

DRAFT

# Auckland Council Code of Conduct

Adopted xxx 2018



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## Introduction

Every local authority is required to adopt a code of conduct<sup>1</sup>. It must set out:

- “(a) *understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—*
  - (i) behaviour toward one another, staff, and the public; and*
  - (ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that—*
    - (A) is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and*
    - (B) relates to the ability of the local authority to give effect to any provision of this Act; and*
- (b) a general explanation of—*
  - (i) the [Local Government Official Information and Meetings Act 1987](#); and*
  - (ii) any other enactment or rule of law applicable to members.”*

This code has two key principles: one reflecting the expectations of the community that elected members act in the community’s interest with high ethical standards and one reflecting members’ own expectations about how they will interact with each other, the public and staff. These principles are expressed positively in terms of trust and respect. The code also provides clarity about what is a significant breach.

There are various documents attached to the Code. Some of these form part of the Code and are adopted along with the Code. Members ensure their conduct is consistent with these documents. Others provide detail that is relevant to determining compliance with this Code and are not adopted as part of it.

The provisions for complaints provide for independent external assessments and judgements where appropriate. Political involvement is minimised.

## Application

The code applies to elected members while acting in their capacity as elected members.

Conduct matters that arise in meetings should be dealt with under the meeting’s standing orders, however, a complaint relating to such a conduct matter, if not adequately dealt with at a meeting, may be made under the Code.

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<sup>1</sup> Local Government Act 2002, schedule 7, clause 15

# 1 Principles

## 1.1 Trust

*I can be trusted to act in the community's interest*

I will:

- make decisions on their merits, in the interests of the public and unaffected by illegitimate considerations such as personal interest or other duties or relationships
- disclose all personal and outside interests, relationships and duties
- declare a conflict of interest and step aside from a decision where it might appear that I will not approach a decision on its merits, in the interests of the public and unaffected by a personal or outside interest, relationship or duty
- when making decisions, have an open mind to the views of others and to alternatives, and be prepared, despite any predisposition I may have, to change my mind
- ensure that I am not under an obligation to those that might inappropriately try to influence me in the performance of my duties
- be accountable for the decisions I make and co-operate with appropriate public scrutiny
- make an equitable contribution, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars
- act and make decisions openly and transparently
- be truthful and demonstrate honesty and integrity
- use council resources prudently and lawfully and not for my own purposes
- uphold the law, and promote and support high standards of conduct by leadership and example
- comply with the legislation, policies and protocols attached to this code

## 1.2 Respect

### *I will respect those I work with*

I will interact with other elected members, staff and the public in a way that:

- encourages mutual respect and maintains the dignity of each individual
- recognises others' roles and responsibilities
- is inclusive
- enables the co-existence of individual and collective responsibility
- allows for robust discussion and debate focusing on issues rather than personalities
- encourages thoughtful analysis
- maintains public confidence in the office to which I have been elected
- is open and honest
- maintains the confidentiality of information provided to me
- complies with the attached policies and protocols

## 2 Policies, protocols, legislation and external documents

The following are policies and protocols that provide more detail around agreed standards and procedures. These policies and protocols are adopted as part of the Code of Conduct.

| Policies and protocols         | Attachment |
|--------------------------------|------------|
| Conflict of interest policy    | A          |
| Access to information protocol | B          |
| Election year policy           | C          |
| Communications policy          | D          |
| Media protocols                | E          |

The following is a summary of legislation that is relevant to the conduct of members.

| Legislation                                    | Attachment |
|--|------------|
| Legislation relevant to the conduct of members | F          |

The following are documents that exist independently of the Code of Conduct. They provide detail that is relevant to determining compliance with this Code of Conduct. These documents exist outside of the Code of Conduct and are not adopted as a part of the Code.

| External documents                             | Attachment |
|--|------------|
| Guide to governance roles and responsibilities | G          |
| Guide to working with staff                    | H          |
| Expenses policy                                | I          |

