any payment.
- Do anything that may prejudice the Insurers' defence of litigation.
- Disclose any information that the elected member has received by way of confidential briefings on a litigation matter.

The Council has to notify its insurers of any occurrence that may give rise to a claim. Elected members should notify the Chief Executive Officer when they are given notice of intention by a citizen to make a claim against the Council, or an elected member is made aware of the presence of facts that directly or indirectly involve the assertion of a claim against the Council.

The Council is not permitted under the conditions of indemnity to admit liability or to settle a claim. Therefore elected members need to be aware that when engaging in conversation where a claim has been made or threatened, they should not give any undertaking, promise or opinion that may be construed as an admission of liability, nor make any offer to settle or do any act that may prejudice in any way the Insurers' later defence of the claim in litigation.

7.0 Legislative Responsibilities

7.1 LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

The phrase "*Conflicts of Interest*" is used to describe three distinct and separate circumstances where there is or may be a conflict between the personal interests, or the conduct of a member, and that member's duties as an elected member.

The statutory and common law rules relating to conflicts of interest are part of the rules of natural justice. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision. Members performing their duties will on occasion be making political decisions (for example when making policy or adopting planning documents) and on other occasions be acting in a judicial or semi judicial capacity (for example when considering resource consent applications). There is some limited scope for flexibility in respect of political decisions, but absolutely no scope for flexibility in relation to judicial or semi judicial decisions.

The three classes of conflict of interest are:

- (a) a pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss.
- (b) non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.

- (c) demonstrated bias, that is the circumstances where a member by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that the member may approach the consideration of a decision on that issue with an open mind.

If the 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 Officer immediately.

Members may also contact the Office of the Controller and Auditor General for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member 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. Contact details for the Office of the Controller and Auditor General - Phone (04) 917 1500 email: reception@oag.govt.nz, website www.oag.govt.nz.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

In a case of doubt, a member should withdraw. Members withdrawing:

- must leave the meeting room;
- should (in protection of their own and the Council's interests) ensure that their actions are appropriately recorded in the Minutes

The issue of conflicts of interest is a difficult one for members. Commonly issues may arise on short notice. Matters which seem straightforward at the outset can also commonly become less clear as a matter progresses. Vigilance by members is required. While the decision to disqualify is ultimately a matter for the member alone, members are encouraged to seek guidance and assistance from the Mayor, other Councillors or the Chief Executive Officer.

7.1.1 Register of Interests

The Council has adopted the suggestion of the Office of the Controller and Auditor General and requested all elected members to make a written declaration of their personal and financial interests that may at times conflict with their roles. This information will be kept in a "Register of Interests". Members are responsible for keeping their written declarations up to date.

7.2 STANDING ORDERS

Standing Orders are a set of rules of debate that provide greater formality in the way that a Council conducts its meetings. Standing Orders are also a means of recording the Council's agreed principles of behaviour within meetings. Using Standing Orders as a guide to the way that the Council conducts its meetings helps to promote teamwork by:

- allowing structured discussion of topics;
- ensuring respect for the opinions of others;
- ensuring tact and appropriate language is used in resolving conflict;
- promoting the use of persuasion and influencing skills to gain a team outcome

Members must abide by the Standing Orders adopted by Council. A copy of the Standing Orders is provided to each member and after the adoption of the first Standing Orders, an amendment of the Standing Orders or the adoption of a new set of Standing Orders requires in every case a vote of not less than 75% of the members present. The Council or Committee may temporarily suspend Standing Orders during a meeting by a vote of not less than 75% of the members present and voting, and the reason for the suspension must be stated in the resolution of suspension.

7.3 DISQUALIFICATION OF MEMBERS FROM OFFICE

The Local Government Act 2002 and Standing Orders provide for disqualification of Members from office for example, if they:

- Are convicted of a criminal offence punishable by two or more years imprisonment;
- Cease to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993;
- Breach the Local Authorities (Members' Interests) Act 1968;
- Are absent without leave from the Council from four consecutive ordinary meetings of the Council.

