
Tira Kāwana / Governing Body Workshop: Review of the Code of Conduct MINUTES

Minutes of a workshop of the Governing Body held in the Meeting Room, Level 26, 135 Albert Street, Auckland on Monday, 26 November 2018 at 1.38pm.

PRESENT

Hon Phil Goff, CNZM, JP
Cr Josephine Bartley
Cr Cathy Casey
Deputy Mayor Bill Cashmore
Cr Fa'anana Efeso Collins Until 2.10pm
Cr Chris Darby Until 1.53pm
Cr Alf Filipaina
Cr C Fletcher
Cr Richard Hills Until 2.25pm
Cr Greg Sayers
Cr Desley Simpson, JP
Cr Sharon Stewart Until 2.29pm
Cr Paul Young

ABSENT

Cr Ross Clow
Cr Linda Cooper, JP
Cr P Hulse
Cr Mike Lee
Cr Daniel Newman, JP
Cr John Walker
Cr Wayne Walker
Cr John Watson

Note: No decisions or resolutions may be made by a Workshop or Working Party, unless the Governing Body or Committee resolution establishing the working party, specifically instructs such action.

Purpose:

The purpose of the meeting is:

- for the Governing Body to have a discussion around apologies.

	Item
1	Apologies Apologies from Cr R Clow, Cr D Newman, Cr W Walker and Cr J Watson for absence on council business were noted.
2	Declarations of Interest Members are reminded of the need to declare any conflict that may arise between their role as a member and any private or other external interest they might have.
3	Review of Code of Conduct Attachments: PowerPoint Presentation Code of Conduct DRAFT Code of Conduct Attachments DRAFT Presentations on the Code of Conduct, Conflict of Interest Policy and the Member Access to Information Protocol sections of the Code of Conduct were given. <i>Cr C Darby left the meeting at 1.53pm.</i> <i>Cr E Collins left the meeting at 2.10pm.</i> <i>Cr R Hills left the meeting at 2.25pm.</i> <i>Cr S Stewart left the meeting at 2.29pm.</i>

The workshop closed at 2.34pm.

Review of the Auckland Council Code of Conduct



Background

- The Governing Body agreed that the Code of Conduct should be reviewed through the Joint Governance Working Party
- A draft revised code of conduct was:
 - presented to the Joint Governance Working Party
 - reported to local boards
 - reported back to the working party with local board feedback
 - the working party agreed amendments
- The code will now be reported to the governing body for adoption
- A code of conduct that is adopted by the governing body applies to local board members



Features of the draft code of conduct

How the code is presented

- Two documents
- The code itself is a concise document containing:
 - principles
 - descriptions of material breaches
 - the complaints process.
- There are attached documents which provide more detail:
 - policies and protocols that are adopted along with the code (eg conflict of interest policy)
 - other documents that are relevant to conduct but are agreed through other processes (eg expenses policy).

Two key principles

Trust

- expectations of the community that their elected representative will conduct themselves appropriately

Respect

- expectations that members have of each other about how they interact with each other and the public

The code presents these principles in a way which indicates personal commitment (“I will”)

Could be signed when members come into office

Complaints process – key roles

Chief executive

- Includes a nominee of the chief executive

Investigator

- Appointed by the chief executive to conduct an initial assessment of a complaint
- May be an internal or external person

Conduct Commissioner

- The governing body approves a list of people of the calibre of a retired high court judge to be called on to be a Conduct Commissioner
- Investigates material breaches

Complaints process

- Complaint must provide evidence of the breach and evidence of attempts to resolve the complaint
- Chief Executive refers complaint to an “Investigator”, unless the complaint is about conflict of interest
- Investigator conducts a preliminary assessment:
 - may dismiss the complaint
 - may make non-binding recommendations if non-material breach
 - refers to a “Conduct Commissioner” for full investigation if material breach
- The Conduct Commissioner replaces the independent review panel, which was previously used infrequently due to cost of a panel of three

Sanctions

- The Joint Governance Working Party is keen to limit political involvement in determining complaints
- Therefore the Conduct Commissioner is able to impose sanctions, for example:
 - a requirement to apologise or withdraw remarks
 - a requirement to make a public statement correcting previous remarks
 - a requirement to undertake training
 - suspending a member from a committee
 - a requirement to seek guidance from the mayor or chairperson
- The findings of the Conduct Commissioner will be public and this will assist with compliance with sanctions

