

Local Board feedback on draft Code of Conduct

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Albert-Eden

That the Albert-Eden Local Board:

- a) provide the following feedback on the draft Auckland Council Code of Conduct:
 - i support the move to a more principled approach to the Code.
 - ii note that the Code is a set of principles that provides elected members with guidelines for making ethical choices in the conduct of their work and is not a legally binding contract and on that basis does not support members being required to sign the code at the time of inauguration.
 - iii seek the bullet point under the Respect principle to be amended to require elected members to maintain confidentiality of confidential information rather than the confidentiality of all information.
 - iv support the new complaints process and the clarity of the roles of the Investigator, Conduct Commissioner and Mediators, however consider that the Investigator should be independent and/or external as is proposed for the Conduct Commissioner.
 - v support Auckland Council appointing a pool of independent Conduct Commissioners, of the calibre of a retired high court judge, however consider that local board members should be part of the decision on who is appointed to the pool. A joint committee of governing body and local board members should be created to make decisions on appointees to the pool. In the Auckland Council shared governance model, there is no logical reason why a decision that potentially affects any elected member should be made by any subset of those members.
 - vi support the independent nature of investigating proposed complaints but consider that the Code should include support for elected members through the complaints process, so members understand the process and can seek advice on how to best engage in the process.
 - vii support public disclosure of material complaints but request that the Code be updated to provide clarity on what proactive release of the outcomes of complaints means in practice, i.e. does this mean publishing the complaint and findings on the council website?
 - viii support an amendment to the material breaches section to include section 4 of the conflicts of interest policy as a material breach of the Code.
 - ix request that the wording should be clear about minimum and maximum length of suspension for material breaches, how it is to be enforced and how such a sanction can be challenged by an elected member. Sanctions should, in the event that they are part of the Code, be determined by the body (governing body or local board) of which the sanctioned elected member is a part.

Conflict of Interest

- x note that the Code proposes that alleged breaches relating to a conflict of interest will follow the process of seeking advice from legal services or internal audit and if the elected member does not act the matter will be referred to the Conduct Commissioner for investigation as a material breach of the Code.
- xi does not agree that a lack of action by the elected member on internal audits advice should be automatically or usually deemed to be a material breach.

The advice may later be determined by the Conduct Commissioner to be wrong.

- xii recommend that section 4.11 should be reworded to read - 'referred to the Conduct Commissioner for investigation as a potential material breach'.
- xiii note that the conflict of interest policy has been updated to reflect the current legal position relating to conflicts of interest and pre-determination.
- xiv consider that the pre-determination section is too wide ranging and restrictive, for instance it should not include any requirement to read all submissions or officers' reports on a subject or issue.
- xv seek the policy to confirm that campaigning on a topic before being elected is not considered as pre-determination unless it is a central raison d'être of their campaign.
- xvi consider that the council has a role in enabling elected members to meet their duty of registering members' interests annually and providing a suitable platform.
- xvii consider it is important that declarations are publicly available and that if any new interests arise throughout the year these should be added in the next annual update (as adding at the time they arise could be an unreasonable imposition) and uploaded to a publicly accessible registrar.
- xviii seek for the Code to be amended to reflect the requirement for members' interests to be uploaded immediately following an election in addition to the requirement of completing the annual declaration by 31 July.
- xix recommend that the language in the Code is reviewed to clearly differentiate between the process of declaring an interest and avoiding a conflict versus having a conflict of interest.
- xx recommend that sections 2.16 and 2.17 be re-worded to reflect that having a non-financial interest need not in itself oblige the member to act in a particular manner when the agenda item is dealt with.
- xxi agree that interests in an agenda item be declared at the start of the meeting but that it remains up to the member to determine whether and to what extent they participate in the item, in the case of a non-financial interest if it is merely an interest in common with the public they can participate fully, otherwise in the case of a non-financial interest they have an option to remain part of the meeting quorum and to have it recorded that they neither spoke nor voted on the item.

Access to information protocol

- xxii welcome the proposed new process for providing elected members with useful information more quickly, particularly where it can be provided to a member in a timely manner before a meeting where the information is relevant to a decision that is to be made there.
- xxiii consider that it is not appropriate for the Chief Executive to be required to determine what is reasonably necessary as this is both an inappropriately high test and also too subjective.
- xxiv recommend that the access to information protocol utilises the 'relevance test' only as elected members have different levels of information requirements to support their decision-making. Sections 3.2 to 3.6 should be amended to retain the "good reason" principle and the "relevant to" test but delete the "reasonably necessary" test throughout.

