**Whau Local Board**

**OPEN MINUTE ITEM ATTACHMENTS**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TABLE OF CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.2</td>
<td>Deputation: Whau Chinese New Year Event 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Presentation - Whau Chinese New Year Event 2018</td>
<td>3</td>
</tr>
<tr>
<td>8.1</td>
<td>Deputation - Whau the People</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Presentation - Whau the People</td>
<td>9</td>
</tr>
<tr>
<td>C1</td>
<td>Attachments</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Copy of Confidential Agenda dated 27 June 2018</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>B. Copy of Confidential Minutes dated 27 June 2018</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>C. Copy of Privacy Elected Member Complaints dated 6 June 2018</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>D. Copy of Report of the Code of Conduct by Independent Review Panel (redacted)</td>
<td>61</td>
</tr>
</tbody>
</table>

**Note:** The attachments contained within this document are for consideration and should not be construed as Council policy unless and until adopted. Should Councillors require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Whau Chinese New Year Celebration 2018

2018, New Start, New Passion, New future

- 2 weeks' series event
- In partnership with Auckland Council facilities network: 5 Areas, 8 Community Centers
- Unique Model, Take Social Responsibility
- Charity Partnership: St John, United Nations Associations of NZ, Eco Matters
- Volunteering work: around 40 volunteers participated
Whau Chinese New Year Celebration 2018 Highlights

2 weeks’ series leading up activations

- Avondale Community Centre
- Avondale Library
- Bockhouse Bay Community Centre
- Bockhouse Bay Library
- Green Bay Community House
- New Lynn Community Centre
- New Lynn Library
- Kelston Community Hub
Whau Chinese New Year Celebration 2018 Highlights

Main Event Celebration

- Time: 25th February 2018
- Venue: Olympic Park
- Theme: Community focused, sustainable development
Whau Chinese New Year Celebration 2018 Highlights

Main Event Celebration - Community Outcomes

- Strong and thriving communities that are enabled to participate, celebrate and contribute (3,500 people, around 70% from Whau Local Board)
- Engagement and Collaboration among 30 organisations
- Enhanced Cultural and Social Cohesion
- Around 40 Youth volunteering opportunities
- Extended sense of belonging by local community
Whau Chinese New Year Celebration 2019

► Thank you to Auckland Council Whau Local Board for providing us this great opportunity.

► We are looking forward to Whau Chinese New Year Celebration 2019.
an update
We are...

Whau the People is a charitable trust made up of Avondale-based artists who have run a variety of creative projects around the Whau since coming together in 2013.

Whau the People are: Bronwyn Bent (Theatre Maker), Jody Yawa Mcmillan (Artist), Sam Morrison (Artist), Janet Lilo (Artist) and Ioana Gordon-Smith (Curator).

Whau the People is also the many collaborators, artists, volunteers, supporters and participants that contribute to all our projects.
Alignment with the Whau Local Board priorities
Celebrating our creative edge in our streets, neighbourhoods and communities
Great neighbourhoods with strong community connections, capacity and voices
Strong local businesses and more quality local jobs
Our heritage is known, protected and our stories are shared.
What have we been up to?

- The Whau Arts Festival 2014, 2015, 2016 and 2018
- Avondale Markets Project 2015
- Hikoi for Hollywood cinema
- Shoe shop window exhibitions
- Multi-generational project series 2016
- All Goods | Whau Arts Space 2016

(Alongside contributing to other community events such as Flotilla Whau, Te Pou Whānau Day, ArtWest and the Avondale Christmas Markets)
Attachment A

Item 8.1

Whau Arts Festival 2014
Whau Arts Festival 2016
Whau Arts Festival 2018
Festival for Whau

Artists and the public converged in and around Riversdale Park in Avondale for the Whau Arts Festival on May 5. Events ranged from art projects, workshops and games, to a skate demonstration and light projection.
Multi-generational Projects 2016
PAPER PLANES
17 Whau Writers // Inter-generational Project
Rosehill Gardens & Avondale College

Saturday 25 June, 3 - 5pm
All Gisions — Whau Arts Space // The Long Room
1875 Great North Road // Avondale

2.30pm Avondale College musicians
3 - 5pm Reading/Book Launch/Portrait Exhibition
5 - 5.30pm Avondale College musicians
5pm Closing Party

Book Launch & Signing
Paper Planes, an anthology of the writers’ for sale — $5

Writers:
Shirley Beveridge
Jessie Boots
Matthew D’Souza
Ira Gertrude
Doehee Hacket
Tessa Anne Lees
Xavier Lenstra
Jay McCaw
Nola Morgan
Project lead/Editor: Poet Amana Bouden
Designer/Printer: Bruno Grenville
Photography: Lea Schleiter

The Queen thanks you, very much, for your letter and for the book that
you so kindly sent as a gift for Her Majesty on behalf of the Whau Writers.

Although it is not possible for The Queen to reply to you personally,
due to the large number of letters she receives every day, your thoughtfulness
in taking the time to write as you did is greatly appreciated.

The Queen hopes you will understand that, because of the enormous number of letters,
cards and messages she has received in the last few months, it has not been possible to
reply to you until now.
Laundromat series: Winter edition 2017
# What happened there...