7.4 DECLARATION OF BANKRUPTCY

Under the Local Government Act 2002 local authorities, when adopting a code of conduct, must consider whether or not they will require members to declare whether they are an undischarged bankrupt. The Council requires elected members who are undischarged bankrupts when elected or are declared bankrupt during the term of office, to notify the Mayor and the Chief Executive Officer as soon as practicable after being declared bankrupt and record the fact in the Register of Interests.

7.5 LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

Refer to Appendix C for a summary of the legislation requirements that has some bearing on the duties and conduct of elected members which includes:

- Local Government Official Information and Meetings Act 1987
- Liability of Elected Members under the Public Finance Act 1977
- Secret Commissions Act 1910
- Securities Act 1978
- The Crimes Act 1961
- Health and Safety in Employment Act 1992

8.0 Compliance and Review

NB: The following legislative responsibilities apply to all elected members. However, any alleged breach of any legislative responsibility by any elected member or by any member of staff will not constitute a breach of this Code of Conduct but will be processed in accordance with the relevant legislative provisions.

8.1 COMPLIANCE

The Local Government Act 2002 Schedule 7 of the Local Government Act 2002 requires each local authority to adopt a Code of Conduct.

The Local Government Act 2002 requires elected members to comply with the provisions of this Code of Conduct (Schedule 7, Clause 15(4)):

"A member of a local authority must comply with the code of conduct of that local authority."

However, the Act also states (Schedule 7, Clause 15(7)):

"To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act."

8.2 BREACHES OF LEGISLATION

The exact nature of the action the Council may take depends on the nature of the issue and whether there are statutory provisions dealing with the issue. If there are statutory provisions dealing with the issue then it will not be considered to constitute a breach of this Code of Conduct and will be addressed in accordance with the relevant statutory provisions. In the case of a breach of the provisions of this Code of Conduct it will be dealt with in accordance with the procedure set out herein. In addition to the provisions of this Code, Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Securities Act 1978, and the Health and Safety in Employment Act 1992. The Chief Executive Officer will ensure that an explanation of these Acts is made at the first meeting after each triennial election and that copies of the Acts are freely available to elected members. Explanations of the obligations that each of these has with respect to conduct of elected members is set out in Appendix C.

Where there are statutory provisions,

- issues relating to members interests render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and if convicted the Member can be removed from office;
- issues which result in the Council suffering financial loss or damage may be reported on by the Auditor General under the Local Government Act 2002, which may result in the member having to make good the loss or damage;
- issues relating to the commission of a criminal offence may leave the elected member liable for criminal prosecution.

8.3 COMPLIANCE WITH THIS CODE

Please refer to the flow chart further on in this document for a diagrammatic view of the processing of alleged breaches of the code.

Dealing with issues in respect to compliance with this Code, by members, will be undertaken by the full Council.

All alleged breaches of the Code must be reported to the Chief Executive Officer in writing, making a specific allegation of a breach of the Code called the "complaint", and providing corroborating evidence. Once the Chief Executive Officer has received a complaint, he/she will immediately acknowledge, in writing, the receipt of the complaint to the person making the complaint, called the "Complainant" and to the person who is the subject of the complaint, called the "Subject".

The Chief Executive Officer will then determine the nature of the complaint and if there are any statutory provisions dealing with the issue it will not be considered

to constitute a breach of the Code of Conduct and will be dealt with in accordance with the relevant statutory provisions.

If the Chief Executive Officer determines that a breach of the Code of Conduct may have occurred, and is not covered by a statutory provision, the full Council will be informed, and the Chief Executive will ask the Subject to decide if they wish the complaint to be heard by the Council or by an Independent Investigator.

If the complaint is dealt with by the Council, the Subject will have an opportunity to respond to the complaint and/or attend the Council meeting where the complaint is being considered, but shall have no voting rights at such meeting. If no resolution can be reached between the Subject and the Council, the Subject may choose to have the complaint dealt with by an Independent Investigator.