Devonport-Takapuna

That the Devonport-Takapuna Local Board:

- a) recommend the following criteria be applied when appointing an investigator:
 - i) the investigator be independent of Auckland Council
 - ii) be a barrister and solicitor of the High Court of New Zealand with a minimum of ten years of experience in the practice of law since admission to the High Court
 - iii) possess the necessary skills, knowledge and attributes to conduct the enquiry.
- b) recommend that a Terms of Reference document be signed off prior to a preliminary assessment being undertaken by the investigator which includes the following:
 - i) scope of the enquiry
 - ii) list of interviewees
 - iii) method these interviews will be recorded.
- c) recommend that should the complaint require a full investigation, the Terms of Reference document in clause b) above be updated.
- d) recommend that the Terms of Reference document in clause b) above be signed off by the Conduct Commissioner.
- e) recommend that the list of persons who may be called to fulfil the role of the Conduct Commissioner be approved by the Governing Body and Local Board Chairs, most likely through the Chairs Forum or another mechanism involving joint decision making by local boards and the Governing Body.
- f) request that clear definitions of the terms included in section three of the draft Code of Conduct (Material Breaches) be provided to ensure such terms are understood to ensure any investigation is applied consistently across complaints, with specific consideration given to clearly defining (and / or providing examples of) the following terms / phrases, while recognizing the political environment elected members work in:
 - i. bullying or aggressive behavior
 - ii. undermining other elected member(s)
 - iii. misrepresentation of the statements or actions of others.
- g) recommend that principles of availability should be included under section 1 (Purpose) in that information shall be made available to elected members unless there is good reason for withholding it, and that the information policy should apply to the whole of Auckland Council and Council Controlled Organisations.

Franklin

That the Franklin Local Board:

- a) provides its feedback on the draft Code of Conduct attached to this report.
 - i. notes the documents entitled 'Draft Auckland Council Code of Conduct' and 'Draft Auckland Council Code of Conduct – Attachments', in attachments A and B of this agenda report.
 - ii. supports the overall approach towards a more concise, positive and principle-based code of conduct.
 - iii. supports the two core principles of Trust and Respect.
 - iv. seeks the bullet point under the Respect principle to be amended to required elected members to maintain confidentiality of confidential information rather than the confidentiality of all information.
 - v. recommends the inclusion of a requirement for members to sign the code at the first business meeting, provided there has been a prior opportunity to discuss the implications at an induction workshop.
 - vi. recommends the inclusion of the code and supporting policies and protocols as part of the information pack sent out to prospective election candidates

Complaints Process

- vii. recommends that the complaints process includes the chief executive undertaking an initial assessment to determine whether the complainant has attempted to resolve the complaint and the complaint fits the criteria of a breach before referring to an investigator.

Conflict of Interest

- viii. does not agree that a lack of action by the elected member on internal audits advice should be automatically or usually deemed to be a material breach, as the advice may later be determined by the Code of Conduct commissioner to be wrong.
- ix. recommends that section 4.11 should be reworded to read "...referred to the Conduct Commissioner for investigation as a potential material breach".

Access to information protocol

- x. welcomes the proposed new process for providing elected members with useful information more quickly, particularly where it can be provided to a member in a timely manner before a meeting where the information is relevant to a decision that is to be made there.
- xi. considers that it is not appropriate for the chief executive to be required to determine what is 'reasonably necessary', as this is too subjective and does not engender a collaborative approach.
- xii. considers that the principles of Trust and Respect equally apply to the chief executive's approach to information requests from elected members.
- xiii. recommends that the access to information protocol utilises the 'relevance test' only, as elected members have different levels of information requirements to support their decision making. Sections 3.2 to 3.6 should be amended to retain

the 'good reason' principle and the 'relevant to' test but delete the 'reasonably necessary' test throughout.

Media protocols

- xiv. recommends that the media protocols are revised to allow the deputy chair to speak on behalf of the chair when they are not available.
- xv. requests that the protocols are revised to reflect local board member roles as agreed by the board as a whole, to enable them to be the local board spokesperson in their areas of responsibility, expertise or subdivision.

Great Barrier

That the Great Barrier Local Board:

- a) delegate the Chairperson in discussion with other board members to provide its formal written feedback on the draft Code of Conduct in attachment of the agenda report, as attached.

(This is attached)

Henderson-Massey

That the Henderson-Massey Local Board:

- a) provide the following feedback on the draft Code of Conduct:
 - i. appreciates the guidance provided in the draft Code of Conduct
 - ii. notes the increased opportunity for vexatiousness through social media
 - iii. With regard to conflicts of interest and predetermination, notes that it is not always an exact science.
 - iv. Supports the replacement of the independent review panel with a Conduct Commissioner.