<table>
<thead>
<tr>
<th>PledgeMe campaign</th>
<th>Pusi Urale solo</th>
<th>Bepen Bhana exhibition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening Event</td>
<td>Place Group exhibition</td>
<td>Amy Blinkhorne exhibition</td>
</tr>
<tr>
<td>Opening Exhibition</td>
<td>Noho</td>
<td>Music, Massage, Homebaking</td>
</tr>
<tr>
<td>Locals theatre performance</td>
<td>Noho exhibition</td>
<td>Warming the Whau</td>
</tr>
<tr>
<td>Build ups</td>
<td>Milenko workshop</td>
<td>Whau Arts Festival 2016</td>
</tr>
<tr>
<td>Tarpology workshop</td>
<td>Green Bay book launch</td>
<td>Architecture for Avondale</td>
</tr>
<tr>
<td>Ukelele workshop</td>
<td>Opening, Andy exhibition</td>
<td>Urbanesia Launch</td>
</tr>
<tr>
<td>3D printer workshop</td>
<td>Andy Lele‘isiuao</td>
<td>Urbanesia exhibitions</td>
</tr>
<tr>
<td>We’re not home right now exhibition</td>
<td>Whau Pacific Fest exhibition</td>
<td>Roboart Workshop</td>
</tr>
<tr>
<td>Exploring Urban Avondale</td>
<td>Whau Pacific Fest Workshop</td>
<td>Roboart exhibition</td>
</tr>
<tr>
<td>COOKS Female Artists network</td>
<td>Event - We’re not home right now</td>
<td>Fish and Chip nights with</td>
</tr>
<tr>
<td>dinner</td>
<td>Music and performance Bill</td>
<td>Stefan</td>
</tr>
<tr>
<td>Party Mix exhibition</td>
<td></td>
<td>Opening Party Mix with</td>
</tr>
<tr>
<td>Xmas party</td>
<td></td>
<td>Wiremu and Ata</td>
</tr>
<tr>
<td>Lavina singing lessons</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
UNITEC ARCHITECTURE presents

ARCHITECTURE FOR AVONDALE AND KAWERAU

ALL GOODS WHAU ARTS SPACE
1875 Great North Road, Avondale
SATURDAY 29 OCTOBER 10.00am-1.00pm
SUNDAY 30 OCTOBER 10.00am-1.00pm

For the past two years, Whau the People have worked with numerous collaborators to stage the Whau Arts Festival, an annual four-day-long neighbourhood event featuring poetry, street art, tattooing, blockbusting, hip-hop, theatre, dance, installations, sculpture and more. In working out the programme for such a wide array of projects, we have at times grouped ideas under headings of ‘Rocks’, ‘Mists’ and ‘Firecrackers’. These terms indicate a welcoming of all types of creative expression; activities that might last a moment as well as activities that live well beyond the festival dates.

In this gambit of arts – and their makers – that the new neighbourhood space ALL GOODS is committing to championing, our inaugural exhibition features artists living in the Whau area as well as artists living further afield, who have previously been involved with Whau the People projects. From painting to photography to moving image and sculpture, this exhibition offers a taste of local artistic diversity and celebrates the rich talent that can be found within our own communities.
Over the past year, we've been lucky to have a wide range of people coming through the doors of All Goods. This exhibition brings together works made or collected by 16 local people we've met during this time. The conversation topics sparked by these works include 21st key, regenerative patterns, G.I. Joos, art in prisons, the Nightingale Courts, sustainability, standing cock and impressionism. The interests and knowledge of our community is varied and at times surprising.

Collaborative Artists and Collectives Indigenous to Moana Nui a Kāi gathered to eat, discuss and connect. Presentations, workshops and food filled the day with the evening committed to installing an exhibition in the main gallery.

The kaupapa of this noho was broad and ranged from Oceania Interrupted giving a vital presentation on the state of things in West Papua and the work they do here in solidarity, to FAFSWAG presenting Navigating the Rainbow Space. A common theme was the importance of visibility and connectivity.

Opening Friday 2 Dec 5pm
All Goods | Whau Arts Space | 1975 Great North Road, Avondale
Item 8.1

LOCALS
TELLING THE STORIES OF AVONDALE NEIGHBOURS
A COMMUNITY THEATRE SHOW MADE WITH AND BY LOCALS;

FREE EVENT
THURSDAY MARCH 31st | 7PM
ALL GOODS | WHAU ARTS SPACE
1875 GREAT NORTH ROAD

ALL WELCOME

Join 3 Avondale Parents:

Want something to do with Preschoolers
while playgroup/kindy/school is taking a break?

Lucy McCannin, Puppeteer
for a preschool music session

Olivia Docter, Massage Therapist
for a sample massage

Andrea Bravo De La Vega, Wholefoods Advocate
to try some home baking (7 OCT only)

Celebrating Neighbours Day, Avondale;
Ain what a huge bank holiday;
Turning streets into neighbourhoods

We'll put on a cuppa and some food too :-)

SCHOOL HOLIDAY
MUSIC | MASSAGE | HOME BAKING
@ ALL GOODS | WHAU ARTS SPACE
1875 GREAT NORTH RD | AVONDALE
FR 30 SEP @ 10:30AM | FR 7 OCT @ 10:30AM

All welcome | koha entry
What now?

In general we want to:

Create a space that is responsive to our local Whau community, one that they feel they have a stake in, can take part in, and be proud of.

Stakeholders.

Emphasise and celebrate the creative expression of the Whau area.

Engage with specific communities - both geographic and otherwise - around the Whau. We will do this through regular creative hui and artistic projects.

Build capacity within our group to ensure a long term future for a community art space in the Whau.

Work towards becoming more financially independent through a social enterprise model.
A new space...
Thanks!!!
I hereby give notice that a confidential meeting of the Whau Local Board will be held on:

**Date:** Wednesday, 27 June 2018  
**Time:** 6.00PM  
**Meeting Room:** Whau Local Board Office  
**Venue:** 31 Totara Avenue  
New Lynn

---

**Whau Local Board**  
**CONFIDENTIAL AGENDA**

---

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TABLE OF CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1</td>
<td>Recommendation of the Conduct Review Independent Panel under the Auckland Council Code of Conduct</td>
<td>3</td>
</tr>
</tbody>
</table>

---

**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Charmene or Don or Charmene. 

---
Recommendation of the Conduct Review Independent Panel under the Auckland Council Code of Conduct

File No.: CP2018/10776

Matataputanga / Confidentiality

<table>
<thead>
<tr>
<th>Reason</th>
<th>The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interests:</td>
<td>s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person. In particular, the report contains personal information on a code of conduct complaint made against an individual elected member.</td>
</tr>
<tr>
<td>Grounds:</td>
<td>s48(1)(a) - The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</td>
</tr>
</tbody>
</table>

Te take mō te pūrongo / Purpose of the report

1. To consider the recommendations of the Conduct Independent Review Panel in relation to a code of conduct complaint against Whau Local Board member Catherine Farmer made by a member of the public.