If the Subject chooses to have the complaint dealt with by an Independent Investigator, the Chief Executive Officer will appoint an Independent Investigator (from a list of those previously approved by the Council) to investigate the complaint. The Investigator will investigate the circumstances of the complaint, and in doing so will allow the Subject of the complaint to have the same rights as they would have should the complaint have been investigated by the full Council. He/she will ascertain the facts and make a judgement about the complaint. The Independent Investigator shall report their findings and decision on the validity (or otherwise) of the complaint and on what action was taken as a result of the investigation to the Council.

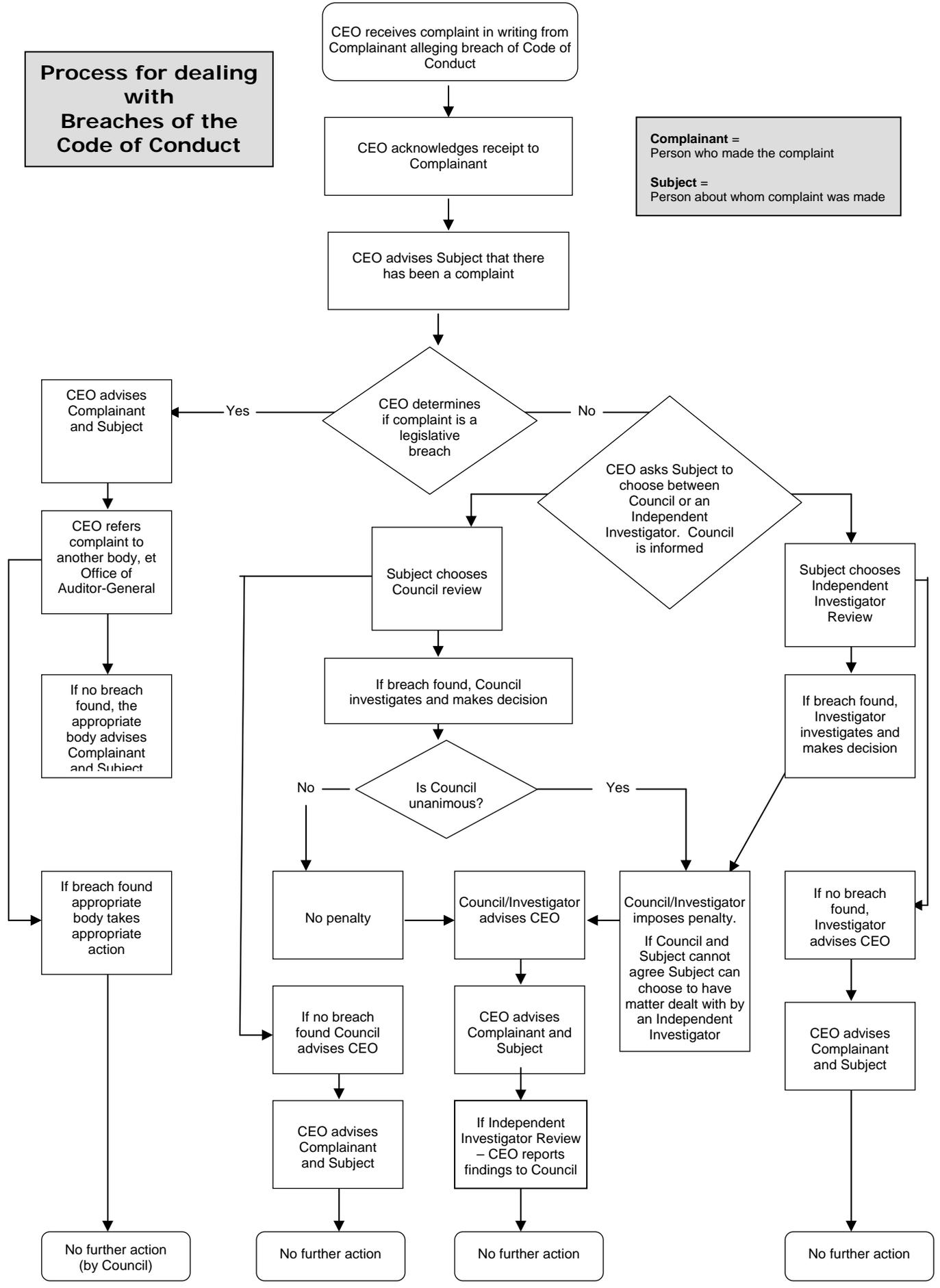
The Council or an Independent Investigator shall enquire into and deliberate upon, all complaints and investigations in private.