Hibiscus and Bays

That the Hibiscus and Bays Local Board:

- a) provides the following feedback on the draft Code of Conduct in Attachment A of the agenda report:
 - i) Supports the overall approach towards a more concise, positive and principle-based code of conduct

Principles

- ii) recommends the bullet point under the respect principle to be amended to require elected members to maintain confidentiality of "confidential" information rather than the confidentiality of all information

Complaints Process

- iii) recommends that the complaints process includes the Chief Executive undertaking an initial assessment to determine whether the complainant has attempted to resolve the complaint and the complaint fits the criteria of a breach before referring to an Investigator

Conflict of Interest

- iv) does not agree that a lack of action by the elected member on internal audits advice should be automatically *or* usually deemed to be a material breach. The advice may later be determined by the Code of Conduct commissioner to be wrong

Recommends that section 4.11 should be reworded to read "...referred to the Conduct Commissioner for investigation as a *potential* material breach"

- v) requests the policy to clarify and confirm that campaigning on a topic before being elected is not considered as predetermination unless it is a central focus of their campaign
- vi) agrees that interests in an agenda item be declared at the start of the meeting but that it remains up to the member to determine whether and to what extent they participate in the item in the case of a non-financial interest if it is merely an interest in common with the public they can participate fully, otherwise in the case of a non-financial interest they have an option to remain part of the meeting quorum and to have it recorded that they neither spoke nor voted on the item

Access to information protocol

- vii) welcomes the proposed new process for providing elected members with useful information more quickly, particularly where it can be provided to a member in a timely manner before a meeting where the information is relevant to a decision that is to be made there
- viii) recommends that the new process also includes Council Controlled Organisations' information

Media protocols

- ix) do not agree with the media protocols restrictions which could be viewed as limitation on freedom of speech
- x) recommends that the media protocols are revised to allow any elected member to speak to media on subject matter they have been involved with, and decision making.

Howick

That the Howick Local Board:

- a) support the draft Code of Conduct attached to this report.

Kaipātiki

That the Kaipātiki Local Board:

- a) recommend the following criteria be applied when appointing an investigator:
 - i) the investigator be independent of Auckland Council;
 - ii) be a barrister and solicitor of the High Court of New Zealand with a minimum of ten years of experience in the practice of law since admission to the High Court; and
 - iii) possess the necessary skills, knowledge and attributes to conduct the enquiry.
- b) recommend that a Terms of Reference document be signed off prior to a preliminary assessment being undertaken by the investigator which includes the following:
 - i) scope of the enquiry;
 - ii) list of interviewees; and
 - iii) method these interviews will be recorded.
- c) recommend that should the complaint require a full investigation, the Terms of Reference document in clause b) above be updated.
- d) recommend that the Terms of Reference document in clause b) above be signed off by the Conduct Commissioner.
- e) recommended that the list of persons who may be called to fulfil the role of the Conduct Commissioner be approved by the Governing Body and Local Board Chairs, most likely through the Chairs Forum or another mechanism involving joint decision making by local boards and the Governing Body.
- f) request that clear definitions of the terms included in section 3 of the draft Code of Conduct (Material Breaches) be provided to ensure such terms are understood to ensure any investigation is applied consistently across complaints, with specific consideration given to clearly defining (and / or providing examples of) the following terms / phrases, recognizing the political environment elected members work in:
 - i) Bullying or aggressive behavior;
 - ii) Undermining other elected member(s)
 - iii) Misrepresentation of the statements or actions of others.
- g) support the new “Elected member access to information” protocol applying to the whole of Auckland Council, including Council Controlled Organisations, and for it to be reviewed after 18 months.

Māngere-Ōtāhuhu

That the Māngere-Ōtāhuhu Local Board:

- a) support in principle the draft Code of Conduct

Manurewa

That the Manurewa Local Board:

- a) endorse its feedback on the draft Code of Conduct attached to this report as follows:
 - i) support the proposal to replace the independent review panel with a Conduct Commissioner
 - ii) support the principle of limiting political involvement in determining complaints
 - iii) support the proposed addition of providing professional development as a sanction for breaching the code
 - iv) support the proposal for elected members to receive advice on conflict of interest complaints from Legal Services or Audit and Risk
 - v) generally support the proposed access to information protocol, but do not support the proposed use of the Audit and Risk Committee to review decisions by the Chief Executive. The board considers that this is not consistent with the principle of limiting political involvement in decisions.

Maungakiekie-Tāmaki

That the Maungakiekie-Tāmaki Local Board:

- a) support Albert-Eden, Orakei and Waitemata Local Boards recommendations.
- b) recommend a code of conduct that enables members to constructively criticize the council organisational processes, decision-making tools and policies when desired outcomes are not being delivered for the community.

Ōrākei

Ōrākei Local Board feedback on the review of Auckland Council's Draft Code of Conduct – 18 October 2018

It is not clear which of the documents accompanying the Draft Code of Conduct form part of the Code for the purposes of compliance and determining alleged breaches. For example, Attachment I – Expenses Policy approved by the Remuneration Authority, and subsequently adopted by the Governing Body, and Attachment G – Governance Roles and Responsibilities. Any attachment that does not specifically relate to the Code of Conduct should not be included.