Conflicts of interest

- Chief executive will arrange for member to receive advice from either Legal Services or Audit and Risk
- The complainant has no further role
- If the member does not comply with advice, the matter becomes a material breach for investigation by the Conduct Commissioner

Attached documents

Conflict of interest policy

- Separate presentation following this one

Access to information protocol

- Separate presentation following this one

Other attachments

- The Election Year policy is unchanged from that adopted prior to the 2016 election
- The Communications Policy and Media Protocols are derived from existing sources.
- The descriptions of applicable legislation are required by the Local Government Act
- The external documents include documents describing the various roles of members and the expenses policy

Comparison with current code

- More concise presentation
- Material breaches are defined
- Separate complaint processes depending on whether complaint relates to a non-material breach, a material breach or conflict of interest
- The current independent review panel is replaced by a Conduct Commissioner, who can impose sanctions
- Findings of Conduct Commissioner will be made public to assist compliance
- Limited political involvement
- Related documents are bundled in with the code

Adoption of associated documents

- Adoption of the code also adopts:
 - Conflict of interest policy
 - Access to information protocol
 - Election year policy
 - Communications policy
 - Media protocols

Local board feedback



Local boards

- Generally supported the draft
- Made a number of suggestions for changes
- Some of these have now been included in the draft code



Local board key concerns

1. "Material breaches" could be better defined
 - Added a description of materiality
2. Some concerns about scope of sanctions
 - Added a note that members cannot be unappointed from bodies to which they are elected
3. The Investigator should always be external
 - Don't agree. Often complaints can be resolved without requiring external involvement.

Local board key concerns

4. There should be local board involvement in approving a list of conduct commissioners
 - Consultation through local board chairs forum added
5. Some boards were uncomfortable with the Communications Policy and Media Policy, feeling they 'gagged' board members
 - Don't agree. Criticism is permitted provided it is with respect. Board members other than the chair may be designated spokespersons with the approval of the board and chair



Conflict of Interest Policy

Why have we revised the policy?

- The current policy is out of date, and does not reflect the law
- To make the policy more user-friendly and accessible
- To provide more guidance to elected members on how to manage conflicts of interest and pre-determination
- To emphasise the interests of the council in the probity and integrity of its decisions

Summary of changes

- Updated to reflect the current legal test on conflicts of interest (derived from *Saxmere* and OAG Guidelines)
- Consistent approach to non-financial and financial interests
- Elected members must evaluate whether they have a conflict of interest: it is a breach of policy if have a conflict of interest and fail to manage it
- Includes a separate section on elected members' obligations under the Local Authorities (Members' Interests) Act 1968
- Includes a separate section on pre-determination
- Refines requirements relating to annual declarations of interests

Standing Orders

- If the new policy is adopted, the Standing Orders will need to be updated to reflect the revised approach to conflicts of interest and pre-determination.

Introducing the Elected Member Access to Information Protocol



Proposed access to information protocol

- Is in addition to normal ways of obtaining information and advice.
- A framework for elected member's requests for information under the "need to know" principle
- Improves access to council information for elected members
- Helps promotes democratic and effective local government



Access to information protocol: the process

- Elected members make a request – setting out what and why you need to know.
- Chief Executive or delegate makes a decision on whether the information is reasonably necessary for the elected member to exercise their statutory functions or performance of their representative duties, and whether any of the limited reasons to withhold may apply.
- Decisions and the provision of information to the elected member (with conditions if necessary for confidential information) within **5 working days**.
- If an elected member is not happy with the Chief Executive decision, they can ask it to be reconsidered by the Audit & Risk Committee (3 independent members)

Political Working Group resolution

- Local Boards have considered the protocol and provided feedback to the Political Working Group
- The Political Working Group agreed to the protocol subject to:
 - Review of the protocol within 18 months
 - The provision of options to Governing Body on who would consider any challenges to a Chief Executive decision – the Audit & Risk Committee or just the Chair of the Audit & Risk Committee