If no breach of the Code of Conduct is deemed to have occurred the Complainant and the Subject will be advised and the Council will not be informed.

Process for dealing with Breaches of the Code of Conduct

Complainant =
Person who made the complaint

Subject =
Person about whom complaint was made



8.4 CONSEQUENCES OF A BREACH

Where the Council agrees that a member has breached the Code of Conduct, and the breach does not involve an offence against any statute, the Council may impose such penalty as it deems appropriate on the member concerned.

Where an independent investigator determines that a member has breached the Code of Conduct, and the breach does not involve an offence against any statute, the independent investigator may impose such penalty as they deem appropriate on the member concerned.

Any form of any penalty that the investigator or the Council may apply will depend on the nature of the breach, and may include the following:

- Censure of the member, by letter and/or in open meeting;
- Withdrawal of representation rights in outside organisations;
- Withdrawal of membership of a Committee or Sub-committee;
- If it appears that a breach of the Code also constitutes a statutory offence then the Council shall refer the circumstances of that breach to the relevant body for further action.

All decisions of the Council and the independent investigator shall be reported in an open part of a Council meeting, except where the alleged breach relates to the misuse of confidential information, or which would otherwise be exempt from public disclosure under the Local Government Official Information and Meetings Act 1987.

A decision by the Council or independent investigator that a breach of the Code has occurred, and/or recording the penalty to be applied, will be final and binding on the member to whom that decision relates and all other members. With the exception only of an allegation of a breach of the rules of natural justice, no member shall seek to review or challenge the outcome under standing orders, the Local Government Act 2002, or by judicial process.

8.5 REVIEW OF THE CODE OF CONDUCT

Once adopted, the Code of Conduct 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. Once adopted, amendments to the Code of Conduct require five out of the seven elected members of the Council to vote affirmation for an amendment to be effective.

To be completed by Members and witnessed by the Chief Executive Officer.

As a member of the Waitomo District Council, I hereby agree to uphold and abide by Council's Code of Conduct as adopted by Council on the 18th day of December 2007.

Signed: Witness:
Mayor Brian Hanna **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Deputy Mayor Guy Whitaker **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Councillor Phil Brodie **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Councillor Terry Davey **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Councillor Allan Goddard **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Councillor Sue Smith **Chris Ryan, Chief Executive**

Date: Date:

Signed: Witness:
Councillor Lorrene Te Kanawa **Chris Ryan, Chief Executive**

Date: Date:

APPENDIX A

Local Government Act 2002 Purpose of Local Government and Role of Local Authorities - Decision Making and Consultation

1.0 PURPOSE OF LOCAL GOVERNMENT

The Local Government Act 2002 states the purpose of Local Government is:

- *"to enable democratic local decision-making and action by, and on behalf of, communities; and*
- *to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses."*

2.0 ROLE OF LOCAL AUTHORITIES

The Local Government Act 2002 also states that the role of local authorities is to:

- *"give effect in relation to its district or region, to the purpose of local government; and*
- *perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment."*

The Local Government Act 2002 further states that a local authority should:

- *"conduct its business in an open, transparent, and democratically accountable manner; and*
- *give effect to its identified priorities and desired outcomes in an efficient and effective manner*
- *make itself aware of and have regard to the views of all its communities;*
- *when making a decision take account of the diversity of the community and the various community's interests; the interests of future as well as current communities and the likely impact of any decision*
- *provide opportunities for Maori to contribute to its decision-making process*
- *collaborate and cooperate with other local authorities and bodies*
- *undertake commercial transactions in accordance with sound business practices*
- *ensure prudent stewardship and efficient and effective use of its resources in the interests of the district*
- *take a sustainable development approach".*