Draft Code of Conduct

The Ōrākei Local Board notes that the draft Code of Conduct is a set of principles that provides elected members with guidelines for making ethical choices in the conduct of their work and is not a legally binding contract. On that basis it should be voluntary and not be compulsory, relying on penalties. The Board does not support elected members being required to sign the Code at the time members make the statutory declarations before legally

acting as Governing Body or Local Board members. The question also arises as to when other new members, whether elected or not, are required to sign up to the Code of Conduct.

The Ōrākei Local Board does not support the draft Auckland Council Code of Conduct for the reasons set out below:

- a) The draft Code goes well beyond what is expected in the legislation including the imposition of sanctions.
- b) The draft Code contains inconsistencies throughout and needs to be reviewed to ensure that terms and references are consistent. For example, the use of the word “council” throughout the documents.
- c) The legislation refers to “members”. The draft Code refers in places to elected members. It is not clear whether the word “members” includes members of the Independent Maori Statutory Board, and of working parties and the like, and co-opted members. Accordingly, to remove any doubt a definition of “member” should be included in the Introduction directly after the excerpt from the legislation.
- d) The Introduction section should include the wording from the declaration that elected members make when they are sworn into office as this sets out expectations of behaviour for elected members as set out in legislation and reinforces the principle “that elected members act in the community’s interest”.
- e) The material breaches section, which sets out what constitutes a material breach, requires further work to provide clarity on what constitutes a breach as the current wording is wide-ranging and will likely result in more breaches than under the current Code.
- f) The draft Code contains possible sanctions for material breaches including suspension from committees or other representative bodies. However, there is nothing in legislation which provides for any sanctions or penalties, so this must be removed from the draft Code. In fact, Schedule 7 clearly states: “To avoid doubt, a breach of the code of conduct does not constitute an offence under this [Local Government Act 2002].”
- g) The draft Code suggests that the Investigator could be a council staff member, who can make a decision on the conduct of an elected member and impose sanctions. This is not appropriate and is quite contrary to the principle of separation of functions of management and governance and employees of the Council should not be in a position to impose any sanctions on elected members. Any decision on conduct and/or sanctions should be decided by elected members.
- h) The draft Code does not allow elected members to provide genuine criticism of staff reports or decisions made by Auckland Council, in a respectful way, without this being an alleged breach of the Code.
- i) The draft Code does not require the Conduct Commissioner to ‘ensure’ they have the views from the elected member before making a decision on the complaint or a sanction. The Board considers that for any investigation to be balanced and fair the Conduct Commissioner must seek the views of the relevant elected member(s).
- j) The draft Code must enable the elected member to be able to challenge a decision from the Investigator or the Conduct Commissioner to ensure fairness, transparency, natural justice and reasonableness.
- k) The draft Code doesn’t appear to be modelled on the model code of conduct prepared jointly by Local Government New Zealand, the Society of Local Government Managers, and

the Department of Internal Affairs, and in particular the draft Code allows members of the public to complain under the draft Code when the model code of conduct does not provide for this.

l) The draft Code at paragraph 4.11 refers to “Alleged breach relates to a conflict of interest” yet Attachment A contains policies and protocols relating to Conflict of Interest. Why the duplication?

m) The Ōrākei Local Board seeks the 9th bullet point under the Respect principle to be amended to require elected members to maintain confidentiality of confidential information rather than the confidentiality of all information.

Attachments

Attachment A: Conflict of Interest policy

The Board does not support the Conflict of Interest policy for the following reasons:

a) Breaches of this policy are deemed to be breaches of the draft Code of Conduct.

b) Section 1 Purpose covers in some detail the need for elected members to have an “open mind” and make decisions based on their merits. Voting on party lines or caucusing, or simply a member stating that he/she will vote according to what the majority of constituents of a ward or area prefer, could be construed as a breach of this policy as the member(s) enters a voting situation with a predetermined mind, in the public perception. This is a breach of clause 3.7. The draft Code should clarify the situation in terms of merit-based decision-making with an “open mind”.

c) Clause 1.2 infers that possible judicial review of decisions of Auckland Council will cause delay, cost and uncertainty for “Auckland” (whatever that term means as it is too broad) but the Board considers that such reviews will only cause issues for Auckland Council and not all of Auckland.

d) Section 4 Register of Members’ Interests. The Board totally opposes this section of the policies and protocols, as there is no legal basis for it. Requests for personal information from members about themselves or family must have a rationale and a legitimate legal reason to request same. While persons may be willing to disclose this information, the draft Code in effect coerces members to provide personal information and failure to do so is deemed to be an alleged breach of the draft Code. There is a question whether this request could be a breach of the Privacy legislation. Further questions must be why this information is collected? What is the legal authority? The legislation places the onus for declaring interests particularly those covered by the Local Authorities (Members’ Interests) Act 1968 on individual members and there are legal provisions for breaches. The draft Code goes further and seeks to declare these material breaches under clause 2.19. The Board notes the advice by staff that this is best practice advice from the Auditor General and is not required by legislation. a

Attachment B - Access to information protocol

The Board supports the move to develop an access to information protocol for elected members but considers that the protocol should focus on the question of whether there is a good reason to withhold the information from the elected members instead of whether the member needs the information to fulfil their role.