Whakarāpopotorotanga matua / Executive summary

2. The Auckland Council Code of Conduct (the code) is required by legislation and elected members must abide by it.

3. A complaint under the code was received in May 2017 by a member of the public about Whau Local Board member Catherine Farmer.

4. This complaint has been through the code’s resolution processes of mediation and consideration by the Conduct Independent Review Panel (the panel). The panel has provided the council with its report from its investigation. This is presented for the Whau Local Board’s consideration.

5. The panel were satisfied that Member Farmer acted in good faith and accept that to her there was no conflict of interest with regards to the decision that she made. However, an objective bystander would have thought that she was ‘too close’ to the content of the decision to be impartial. Therefore the panel have recommended that Member Farmer be counselled to observe more carefully article 7 of the code.

6. Given the independent and robust nature of the panel’s process it is not for the Whau Local Board to reconsider the complaint. The Whau Local Board is advised to note the panel’s report and endorse its recommendation.

7. The Whau Local Board must decide if the panel’s report is made public. Whether or not to publish the report is a finely balanced argument which must weigh up the need for the council to promote transparency and for this case to serve as an educational tool against, the risk of disproportionate reputational damage and ensuring a proportionate response to the level of severity of the misconduct.
Ngā tūhungera / Recommendation/s

That the Whau Local Board:

a) note the Conduct Independent Review Panel’s report on the Code of Conduct complaint against Whau Local Board member Catherine Farmer.

b) endorse the panel’s recommendation for Whau Local Board member Catherine Farmer to ‘be counselled to observe more closely the provisions of Article 7’ of the Code of Conduct.

c) approve the publication of the Conduct Independent Review Panel’s report on the Code of Conduct complaint against Whau Local Board member Catherine Farmer, redacting all identifying information with the exception of Member Farmer’s name.

d) approve that this report and the resolutions be restated in the public minutes.

Horopaki / Context

8. The Local Government Act 2002 requires local authorities to adopt a code of conduct and for elected members to comply with it. A code of conduct must set out:

- the conduct of members toward one another, staff and public
- how information is disclosed
- legislation that applies to the actions of members
- the relationship between elected members and management.

9. The Auckland Council Code of Conduct (the code) applies to both Governing Body and local board members. It was adopted by the Governing Body in November 2010.

10. In May 2017 a complaint was received from a member of the public against Whau Local Board member Catherine Farmer. The complaint alleged Member Farmer had breached requirements of the code in regard to conflicts of interest by taking part in certain decisions dating back to September 2015. The complaint was not resolved.

11. The code provides for unresolved complaints to be referred to the convenor of the Conduct Review Independent Panel (the panel). The convenor of the panel, Sir Ian Barker, can then refer the complaint to mediation and/or the panel for investigation.

12. In the case of the complaint made against Member Farmer mediation did not resolve the complaint so a full panel investigation was undertaken in April/May 2018. This involved three members of the panel holding a hearing at which both parties in the complaint presented their submission.

13. Under the code, the panel’s findings are to be reported to the relevant local board for consideration. The code requires that the panel’s recommendation is considered with neither the complainant nor the respondent at the meeting.

14. The code provides for the panel to issue guidelines for its procedures. Those guidelines state that the panel’s recommendation:

"...will be made available only at the relevant meeting at which it is scheduled to be considered. Copies of the recommendation are to be given to the parties at that point.

It will be for the Governing Body or Local Board as the case may be to decide whether the [panel’s] recommendation in any given instance is to be made public and/or considered in open meeting."
Tātaritanga me ngā tohutohu / Analysis and advice

The panel’s report and recommendation

15. The panel were satisfied that Member Farmer acted in good faith and accept that to her there was no conflict of interest with regards to the decision that she made. However, an objective bystander would have thought that she was ‘too close’ to the content of the decision to be impartial. Further details on the panel’s investigation and findings are in its report at attachment A.

16. The panel has conducted a rigorous independent process to come to its conclusions, with the benefit of having all the information before them including hearing the submissions of both the complainant and the respondent. Therefore it is not for the Whau Local Board to reconsider the complaint.

17. On this basis, it is recommended that the Whau Local Board note the panel’s report.

18. It is recommended that the Whau Local Board endorse the panel’s recommendation for Member Farmer to ‘be counselled to observe more closely the provisions of Article 7 of the code’.

19. With regards to counselling on Article 7 of the code, it is important to note that since the complaint against Member Farmer was made she has attended two relevant workshops. These have been delivered as part of the council’s Kura Kāwana programme (elected member professional development). One workshop was specifically on conflicts of interest, the other a more general session on governance which also touched on conflicts of interest. Conflicts of interest are one part of Article 7 of the code and the core aspect of the complaint.

20. The conflict of interest workshop Member Farmer attended took place in July 2017. It covered the following topics and provided time for participants to discuss their own situation with regards to conflicts of interest.

   a) The council’s approach to integrity.
   b) What conflicts of interest are and the obligation on elected members to declare them (both financial and non-financial).
   c) Difference between actual and perceived conflicts of interest and how to recognise and manage, or mitigate them.
   d) Managing elected members’ annual interest declaration obligations.

21. It could be argued that Member Farmer’s attendance at this training is sufficient to fulfil the panel’s recommendation. However, it is recommended that an additional step is undertaken, that Member Farmer meet with the senior investigation advisor in the council’s Internal Audit Unit and the programme manager of the Kura Kāwana programme. The purpose of this meeting would be to discuss what learnings Member Farmer took from the conflict of interest training and identify any further learning needs she has.