## 3 Material breaches

- Participating in a decision where the member has been formally advised through the complaints provisions of this code that a conflict of interest exists
- Breaching cl 2.19 and cl 3.7 of the Conflicts of Interest policy
- Bullying, aggressive behaviour
- Discrimination
- Undermining other elected members, staff or the public
- Intentional misrepresentation of the statements or actions of others
- Intentional disclosure of confidential information
- Intentional misuse of council resources
- Harassment, including:
  - Violent threats or language directed against another person.
  - Discriminatory jokes and language.
  - Posting sexually explicit or violent material.
  - Posting (or threatening to post) other people's personally identifying information.
  - Personal insults, especially those using racist or sexist terms.
  - Unwelcome sexual attention.
  - Advocating for, or encouraging, any of the above behaviour.
  - Continuing with unwanted behaviour after being asked to stop.

## 4 Complaints

### 4.1 Breach of the Code

All elected members must comply with the Code of Conduct and associated policies. Not doing so, constitutes a breach of the Code.

### 4.2 Complaints

Where an elected member, the chief executive (including on behalf of a member of staff from the council family) or a member of the public believes that an elected member has breached the Code, a complaint may be made.

The complaint must be made in writing and lodged with the chief executive, reference the part of the Code which is alleged to be breached, provide evidence of the alleged breach and evidence of attempts to resolve the complaint.

### 4.3 Principles

All complaints will be considered in a manner consistent with the principles that:

- the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness, nature and complexity of the alleged breach; and
- the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code.

### 4.4 Investigator, Conduct Commissioner, mediators

#### General

The Investigator, Conduct Commissioner and mediator will be separate persons in the case of any specific complaint.

#### Investigator

The chief executive will be responsible for the appointment of a suitable Investigator. This may be a staff member or external person.

#### Conduct Commissioner

The chief executive will recommend to the Governing Body, for approval, a list of persons who may be called on to fulfil the role of Conduct Commissioner.

#### Mediators

Mediators will be external and have established skills as mediators.

### 4.5 Receipt of complaint

On receipt of a complaint, the chief executive will follow the process set out in cl 4.11 if the complaint relates to a breach of the conflicts of interest provision in the Code.

All other complaints will be referred to an Investigator.

The chief executive will inform:

- the complainant that the complaint has been referred to the Investigator;
- the respondent that a complaint has been made against them, as well as the name of the Investigator, and the process for dealing with complaints as set out in the Code.

### 4.6 Preliminary assessment

On receipt of a complaint, the Investigator will determine if the complaint is:



- frivolous, vexatious, or without substance and should be dismissed;
- outside the scope of the Code and should be redirected or dismissed;
- relates to a non-material breach of the Code; or
- relates to a material breach of the Code and a full investigation is required.

Factors that can be considered when determining if a complaint is frivolous, vexatious, or without substance include whether complaints are intended to:

- intimidate or harass another member or employee;
- damage another member's reputation;
- obtain a political advantage;
- influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions;
- avoid disciplinary action under this Code;
- prevent or disrupt the effective administration of this code;

or are not made in good faith.

The Investigator can make any initial inquiry that is necessary to determine the appropriate course of action.

Unless the Investigator determines otherwise, a full copy of the complaint will be provided to the respondent.

#### **4.7 Dismissal of complaint**

Where the Investigator decides that the complaint should be dismissed, the Investigator will inform the chief executive.

The chief executive will inform the complainant and the respondent of the Investigator's decision.

The Investigator has full discretion to dismiss any complaint, and any decision made by the Investigator is not open to challenge.

#### **4.8 Non-material breach**

Where the Investigator finds that the complaint relates to a non-material breach of the Code, the Investigator will inform the chief executive and can choose to recommend an appropriate non-binding course of action for the respondent, which may include:

- seeking guidance from the Chairperson or Mayor, or other mentor;

- attending appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint;
- apologising to the complainant; and/ or
- participating in voluntary mediation.