Attachment C - Election Year Policy

The Board does not support the Election Year Policy as it possibly unlawfully restricts the ability of local board members and local boards to fulfil their legislative role for the full period of their term of office, on the grounds that it creates “an electoral advantage” for current members in the lead up to each election.

Attachment D – Communications Policy

It is noted that the placeholder box at the end of this attachment, states that “Other policies and guidelines that are relevant to communications are being reviewed for their suitability for inclusion here”. If this attachment is to be read as part of the draft Code, then elected members need to see the most up to date attachments.

Attachment G – Governance roles and responsibilities

The term “Councillor” is mentioned in this attachment once but this does not reflect a term from the legislation relevant to the draft Code and elected members are referred to without definition, so it would be sensible to quote the legal definition for elected members in the draft Code.

Ōtara-Papatoetoe

That the Ōtara-Papatoetoe Local Board:

- a) support the proposed draft Code of Conduct.

Papakura

That the Papakura Local Board:

- a) endorse its feedback on the draft Code of Conduct attached to this report as follows:
 - i) support the proposal to replace the independent review panel with a Conduct Commissioner
 - ii) support the principle of limiting political involvement in determining complaints
 - iii) support the proposed addition of providing professional development as a sanction for breaching the code
 - iv) support the proposal for elected members to receive advice on conflict of interest complaints from Legal Services or Audit and Risk
 - v) generally support the proposed access to information protocol, but do not support the proposed use of the Audit and Risk Committee to review decisions by the Chief Executive. The board considers that this is not consistent with the principle of limiting political involvement in decisions.

Puketāpapa

That the Puketāpapa Local Board:

- a) provide its feedback on the draft Code of Conduct in Attachment of the agenda report
- b) note board member discussion on the draft Code of Conduct in Attachment of the agenda report
- c) delegate to the Chair, Harry Doig to finalise the board's feedback on the draft Code of Conduct to the Joint Governance Working Party by 30 October 2018.

The Puketāpapa Local Board provides the following input:

Re: Code of Conduct

1. supports the overall direction of the draft policy as it makes clearer the obligations of elected members and the processes enacted should these obligations be breached
2. supports the principles of Trust and Respect as set out except for the Respect bullet point that refers to information which should read 'maintains the confidentiality of **confidential** information provided ...'
3. cl 3 Material breaches. The first bullet point should be deleted as it is included within the second bullet point. It also may lead a member to think that they can justifiably participate in a decision because they have not been advised that they are in conflict. It is the member's responsibility to declare an interest whether advised or not and if not sure then to err on the side of declaration
4. cl 3 Material breaches. '**Applying undue influence on a Council employee**' should be included
5. cl 3 Material Breaches. Add '**ageist**' to list of Personal Insults under Harassment bullet point
6. cl 4.4 Conduct commissioner. These should be appointed by a joint committee of Local Board and Governing Body representatives in line with our non-hierarchical shared governance model
7. cl 4.5 Receipt of complaint. The CE will inform 'the respondent that a complaint has been made against them, **the substance of the complaint, the name of the complainant**, as well as the name of the investigator ...'
8. cl 4.11 Alleged breach relates to a conflict of interest. Para four This para needs to be looked at again. Many of the decisions made by boards are one-off. If a member participates in a decision and a complaint is subsequently made and upheld then it is too late. Telling them to 'recuse themselves from any future decision ...' becomes meaningless. Refer also to '3' above.

Re: Policies and protocols

9. Conflict of Interest
 - a. Cl 2.14 'If a member is concerned that they may have a conflict ... and/or seek **and receive** advice from the Chief Executive **prior to the issue coming before the meeting where it will be considered.**' Again if this is not feasible then the member should err on the side of declaration.
 - b. Cl 4.5 (j) membership and patronage of, **or close association with**, community organisations. Consistency with Appendix 2. The Board would include volunteering in the category of 'close association with'.
10. Access to information protocol
 - a. Cl 2.2 notes that this doesn't apply to CCOs and wonders how they could be subsequently included.
 - b. Cl 3.11 considers that the means by which confidential information may be made available to elected members could be manipulated to make it very difficult to be of any use to the member

- c. Cl 3.12 reference to clause 3.10 should be 3.11
- d. Cl 4.4 ' ... Chief Executive **or nominee...**'

Rodney

That the Rodney Local Board:

- a) provide the following its feedback on the draft Code of Conduct in Attachments A and B of the agenda report:
 - i. generally supports the changes to the Code of Conduct and the policies, particularly the substantially updated Conflicts of Interest policy, and the new Protocol on Access to Information
 - ii. supports the proposed complaints process, particularly the appointment of a conduct commissioner for material breaches to replace the current independent review panel
 - iii. supports the conduct commissioner being a high calibre appointee such as a retired High Court Judge and considers that it will ensure the utmost trust and confidence in the process from both elected members and the public.
 - iv. supports the amendments to the Conflicts of Interest Policy regarding non-financial conflicts and the additional clarity that this will provide for elected members, noting that financial and non-financial conflicts are to be treated similarly regarding disqualification from decision making
 - v. supports the addition of the Pre-Determination section in the Conflicts of Interest Policy and the additional guidance that it will provide for elected members
 - vi. supports the new Protocol on Access to Information, particularly where this new protocol can help to avoid the need to file official information requests under the Local Government (Official Information and Meetings) Act 1987, which are both time consuming and costly for council

Upper Harbour

That the Upper Harbour Local Board:

- a) support the trust and respect principles forming the foundation of the new Code of Conduct.
- b) support the process outlined within the Code of Conduct regarding complaints management but believes further definition of the process is required, with indicative timelines and a flow chart.
- c) request that clear definitions of the terms included in Section 3 of the draft Code of Conduct (Material Breaches) be provided to ensure such terms are understood to ensure any investigation is applied consistently across complaints, with specific consideration given to clearly defining (and / or providing examples of) the following terms / phrases, recognising the political environment elected members work in:
 - i) bullying or aggressive behaviour
 - ii) undermining other elected member(s)

- iii) misrepresentation of the statements or actions of others.
- d) support the new 'Elected member access to information' protocol applying to the whole of Auckland Council, including council-controlled organisations, and for it to be reviewed after 18 months.
- e) support the removal of elected members from determining complaints under the Code of Conduct and the imposition of sanctions .
- f) support the creation of a Conduct Commissioner who has the power to impose sanctions under the Code of Conduct, noting that this is proposed to replace the independent review panel provided for under the current code.
- g) do not support the determination of sanctions or any report completed by the Conduct Commissioner in relation to Code of Conduct complaints being made publicly available.

Waiheke

General Code of Conduct Feedback

- i) supports the overall approach towards a more concise, positive and principle-based code of conduct
- ii) notes that the code of conduct is a set of principles that provides elected members with guidelines for making ethical choices in the conduct of their work and is not a legally binding contract and on that basis does not support members being required to sign the code at the time of inauguration
- iii) seeks the bullet point under the Respect principle to be amended to require elected members to maintain confidentiality of **confidential** information rather than the confidentiality of all information

Material Breaches

- iv) supports the material breaches as identified

Complaints Process

- v) recommends that the complaints process includes the Chief Executive undertaking an initial assessment to determine whether the complainant has attempted to resolve the complaint and the complaint fits the criteria of a breach before referring to an Investigator
- vi) recommends the following criteria be applied when appointing an investigator:
 - a. the investigator be independent of Auckland Council
 - b. be a barrister and solicitor of the High Court of New Zealand with a minimum of ten years of experience in the practice of law since admission to the High Court
 - c. possess the necessary skills, knowledge and attributes to conduct the enquiry.
- vii) recommends that a Terms of Reference document be signed off prior to a preliminary assessment being undertaken by the investigator which includes the following:

- a. scope of the enquiry
- b. list of interviewees
- c. method these interviews will be recorded.

Conflict of Interest

- viii) notes that the code proposes that alleged breaches related to a conflict of interest will follow the process of seeking advice from legal services or internal audit and if the elected member does not act the matter will be referred to the Conduct Commissioner for investigation as a material breach of the code
- ix) does not agree that a lack of action by the elected member on internal audits advice should be automatically *or* usually deemed to be a material breach. The advice may later be determined by the Code of Conduct commissioner to be wrong
- x) considers “interest in common with the public” clauses should apply to both financial and non-financial interest sections
- xi) recommends that section 4.11 should be reworded to read ...referred to the Conduct Commissioner for investigation as a ***potential*** material breach”
- xii) notes that the conflict of interest policy has been updated to reflect the current legal position relating to conflicts of interest and pre-determination
- xiii) considers that the pre-determination section is too wide ranging and restrictive, for instance it should not include any requirement to read all submissions or officers’ reports on a subject or issue
- xiv) seeks the policy to confirm that campaigning on a topic before being elected is not considered as predetermination unless it is a central *raison d’etre* of their campaign
- xv) considers that the council has a role in enabling elected members to meet their duty of registering members’ interests annually and providing a suitable platform
- xvi) considers it is important that declarations are publicly available and that if any new interests arise throughout the year these should be added in the next annual update (as adding at the time they arise could be an unreasonable imposition) and uploaded to a publicly accessible registrar
- xvii) seeks for the code to be amended to reflect the requirement for members’ interests to be uploaded immediately following an election in addition to the requirement of completing the annual declaration by 31 July
- xviii) recommends that the language in the code is reviewed to clearly differentiate between the process of declaring an interest and avoiding a conflict versus having a conflict of interest
- xix) recommends that sections 2.16 and 2.17 should be reworded to reflect that having a non-financial interest need not in itself oblige the member to act in a particular manner when the agenda item is dealt with
- xx) agrees that interests in an agenda item be declared at the start of the meeting but that it remains up to the member to determine whether and to what extent they participate in the item in the case of a non-financial interest if it is merely an