22. This could include a confidential discussion between Member Farmer and the senior investigation advisor to discuss in detail Member Farmer’s personal situation with regards to conflicts of interest.

23. In addition, the code is currently being reviewed. This is expected to be completed by the end of 2018. When implementing the revised code it is envisaged that training will be developed for all elected members to ensure they are aware of and understand their commitments under it.

Determining if the panel’s report is confidential or made public

24. As noted in paragraph 14 the Whau Local Board needs to decide if the panel’s report is kept confidential or made public.
25. There is a need to achieve a balance between the rights of Member Farmer, the council, public interest and the complainant when deciding whether to release personal information. The decision on whether the panel’s report should be published is finely balanced.

26. Attachment B provides detailed advice and considerations for determining if the panel’s report should be made public. A summary of this advice is set out in the table below which explains the pros and cons for making the panel’s report public.

<table>
<thead>
<tr>
<th>PROS TO PUBLICATION</th>
<th>CONS TO PUBLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotes transparency, strengthening public trust and confidence in council processes and decision-making</td>
<td>Risk of reputational damage to council and elected member</td>
</tr>
<tr>
<td>Reduces the risk of the report being made public knowledge by other means (via complainant)</td>
<td>Disproportionate to the level of severity of misconduct</td>
</tr>
<tr>
<td>May be released through a LGOIMA request anyway</td>
<td>There is a low risk that council could be liable for any consequences of releasing personal information (if such information is released under a LGOIMA request, council is protected from such consequences)</td>
</tr>
<tr>
<td>Serves as good education and guidance for future conduct</td>
<td>Risk of improper pressure or harassment of the elected member</td>
</tr>
</tbody>
</table>

27. Taking into account these pros and cons for making the panel’s report public it is recommended that the panel’s report is published and all identifying information with the exception of Member Farmer’s name is redacted.

28. This case does illustrate that local board members work in a complex environment with regards to their relationships with the community and this needs to be carefully considered in decision-making.

29. Publishing the panel’s report should help to mitigate the disadvantages identified for publishing the panel’s report while achieving the advantages of promoting transparency and ensuring the case serves as an educational tool.

Ngā whakaawae ā-rohe me ngā tirohanga a te poari ā-rohe /
Local impacts and local board views

30. This report is confidential and no views have been sought from the local board on this topic prior to this meeting.

31. If the Whau Local Board decides to make the panel’s report public, with the inclusion of Member Farmer’s name there is a risk of reputational damage to both the Whau Local Board and Member Farmer. Proactively publishing the panel’s report should help to mitigate these risks.

Tauākī whakaawae Māori / Māori impact statement

32. There are no particular impacts to Māori from the recommendations in this report.

Ngā ritenga ā-pūtea / Financial implications

33. There are minimal financial implications from the recommendations in this report. The minimal cost would be in staff time providing training and support to Member Farmer on Article 7 of the code.
Ngā raru tūpono / Risks
34. The main risk associated with this report is to do with the decision of whether or not to publish the panel’s report. These risks are summarised under the heading ‘Cons to publication’ in table 1 and are further detailed in appendix B. As noted in paragraph 31, proactively publishing the panel’s report should help to mitigate these risks.

Ngā koringa ā-muri / Next steps
35. If the Whau Local Board resolves to accept the panel’s recommendation for Member Farmer to ‘be counselled to observe more closely the provisions of Article 7 of the code’, an initial meeting will be set-up for Member Farmer with with the senior investigation advisor in the council’s Internal Audit Unit and the programme manager of the Kura Kawana programme.
36. Louise Mason, General Manager Local Board Services will write to the complainant to inform them of the Whau Local Boards’ decisions resulting from this report.

Ngā tāpirihanga / Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
</table>

Ngā kaihaina / Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Christine Gulik - Principal Advisor Policy &amp; Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Louise Mason - GM Local Board Services</td>
</tr>
<tr>
<td></td>
<td>Glenn Boyd - Relationship Manager Henderson-Massey, Waitakere Ranges, Whau</td>
</tr>
</tbody>
</table>

Recommendation of the Conduct Review Independent Panel under the Auckland Council Code of Conduct
Confidential minutes of a meeting of the Whau Local Board held in the Whau Local Board Office, 31 Tctara Avenue, New Lynn on Wednesday, 27 June 2018 at 6.00PM.
Recommendation of the Conduct Review Independent Panel under the Auckland Council Code of Conduct

Resolution number WH/2018/61

MOVED by Chairperson T Mulholland, seconded by Member D Whitley:

That the Whau Local Board:

a) note the Conduct Independent Review Panel's report on the Code of Conduct complaint against Whau Local Board member Catherine Farmer.

b) endorse the panel's recommendation for Whau Local Board member Catherine Farmer to 'be counselled to observe more closely the provisions of Article 7' of the Code of Conduct.

c) approve the publication of the Conduct Independent Review Panel's full report on the Code of Conduct complaint against Whau Local Board member Catherine Farmer with the redaction of complainants and their support person's name.

d) approve that this report including supporting documentation and the resolutions be restated in the public minutes.

CARRIED

Member C Farmer returned to the meeting at 8.23 pm.

8.23pm

The Chairperson thanked Members for their attendance and attention to business and declared the meeting closed.

CONFIRMED AS A TRUE AND CORRECT RECORD AT A MEETING OF THE WHAU LOCAL BOARD HELD ON

DATE: .........................................................................................................................

CHAIRPERSON: ..................................................................
PRIVACY: Elected member complaints
6 JUNE 2018

Background Information

A Code of Conduct complaint was made by a member of the public against an elected member. This complaint was referred to the Conduct Independent Review Panel (CIRP). The CIRP found that the member had breached the code, but that it was a minor breach and did not warrant censure or any of the other more serious sanctions available through the code of conduct. As per sections 8.7 and 8.8 of the Code of Conduct, the CIRP report (the report) will be considered by the local board who must decide on appropriate next steps. The local board must also decide whether the findings by the CIRP will be made public.