The chief executive will inform the complainant and respondent of the Investigator's decision and any recommendations. The Investigator may also choose to recommend that the chief executive inform the Mayor or relevant Local Board Chair for information purposes only.

Any decision made by the Investigator is not open to challenge.

## 4.9 Material breach

Where the Investigator considers the complaint relates to a material breach of the Code, the Investigator will inform the chief executive and refer the complaint to a Conduct Commissioner. The chief executive will inform the complainant and respondent.

The Conduct Commissioner will then, in his or her complete discretion, either direct that the complaint should be mediated if the Conduct Commissioner considers there is a reasonable prospect that mediation will resolve the complaint. Alternatively, the Conduct Commissioner may decide to investigate the complaint to determine whether a breach is made out and the seriousness of it.

If mediation is directed, the mediator will be independent from the Investigator and the Conduct Commissioner. If the mediation is successful, the outcome of the mediation will be reported to the chief executive. If the mediation is unsuccessful, the Conduct Commissioner will carry out a full investigation.

If the Conduct Commissioner investigates the complaint, the Conduct Commissioner may:

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

The Conduct Commissioner will also determine whether or not to impose any of the following sanctions on the elected member:

- a requirement to apologise and, if applicable, withdraw remarks
- a requirement to make a public statement correcting previous remarks which misrepresented the facts;
- a requirement to undertake specified training or personal development;
- suspending the elected member from committees or other representative bodies; and/or

- seeking guidance from the Chairperson or Mayor, or other mentor.

Following the investigation, the Conduct Commissioner will provide the chief executive with a report on the findings of the investigation and any sanctions that are imposed on the respondent. The chief executive will provide the report to the complainant, respondent, and the relevant local board or governing body for information purposes only.<sup>2</sup>

The decision made by the Conduct Commissioner is not open to challenge.

#### **4.10 Public disclosure of complaints and outcomes**

The public interest in the accountability of elected members needs to be balanced against the requirements of natural justice and privacy. Complaints relating to non-material breaches, and their outcomes, will not normally be proactively released.

Where the complaint relates to a material breach of the Code, the Conduct Commissioner will determine whether the outcome of the investigation, or the report, should be proactively released (having regard to the Local Government Official Information and Meetings Act 1987). If it is proactively released, compliance with any sanctions imposed by the Conduct Commissioner will also be publicly recorded.

#### **4.11 Alleged breach relates to a conflict of interest:**

Where the alleged breach of the Code relates to a conflict of interest, the chief executive will inform the respondent of the complaint, and arrange for the member to receive advice from legal services or internal audit on conflicts of interest.

The chief executive will inform the complainant that advice on the matter has been sought. The complainant will not have any further involvement in the complaint following this.<sup>3</sup>

The advice is provided to the member and to the governing body (in relation to a complaint against a governing body member), or the local board (in relation to a complaint against a member of a local board).<sup>4</sup>

If the advice is that it would be reasonable for the elected member to conclude that they have a conflict of interest, they are required to declare the conflict and recuse themselves from any future decision on that matter. If the elected member does not take that action,

<sup>2</sup> The decision on whether or not the report will be included on a public meeting agenda, will be made in light of the requirements of the Local Government Official Information and Meetings Act 1987.

<sup>3</sup> Involvement by the complainant is not required as the matter is a question relating to the existence, or lack thereof, of a conflict of interest. It does not require the complaint being resolved to the satisfaction of the complainant.

<sup>4</sup> Or to just the mayor / chair possibly – on the basis that the chair has this information should similar decision-making come up again.

the matter will be referred to the Conduct Commissioner for investigation as a material breach of the Code.

If the complaint is that an elected member has breached cl 2.19 of the Conflicts of Interest policy, that complaint will be referred to the Conduct Commissioner to investigate under cl 4.9 (Material breach) of this Code,



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