3.0 DECISION MAKING PROCESS

Every decision made by a local authority must be made in accordance with Sections 77, 78, 80, 81 and 82 of the Local Government Act 2002. Specifically the Council must during the course of the decision making process:

- *"seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*

- *access those options by considering the benefits and costs both present and future interests of the Waitomo District;*
- *access those options by considering the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option and assess the impact of each option on the Council's capacity to meet present and future needs in relation to any statutory responsibility of the Council;*
- *identify those options which involve a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga;*
- *give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter;*
- *determine whether the matter is significant;*
- *identify whether the proposed decision would be significantly inconsistent with any existing policy or plan;*
- *establish and maintain processes to provide opportunities for Maori to contribute to the decision making process;*
- *consider ways in which the Council may foster the development of Maori capacity to contribute to the decision making process; and*
- *provide relevant information to Maori."*

4.0 CONSULTATION

The Council is required to make decisions that take into account and balance the various needs and preferences of its residents. Section 82 of the Local Government Act 2002 sets out the principles of consultation, which the Council must undertake in relation to any decision. Section 82 is set out as follows:

"(1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:

- (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:*
- (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority;*
- (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:*
- (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:*

- (e) *that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:*
 - (f) *that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.*
- (2) *A local authority must ensure that it has in place processes for consulting with Maori in accordance with subsection (1).*
- (3) *The principles set out in subsection (1) are, subject to subsection (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.*
- (4) *A local authority must, in exercising its discretion under subsection (3), have regard to -*
 - (a) *the requirements of section 78; and*
 - (b) *the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and*
 - (c) *the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and*
 - (d) *the provisions of Part I of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and*
 - (e) *the costs and benefits of any consultation process or procedure.*
- (5) *Where a local authority is authorised or required by this Act or other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in sub-section (1) as are inconsistent with specific requirements of the procedures so prescribed are not to be observed by the local authority in respect of that consultation".*

APPENDIX B

Rules for Reimbursement of Elected Members' Expenses

(Refer Doc No.s 319919 and 316085 – copies attached)

APPENDIX C

Legislative Responsibilities

1.0 LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

The Local Authorities (Members' Interests) Act 1968 deals with the positions of elected members who may have an interest in contracts to be let by the Council. It also prohibits elected members from voting or taking part in any matter in which they have a direct or indirect financial interest.

The essence of the Act is to ensure that elected members follow high ethical standards in their public obligations so that the public can have confidence that their decisions are taken entirely properly, without any suspicion of improper interests influencing elected members' actions.

Details of these requirements are given in the guide to the legislation published by the Office of the Controller and Auditor General.

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as elected members. This is also to ensure that people who fill positions of authority carry out their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Local Authorities (Member's Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The phrase "*Conflicts of Interest*" is used to describe three distinct and separate circumstances where there is or may be a conflict between the personal interests, or the conduct of a member, and that member's duties as an elected member. The statutory and common law rules relating to conflicts of interest are part of the rules of natural justice. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision. Members performing their duties will on occasion be making political decisions (for example when making policy or adopting planning documents) and on other occasions be acting in a judicial or semi judicial capacity (for example when considering resource consent applications). There is some limited scope for flexibility in respect of political decisions, but absolutely no scope for flexibility in relation to judicial or semi judicial decisions.

The three classes of conflict of interest are:

- (d) a pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss.
- (e) non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships

arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.

- (f) demonstrated bias, that is the circumstances where a member by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that the member may approach the consideration of a decision on that issue with an open mind.