This advice considers the associated benefits and risks of making the report public.

Discussion

The report contains personal information of the elected member and complainant. There is a need to achieve an appropriate balance between the rights of the elected member, the council, public interest and the complainant when deciding whether to release personal information. Decision makers should exercise judgement on a case-by-case basis when considering whether to publish a report containing personal information.

The decision on whether the report should be published is finely balanced. Relevant considerations, with key risks and benefits of publication in text boxes, are discussed below.

1. Questions

Consideration should be given to the circumstances in each case when deciding if, and to whom, personal information might be released. Deliberations about any disclosure of personal information about an elected member should be informed by several factors, including but not limited to:

- the content and level of detail of personal information to be released. Can general information about the handling of the complaint be provided to satisfy public interest, without disclosing personal information about the elected member?
- the need to disclose the information. Is it necessary? What is the aim of the disclosure and what will be achieved? Is this proportionate to the misconduct involved?
- to whom is the information to be disclosed?
- the elected member’s right to privacy or any potential damage to their reputation and career. Is this proportionate to the misconduct?
- the elected member’s seniority and length of service. For senior or long serving Members, there is generally a higher expectation to meet Code of Conduct standards.
2. Privacy and LGOIMA considerations

This section is based upon a review of relevant parts of the Privacy Act and the Local Government Official Information and Meeting Act 1987 (LGOIMA) which the local board should consider when deciding whether to publish the report.

The LGOIMA allows anyone to submit a request for official information held by local government agencies, including Auckland Council and council-controlled organisations (CCOs). At the time of writing, council has not received a LGOIMA request for a copy of the report. Should council receive a LGOIMA request for the report, the following considerations would need to be assessed to determine whether we can/should proactively release official information.

The report may be released through a LGOIMA request anyway

The LGOIMA is an important mechanism for holding governments and public bodies to account. An elected member’s expectations of privacy are considered when the council receives a request made under the LGOIMA.

The Privacy Act 1993 protects information relating to the personal affairs of an individual. The Privacy Act generally prevents disclosure of personal information to anyone without prior authorisation.

Currently, where official information is made available in response to a LGOIMA request, the question of giving adequate protection to privacy depends upon the withholding ground and whether there are countervailing public interest factors that justify release. The LGOIMA allows information to be withheld to protect a person’s privacy. Although principle 11 of the Privacy Act...
prohibits disclosure of personal information (except in certain circumstances), section 7 states that if personal information can or must be disclosed under another statute then that other statute will override the Privacy Act. This, in effect, means that if LGOIMA applies, this overrides the Privacy Act. If LGOIMA does not apply (and no other statute applies), then the Privacy Act prevails. In this case, a balancing act must take place as to whether the personal information contained within the report should be withheld to protect the elected member’s privacy or its release can be justified.

The grounds for withholding official information in section 7 of the LGOIMA are subject to a ‘public interest test’. This means agencies must balance the public interest in disclosing information against the need to withhold it. If the public interest in disclosure outweighs the need to withhold the information, then it must be released. Public interest does not mean ‘interesting to the public’. It means the issue is one of legitimate public concern. To help identify the public interest considerations favouring disclosure, council should consider the purpose of the request and the nature and content of the information. Strong reasons of public interest include transparency and accountability, balanced against proportionality of releasing the information. Transparency can enhance levels of citizens’ trust and maintain integrity. It encourages good administration and discourages bad practices. It also fosters effective public-sector accountability.

Publication promotes transparency, strengthening public trust and confidence in council processes and decision making

Other reasons that may justify the withholding of the report could include section 7(2)(f)(i) LGOIMA which allows an agency to protect persons from improper pressure or harassment. It could be argued that releasing the report when no censure has been recommended by the panel is disproportionate and risks improper pressure.

Publication is disproportionate to the level of severity of misconduct and risk of improper pressure or harassment of the elected member.

Further, should council receive a LGOIMA request, section 7(2)(c)(i) LGOIMA allows council to withhold information which is subject to an ‘obligation of confidence’ where this would likely prejudice the future supply of similar information. This would allow the local board to review the report during a meeting held in confidence. It would also provide the flexibility to reveal the findings of the report and steps taken, without publishing the report in full.

Note that a release made after a LGOIMA request has been submitted is protected under section 41 LGOIMA, which means that if personal information is made available in good faith, Auckland Council is not legally liable for any consequences of that release. However, proactive releases of official information are not subject to the same protection and must comply with and have

---

1 TV3 Network Services Ltd v Broadcasting Standards Authority [1995] 2 NZLR 720 at 733
liability under the Privacy Act. To mitigate this low risk it is important that appropriate consideration is given to the public interest justification in releasing the information.

**Publication presents a low risk of interference with privacy rights**

It could be argued that a decision by the independent panel was made pursuant to an elected member’s decision made in their official capacity, therefore the complaint and the resulting investigation should be made public.

3. **Identity of the complainant**

The complaint was made by a member of the public. As such there may be a higher expectation that the outcome of an upheld complaint should be made public.

However, as noted above, when considering what information to make public to promote confidence in council, there is a need to balance the right to privacy and the need to take reasonable steps to be as transparent and accountable as possible.

In any case, the complainant may opt to make the findings of the CIRP public, with the risk of increased pressure on council to release the report.

**Publication reduces the risk of the report being made public knowledge by other means**

4. **Code of Conduct: elected members**

The elected member has been found to have been in breach of the Code of Conduct. By standing for election, members have agreed to the Code’s processes, which states that ‘Members are accountable to the public for their decisions and actions and should consider issues on their merits, taking into account the views of others. This means co-operating fully and honestly with the scrutiny appropriate to their particular office’.

An elected member has increased expectations of leadership and modelling appropriate behaviour. Declaring private interests is one of the Key Principles of the Code of Conduct and ‘Members should promote and support these principles by example’.

As democratically elected members of local boards and the governing body, it can be argued that elected members should expect that their identity will, and should, be connected with any decision or performance of official duties. The further up the decision-making chain a person is in a public agency, the lower an expectation of privacy afforded.