interest in common with the public they can participate fully, otherwise in the case of a non-financial interest they have an option to remain part of the meeting quorum and to have it recorded that they neither spoke nor voted on the item

Access to information protocol

- xxi) welcomes the proposed new process for providing elected members with useful information more quickly, particularly where it can be provided to a member in a timely manner before a meeting where the information is relevant to a decision that is to be made there
- xxii) considers that it is not appropriate for the Chief Executive to be required to determine what is reasonably necessary as this is both an inappropriately high test and also too subjective
- xxiii) recommends that the access to information protocol utilises the 'relevance test' only as elected members have different levels of information requirements to support their decision making. Sections 3.2 to 3.6 should be amended to retain the "good reason" principle and the "relevant to" test but delete the "reasonably necessary" test throughout

Media protocols

- xxiv) recommends that the media protocols are revised to allow the deputy chair to speak on behalf of the chair when they are not available
- xxv) requests that the protocols are revised to reflect individual local board member portfolio delegations as they have the right to be local board spokesperson in their portfolio responsibility areas

Waitākere Ranges

The Waitākere Ranges Local Board provides the following feedback on the Draft Code of Conduct as follows:

- a) Support in general the two principles based upon an affirmative approach
- b) With regard to the principle of trust, replace the word 'community' with 'public'
- c) With regard to the principle of respect, adjust bullet point 7 to read 'endeavour to maintain public confidence' and delete 'in the office to which I have been elected'. Adjust bullet point 9, adding the words so that it reads 'maintains the confidentiality of information provided to me that is noted as being confidential'
- d) Propose that both principles do not have a list of bullet examples as they in themselves are open to interpretation rather, where possible, give definition through specific legal description
- e) With regards to material breaches, adjust the wording in relation to 'undermining' as feel that robust discussion could be misconstrued as being seen as undermining
- f) Support the overall approach that elected members are not involved in the process

- g) Support the use of an independent commissioner, noting the need for them to be held in high esteem or have a relevant background
- h) Support an information protocol proposal and that members should be able to access information requested in that the approach should start with the presumption that all information should be supplied and good reason is required to withhold information.

Waitematā

That the Waitematā Local Board:

- a) provide the following feedback on the draft Code of Conduct in Attachment of the agenda report.

General Code of Conduct Feedback

- i) supports the overall approach towards a more concise, positive and principle-based code of conduct
- ii) notes that the code of conduct is a set of principles that provides elected members with guidelines for making ethical choices in the conduct of their work and is not a legally binding contract and on that basis does not support members being required to sign the code at the time of inauguration
- iii) seeks the bullet point under the Respect principle to be amended to require elected members to maintain confidentiality of confidential information rather than the confidentiality of all information

Complaints Process

- iv) recommends that the complaints process includes the Chief Executive undertaking an initial assessment to determine whether the complainant has attempted to resolve the complaint and the complaint fits the criteria of a breach before referring to an Investigator

Conflict of Interest

- v) notes that the code proposes that alleged breaches related to a conflict of interest will follow the process of seeking advice from legal services or internal audit and if the elected member does not act the matter will be referred to the Conduct Commissioner for investigation as a material breach of the code
- vi) does not agree that a lack of action by the elected member on internal audits advice should be automatically or usually deemed to be a material breach. The advice may later be determined by the Code of Conduct commissioner to be wrong
- vii) recommends that section 4.11 should be reworded to read "...referred to the Conduct Commissioner for investigation as a *potential* material breach"
- viii) Notes that the conflict of interest policy has been updated to reflect the current legal position relating to conflicts of interest and pre-determination
- ix) consider that the pre-determination section is too wide ranging and restrictive, for instance it should not include any requirement to read all submissions or officers' reports on a subject or issue
- x) seeks the policy to confirm that campaigning on a topic before being elected is not considered as predetermination unless it is a central *raison d'être* of their campaign
- xi) considers that the council has a role in enabling elected members to meet their duty of registering members' interests annually and providing a suitable platform