The Local Government Authorities (Members' Interests) Act 1968 provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year. The Chief Executive Officer must seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Additionally, elected members are prohibited from participating in any Council discussions or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

If the 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 Officer *immediately*.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member 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. Contact details for the Office of the Controller and Auditor General - Phone (04) 917 1500 email: reception@oag.govt.nz, website www.oag.govt.nz

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

In a case of doubt a member should withdraw. Members withdrawing:

- must leave the meeting room;
- should (in protection of their own and the Council's interests) ensure that their actions are appropriately recorded in the Minutes

The issue of conflicts of interest is a difficult one for members. Commonly issues may arise on short notice. Matters which seem straightforward at the outset can also commonly become less clear as a matter progresses. Vigilance by members is required. While the decision to disqualify is ultimately a matter for the member alone, members are encouraged to seek guidance and assistance from the Mayor, other Councillors or the Chief Executive Officer.

2.0 LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

The Local Government Official Information and Meetings Act 1987 establishes procedures to provide for the admission of the public to meetings of Councils while providing for the protection of deliberations of Councils to the extent consistent with the public interest and the preservation of personal privacy. All of the Council's meetings are required to be open to the public, unless the public is expressly excluded. The public can only be excluded from a meeting on the grounds and in the manner outlined in Section 48 of the Local Government Official Information and Meetings Act 1987.

This Act requires Council to make all information relating to their operation public unless there is a good reason for withholding it. Good reasons for withholding information may include privacy of an individual, commercial sensitivity of a company, damage to the public interest, safety of an individual or that the maintenance of law may be prejudiced.

The decision on whether to withhold or release such information lies with the Chief Executive Officer. Members of the public may challenge any decision to withhold information, by making an Official Information Request to the Chief Executive Officer. If the Chief Executive Officer declines to release the information, then the member of the public can apply to the Office of the Ombudsman to have the information released.

The Act requires Councils to publish a list of all their meetings, their time and place in advance each month. Councils must also make the agendas and reports to be considered available for inspection by the public at least two working days before the meeting.

The Act requires the Chairperson of the meeting to maintain order at the meeting. The Chairperson has the ability to require members of the public to leave the meeting if the Chairperson believes the behaviour of any member of the public is likely to prejudice the orderly conduct of the meeting.

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, or fined up to \$1,000, or both. A conviction would therefore trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

3.0 LIABILITY OF ELECTED MEMBERS UNDER THE LOCAL GOVERNMENT ACT 2002

Section 46 of the Local Government Act 2002 makes elected members liable for loss both jointly and severally which is reported by the Auditor General.

Section 47 of the Local Government Act 2002 states that members may be required to pay costs of proceedings in certain cases.

4.0 SECURITIES ACT 1978

This legislation governs the raising of money by the offer to the public of the opportunity to invest through shares in an enterprise or to lend money to an organisation. Its application to Council would arise if Council wished to borrow money by public stock issues. In such a case, Council would be required to publish an investment statement and a prospectus. Where published documents relating to an issue of securities are found to contain untrue statements the

directors (in this case Elected Members) of the issuer may be held both criminally liable and civilly liable.

5.0 THE 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.

These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will also be automatically ousted from office.

6.0 HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

This Act imposes duties and responsibilities on the Council as an employer. The main object of the Act is to promote the prevention of harm to all persons at work. It requires employers to take all practicable steps to safeguard the health of employees. The Act requires employers to protect employees from physical and mental harm caused by work-related stress. This includes identifying potential hazards and monitoring the health of employees.

Should an employer fail to take all practical steps to ensure the safety of its employee, the employer could be found guilty of an offence and is liable on summary conviction to a fine of up to \$250,000 (or \$500,000 if serious harm is caused).

The Council is ultimately accountable for the actions of its Councillors and must ensure they do not behave in a way which is going to result in any of its employees being harmed (either physically or mentally). This could include, for example, any unfair or unwarranted comments or remarks by Councillors about a Council employee, which could foreseeably result in that employee suffering mental harm which may precipitate a claim by either the Department of Labour or an employee against the Council under this Act. Further the disaffected employee may also be able to bring a personal grievance claim under the Employment Relations Act 2000 if he or she is subjected to an unjustified attack or unjustifiable comments by Councillors.

A breach by a Councillor of obligations owed towards employees has serious implications for the Council and for an individual member.