The elected member’s length of service may also carry with it an increased expectation and compliance with the Code of Conduct. For example, an elected member of ten or more years of service could reasonably be expected to have a higher expectation upon them to meet...
behavioural standards than a Member who may have breached the Code of Conduct as a result of inexperience.

Further, in this case there were several stages before the issue was referred to the CIP, including mediation which did not result in the parties reaching agreement. The process and the risk of publication was set out to the parties, with the possible consequences of publication clear.

However, there is a risk that the damage to an elected member’s reputation and career may be disproportionately affected by disclosure of personal information concerning a Code of Conduct matter. This should be considered and balanced on a case-by-case basis.

Publication creates a risk of reputational damage to council and elected member

5. Severity of offence

The disclosure of personal information about an elected member to a wider audience may not be warranted in all circumstances.

The report states that the elected member had a ‘conflict of interest of the kind addressed in the Code’, but that any outcome of the complaint (censure, removal from representative type bodies, and dismissal from a position of Chair or Deputy Chair of a Committee) would be ‘disproportionate for the conduct’. The report recommended the Member be ‘counselling to observe more carefully the provisions of Article 7 in the Code’.

Some kinds of misconduct, such as fraud, warrant wider dissemination of the results of an investigation, sanctions, remedial action or changes to policies.

It may be possible to proactively release information describing the misconduct, subsequent actions taken and advising other elected members of appropriate behaviour without disclosing personal information about the member concerned.

Such actions would still serve to increase the public’s confidence and educate Members. However, care should be taken that the Member’s identity cannot be reasonably ascertained from this information.

Publication serves as good education and guidance for future conduct

6. Next steps

Whether it is appropriate or not to make the findings in the report public is finely balanced and should be considered carefully. The table below details the advantages and disadvantages to publication.
<table>
<thead>
<tr>
<th>PROS TO PUBLICATION</th>
<th>CONS TO PUBLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotes transparency, strengthening public trust and confidence in council processes and decision-making</td>
<td>Risk of reputational damage to council and elected member</td>
</tr>
<tr>
<td>Reduces the risk of the report being made public knowledge by other means (via complainant)</td>
<td>Disproportionate to the level of severity of misconduct</td>
</tr>
<tr>
<td>May be released through a LGOIMA request anyway</td>
<td>There is a low risk of interference with privacy rights if proactively published as not covered by section 41 LGOIMA defence, meaning council could be liable for consequences of release</td>
</tr>
<tr>
<td>Serves as good education and guidance for future conduct</td>
<td>Risk of improper pressure or harassment of the elected member</td>
</tr>
</tbody>
</table>
Recommendation 1/18

IN THE MATTER of the
Code of Conduct of the
Auckland Council for Elected
Members

AND IN THE MATTER of a
complaint by [Name] (the
Complainant), a member of the
public, against Catherine
Farmer (the Respondent)
a member of the Whau Local
Board

REPORT OF THE CODE OF CONDUCT
INDEPENDENT REVIEW PANEL

INTRODUCTION

1. Under Clause 15 of Schedule 7 of the Local Government Act 2002 all local authorities are
required to adopt a Code of Conduct which must set out, inter alia:

"Understandings and expectations adopted by the local authority about the manner in which
members may conduct themselves while acting in their capacity as members, ....

2. On 1 November 2010, the Auckland Council ("the Council") adopted a Code of Conduct for
Elected Members ("the Code"). This was amended by the Council on 22 August 2013.

every member of a local board, as constituted by the 2009 Act, to comply with the said
Code.

4. In May 2017, the Complainant wrote to the CEO of Auckland Council making the following
complaints:

a) On 9 September 2015 Ami Chand and Catherine Farmer did not declare an interest in a
trust known as The Pacific Events and Entertainment Trust (PEET), before voting on a
leasing agreement under which the PEET and another party had competing applications for determination by the Whau Local Board at its board meeting on that date.

b) On 18 May 2016 Ami Chand and Catherine Farmer did not declare an interest in the PEET when deciding on a request for funding made by the PEET for $2,000.00 which came before the Whau Local Board for determination on that day.

c) On 7 September 2016 Ami Chand and Catherine Farmer did not declare an interest in the PEET when deciding on a request for funding made by the PEET for $2,000.00 which came for determination by the Whau Local Board on that day.

5. The Auckland Council CEO referred the matter to Phil Wilson, Governance Director who, on 15 June 2017, wrote to Ms Farmer in terms which accepted there were prima facie grounds for complaint and proposed certain actions to avoid any possibility of repetition of the complaints.

6. There were further communications, which will be addressed later.

7. The conduct of the Respondent at a Whau Local Board meeting on 22 November 2017 gave rise to a fourth complaint as follows:

d) On 22 November 2017 Catherine Farmer did not declare an interest in the PEET when deciding on a request for funding made by the PEET for $1,472.00 which came for determination before the Whau Local Board that date.

8. At the time of the three matters mentioned in paragraph 4, the Respondent was the Chair of the Local Board.

9. No complaint is pursued against Ami Chand.

10. The complaint was referred to mediation by the Convenor of the Conduct Independent Review Panel but there was no resolution through that process.

11. The complaint was then referred to the Convenor, Conduct Independent Review Panel ("the Panel") which the Council was required to set up under Article 8.5 of the Code.

12. The Council appointed a panel (ultimately) consisting of Sir Ian Barker QC (Convenor), David McGregor and Derek Firth.

13. GUIDELINES FOR MAKING A COMPLAINT UNDER THE CODE OF CONDUCT INDEPENDENT REVIEW PANEL (the Guidelines) were established in about January 2013.

14. The Panel proceeded in accordance with those Guidelines, including having an oral hearing which was requested. None of the members of the Panel has any conflict of interest. They have not discussed the details of the complaints with any other person. They have
considered only the written material from the parties and their oral statements at the hearing on Thursday 26 April 2018 (which was held in the Board Room, Auckland Town Hall, Queen Street Auckland.)