- xii) considers it is important that declarations are publicly available and that if any new interests arise throughout the year these should be added in the next annual update (as adding at the time they arise could be an unreasonable imposition) and uploaded to a publicly accessible registrar
- xiii) seeks for the code to be amended to reflect the requirement for members' interests to be uploaded immediately following an election in addition to the requirement of completing the annual declaration by 31 July
- xiv) recommends that the language in the code is reviewed to clearly differentiate between the process of declaring an interest and avoiding a conflict versus having a conflict of interest
- xv) recommends that sections 2.16 and 2.17 should be reworded to reflect that having a non-financial interest need not in itself oblige the member to act in a particular manner when the agenda item is dealt with
- xvi) agrees that interests in an agenda item be declared at the start of the meeting but that it remains up to the member to determine whether and to what extent they participate in the item in the case of a non-financial interest if it is merely an interest in common with the public they can participate fully, otherwise in the case of a non-financial interest they have an option to remain part of the meeting quorum and to have it recorded that they neither spoke nor voted on the item

Access to information protocol

- xvii) welcomes the proposed new process for providing elected members with useful information more quickly, particularly where it can be provided to a member in a timely manner before a meeting where the information is relevant to a decision that is to be made there
- xviii) considers that it is not appropriate for the Chief Executive to be required to determine what is reasonably necessary as this is both an inappropriately high test and also too subjective
- xix) recommends that the access to information protocol utilises the 'relevance test' only as elected members have different levels of information requirements to support their decision making. Sections 3.2 to 3.6 should be amended to retain the "good reason" principle and the "relevant to" test but delete the "reasonably necessary" test throughout

Media protocols

- xx) recommends that the media protocols are revised to allow the deputy chair to speak on behalf of the chair when they are not available
- xxi) requests that the protocols are revised to reflect individual local board member portfolio delegations as they have the right to be local board spokesperson in their portfolio responsibility areas.

Whau

That the Whau Local Board:

- a) provide its feedback on the draft Code of Conduct in Attachment of the agenda report as below:
 - i) support the added principles approach to Auckland Council's Code of Conduct.

- ii) support the more clear and transparent approach to the Code and considers that the material breaches section is useful as it sets out what constitutes a material breach, however the Board believes that this section could do with more refinement to ensure members are 100 per cent clear on what constitutes a material breach of the Code.
- iii) support the new complaints process and the clarity of the roles of the Investigator, Conduct Commissioner and Mediators and supports the move to minimise political involvement in the complaints process.
- iv) support the independent nature of investigating proposed complaints but considers that the Code should include support for elected members through the complaints process, so members understand the process and can seek advice on how to best engage in the process.
- v) support the principle in the Code that the concepts of natural justice and fairness will apply in determination of any complaints under the Code.

Review of the Code of Conduct – Feedback by the Aotea Great Barrier Local Board

The Aotea Great Barrier Local Board provides the following feedback on the draft Code of Conduct:

1. Material breaches: Discrimination

Section 21 of the Human Rights Act 1993 provides the prohibited grounds of discrimination, including sex, marital status, religious belief, ethical belief, colour, race etc. Other forms of discrimination are lawful and accepted in society, including within a local governance framework, for example discrimination in the allocation of grant funds in favour of local initiatives and applicants.

Recommendation: The Code of Conduct should be amended as follows:
Discrimination on grounds prohibited in the Human Rights Act 1993

2. Material breaches: Sanctions by the Complaints Commissioner

Clause 4.9 provides that the Complaints Commissioner may suspend the elected member from committees or other representative bodies. Clarification is required within the local board context of:

- the meaning of "other representative bodies". Does this mean that the elected local board member may be suspended from the local board as this is an "other representative body"?
- the duration of suspension. May a local board member be suspended from a local board for the duration of the term? Suspension of a local board member from the local board deprives the electorate of their duly elected representation and a time restriction should be imposed on the suspension to ensure continued representation of the community by the elected member.
- Suspension from a committee of a local board that deals with a specific issue may validly be imposed for the duration of the term if the material breach relates to a conflict of interest.

Recommendation: The Code of Conduct should be amended as follows:

- suspending the elected member from committees or other representative bodies for the remainder of the term of the council or such shorter period as is deemed appropriate. An elected member may not be suspended from the governing body or a local board for a period exceeding a prescribed number of days (e.g 60 days).

3. Non-material breach: Resolving complaints in timely manner

To ensure that complaints of non-material breaches are resolved in a timely manner and not be left unresolved for months, to the frustration of the complainant and the elected member, a time limit for resolution should be imposed. Similar to applications under other legislation, suspension of the time limit may be justified where further information or responses are required from either the complainant or the elected members.

Recommendation: The Code of Conduct should be amended as follows:

- A non material breach must be resolved within 20 working days after receipt by the Investigator. The calculation of the resolution period may be suspended by the Investigator to allow for further information or responses to be provided by either the complainant or the elected member and shall recommence upon receipt of the information or response.