15. The Complainant was represented by [REDACTED]. While we note the tension between the Complainant’s solicitor and members of the PEET, the reasons for it are not relevant.

The Respondent was represented by Michael Taia of Enterprise Law.

16. Warwick McNaughton, Principal Advisor—Democracy Services for the Council, has acted as Secretary for the Panel and attended the hearing.

DETAILS OF COMPLAINT AND RESPONSE

17. Before turning to the formal submissions which were made to the Panel, it is appropriate to note the prior correspondence which was also submitted.

- 15 June 2017 the letter from the Governance Director to Ms Farmer, mentioned earlier.
- 5 July 2017 a response to the Governance Director from Ms Farmer’s solicitor Michael Taia rejecting any basis for the complaint.
- 13 July 2017 from the Director of Legal and Risk of the Council to Michael Taia referring to section 7.7 of the Code of Conduct.
- 8 April 2018 from Simon Matafai to the Panel members confirming that Ms Farmer was never a trustee of the PEET.

18. The timetable eventually adopted by the Panel was for contemporaneous written submissions on 10 April 2018, contemporaneous submissions in reply on 17 April 2018, followed by an oral hearing on 26 April 2018.

Complainant’s initial submission (10 April 2018)

19. Central to the complaint is the claim that Ms Farmer was so close to the PEET that she was obliged to declare an interest in any matter which affected it and abstain from voting; also, to leave the meeting while any matters involving the PEET were discussed.

20. The reasons advanced for such a disqualifying relationship included:

a) The members who voted personally knew the persons involved in both of the interested groups as they were all members of the Whau Local Board at that time. It should be noted that an officer of the competing applicant for the lease was Duncan McDonald,
also a member of the Whau Local Board. Both he and Mr Matafai left the meeting when
the competing lease applications were considered.

b) The Respondent (Labour), Simon Matafai (Labour), Susan Zhu (Labour) and Ami Chand
(Labour) were all members of the same political party and known to each other.

c) The Respondent and Ami Chand were originally noted in the register as being trustees of
the PEET. (In the case of the Respondent, that seems to have been in error and for only
a brief period of time).

d) Simon Matafai had noted on the Trust Deed for the PEET that it was prepared by him
under the auspices and copyright which he attributed to the Whau local Board.

e) Because the Respondent personally knew the persons involved in the PEET and in
particular Simon Matafai as the CEO of the PEET and as a Board Member of the Local
Board and as a fellow Labour campaigner, she would not be able to view impartially and
without bias the application before the Board for the lease of 50A Rosebank Road.

f) When Phil Wilson concluded his investigations and completed a report dated 15 June
2017, he based his findings on a recognised test used by the Courts to consider these
matters namely:

"Whether a fair minded and informed observer who is assumed to have
access to all the facts capable of being known by members of the public
generally, could conclude there was a real possibility that the member was
biased"

Mr Wilson then observed:

"Looking at all the evidence together, on balance, I can see how a biased
indcision-making could be perceived.


g) Submissions were made regarding the meaning and correct interpretation of various
provisions in the Code. Also, further detail was given of the various points summarised
above. These included photographs of the Respondent and Mr Matafai campaigning
together for Labour and attending PEET events together; also, that the Respondent is a
member of the Auckland Gospel Choir which is affiliated with the PEET. These illustrate
a long friendly connection and common party affiliation between the Respondent and
Mr Matafai.

21. The Complainant submits that the Respondent was in breach of her obligations under the
Code in failing to declare an interest on matters involving the PEET.
Respondent’s initial submission (10 April 2018)

22. Mr Taia commenced by drawing attention to the fact that the Complainant [redacted] He refers to the unhappy relationship between [redacted] and the PEET. He asserted that the Complainant has a personal vendetta against the PEET and against the Complainant. The Panel is of the view that none of these allegations is relevant to the complaint.

23. Mr Taia then reviewed the provisions of the Code of Conduct, particularly Rule 7.7 and Clause 10.10 (Appendix 1). He emphasises that there must be a real danger of bias on the part of the member.

24. He then submitted:

   a) It cannot be in the best interest of the city or district that the Complainant be provided with this opportunity to use the complaint to advance a personal vendetta.

   b) There is no real danger of bias. It is only the perception of the Complainant, who is not an impartial member of the public.

   c) It cannot serve justice to enable the Complainant [redacted] to use Council policies to attack the integrity of an innocent Local Board member who has served the board for over 20 years. It is an abuse of this process.

   d) There is no real evidence of any bias. The Respondent was not a trustee of the PEET and reference is made to the letter from Mr Matafai dated 5 July 2017, referred to earlier.

   e) The “floodgates” risk in possible numerous similar situations.

Response by the Complainant (17 April 2018)

25. There was detailed reference to the troubles between [redacted] and the PEET. Extensive detail was provided but it is not helpful to a proper consideration of the complaint.

26. It was then submitted that the Respondent and Mr Matafai had both been on the Whau Local Board since 2013. Also, that the Respondent and Mr McDonald (of the competing applicant for the lease) had been on the Whau Local Board together since 2010.

27. The connection with Mr Matafai and the Labour Party was repeated together with detail of their campaigning together.

   There was then produced a series of social media postings about PEET activities to which the Respondent had responded with “like”. These were all postings in connection with activities
of the PEET including the Auckland Gospel Choir (of which the Respondent is a member). The postings include numerous photographs of the Respondent at various PEET functions or with various PEET organisations.

28. The apt point was made that the Council officers assessed the competing applications for lease and made a recommendation in favour of Mr McDonald’s organisation (the Avondale Community Society Inc). It is pointed out that the time for the discussion on these competing applications was only 10 minutes when the Respondent was the Chair. It is also pointed out that the voting (in the absence of Mr Matai and Mr McDonald) was along Party lines in that the three Labour Party members voted for the PEET and an independent, Derek Battersby voted against.

29. The reference to opening the “floodgates” is firmly rejected on the basis that the Code must be complied with regardless of other possible outcomes.

Response by the Respondent (17 April 2018)

30. After some introductory comments, which repeat much of what had been said before, it was submitted:

a) The Complainant has a personal vendetta against the Trust and the complaint is another attempt to challenge the legitimacy of the Trust and to attack its integrity.

b) There is no real danger of bias and that the only bias is through the eyes of the Complainant.

Submissions made at the oral hearing on 26 April 2018

31. There were no submissions on either side which were new but each side elaborated on their earlier written submissions.

32. [Redacted] did ask to see the minutes of the Workshop held before the meeting at which the grant of the lease was decided. The Workshop was held on 12 August 2015 and a copy of its minutes has subsequently been made available by Mr McNaughton. The minutes record the competing applications and include a weighted average assessment by Council officers as the means of evaluating the applications on a comparative basis. This is a well-recognised approach. The headings were Eligibility, Group Details, (Financial and Sustainability) Best Fit, Meets identified need, and Innovation.

33. Both applicants scored equally for Eligibility and Meets identified need. The PEET scored the highest for Innovation (13% compared with 10%) and the Avondale Community Society scored higher under Group Details (5% compared with 1% under financial and 11% compared with 5% under Group Sustainability) and Best Fit (24% compared with 14%).
34. Significantly, Clause 15 of the Assessment Report provides:

“It is assessed that each of the groups would be a suitable tenant for the building and each brings its own strengths and meets different needs. This report recommends that the Avondale Community Society is the preferred candidate, as they (sic) would ensure use of the building by the wider community and have a demonstrated community focus through their experience of managing the St Ninian’s Hall lease.”

RELEVANT PROVISIONS OF CODE OF CONDUCT

35.

7.7 The Conflicts of Interest

Attached as Appendix 1 to this Code is the Council’s Conflicts of Interests Policy. It is a requirement of this Code of Conduct that all elected members fully acquaint themselves with and adhere strictly to its requirements. These cover two classes of conflict of interest:

- A financial conflict of interest.....
- A non-financial conflict of interest which does not have a direct personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.....

Appendix 1, Conflicts of Interest Policy for the Auckland Council provides, inter alia

10.10 Non-Financial Interests – Decision-making

(a) Non-Financial Interests involving relatives, friends, tribal affiliations, membership of other organisations (eg community, regional national organisations, clubs, churches etc).

Members should evaluate the guidelines of the OAG (Office of the Auditor General) and/or seek advice from the Chief Executive or OAG before determining whether or not they should declare an interest and stand aside from decision-making. There is no simple binding rule that covers all such cases – they must be evaluated on their individual merits.

(b) Predetermination

......

A member must not participate in a hearing or decision-making process under the Resource Management Act 1991 or in any other hearing or decisions that have a regulatory effect, if that member’s statements or conduct indicate that he or she has predetermined the matter before hearing all relevant information. On other matters where there are potential issues of predetermination, the members should refer to
the Guidelines of the DAG and/or seek advice from the Chief Executive or the DAG before deciding whether or not to participate in decision making.

Under Article 8.8 of the Code, where there has been no breach of a statutory provision disclosed on investigation of a complaint, the Panel’s sole function is to make a recommendation on the complaint to the Local Board which may take the following courses of action:

- Censure;
- Removal of the elected member from representative type bodies;
- Dismissal of the elected member from a position as Chair or Deputy Chair of a committee.

A decision to apply one or more of these actions requires a resolution to that effect.

**DISCUSSION**

36. Elected members of Local Boards must be free to fulfil their role with as few constraints as possible. Technical conflicts will be frequent, and tensions of other kinds will be widespread, simply because of the nature of the work.

37. Accordingly, it is the view of the Panel that a common-sense approach is required in order to ensure that the democratic process is practical and effective.

38. Indeed, for politicians at all levels, identifying conflicts of interests can be quite challenging.

39. What is important, is the perception of an independent bystander, not the perception of the politician him or herself.

40. Local Board members are bound to have associations or connections within their area. That is why they have offered themselves for election and one of the reasons why they have been elected.

41. Whether or not the boundary line of a conflict has been crossed will often be a question of degree. In the present matter we are satisfied that Ms Farmer has acted in good faith and accept that, to her, there was no conflict of interest.

42. However, we believe that, on an objective basis, her various links, associations, and friendships with those involved in the PEET were such as to give rise to a conflict of interest of the kind addressed in the Code.

43. Examples of conduct which, in the opinion of the Panel, requiring the Respondent to declare and interest and withdraw from the discussion include:
• The obvious close relationship between the Respondent and Mr Matafai. This is exemplified by their campaigning together for the Labour ticket and being together at numerous PEET functions and activities.

• There does not appear to have been any similar close association with Mr McDonald or the Avondale Community Trust.

• These things, alone, in the opinion of the Panel, should have led the Respondent to declare an interest and recuse herself from the meetings.

44. We believe that an objective bystander would have thought, in those respects, that she was simply "too close" to the PEET to be as impartial as might be expected of a Local Board member.

45. It is appropriate for us to mention the factors which we believe would not be grounds for declaring a conflict of interest. These include:

• Simply being members of the same political party (and nothing more).

• Posting "likes" on social media in respect of the activities of a particular organisation.

46. We accept that others might take a different view, but this is our best assessment on an objective basis.

RECOMMENDATION

47. The options available to the Local Board are set out earlier.

48. In the Panel’s view, for it to recommend any of those outcomes of the complaint (censure, removal from representative type bodies, and dismissal from a position of Chair or Deputy Chair of a Committee) would be disproportionate for the conduct of which the complaint is made.

49. The Panel recommends that the Respondent be counselled to observe more carefully the provisions of Article 7 of the Code.

Dated this 11th day of May 2018

[Signature]
Hon Sir Ian Barker
Convenor
On behalf of the Panel