



Code of Conduct

TIKANGA WHANONGA

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The original Code of Conduct and the amendments highlighted in blue above relate to a previous version of the Code of Conduct.

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Introduction

This Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- Enhance the effectiveness of the Whakatāne District Council and the provision of good local government of the community or district;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Whakatāne District Council to its communities; and
- Develop a culture of mutual trust, respect and tolerance between the elected members of the Whakatāne District Council and between the elected members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in this Code.

Scope

The Code has been adopted in accordance with clause 15 (1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members, as well as the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- Each other;
- The Chief Executive and staff;
- The media; and
- The general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information, which affects the ability of the Whakatāne District Council to give effect to its statutory responsibilities.

This Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

Values

The Code is designed to give effect to the following values:

1. **Public interest:** members will serve the best interests of the people within their community or district and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner.
3. **Ethical behaviour:** members will act with honesty at all times and respect the impartiality and integrity of officers.
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.
7. **Equitable contribution:** members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

Roles and Responsibilities

The Code of Conduct is designed to strengthen the good governance of Whakatāne District Council. Good governance requires that the complementary roles of the governing body and the administration are understood and respected.

Members

Each elected member of the Whakatāne District Council is required to make a Declaration of Office committing to faithfully and impartially undertake his or her duties in the best interests of the Whakatāne District (s14, Schedule 7, LGA 2002). The role of the governing body includes:

- Representing the interests of the people of the community or district;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan;
- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

Chief Executive

The role of the Chief Executive includes:

- Implementing the decisions of the Council;
- Ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of the Council;
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- Providing leadership for the staff of the Council; and
- Employing, on behalf of the Council, the staff of Whakatāne District Council (including negotiation of the terms of employment for those staff).

The Chief Executive is the only person *directly* employed by the Council itself (s42 LGA 2002). All concerns about the performance of an individual member of staff must in the first instance, be referred to the Chief Executive.

Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

Relationships between members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that:

- Maintains public confidence;
- Is open, honest and courteous;
- Is focused on issues rather than personalities;
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.

Please note: that nothing in this section of the Code is intended to limit robust debate.

Relationships with staff

An important element of good governance involves the relationship between the Council, its Chief Executive and its staff. Members will respect arrangements put in place to facilitate this relationship, and:

- Raise any concerns about employees, officers or contracted officials with the Chief Executive;
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor;
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- Treat all employees with courtesy and respect, and not publicly criticise any employee;
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees;

Please note: Elected members should be aware that failure to observe this portion of the Code might compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's audit.

Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that Councils have the respect and trust of their communities. To facilitate trust and respect Council members will:

- Ensure their interactions with communities are fair, honest and respectful;
- Be available to listen and respond openly and honestly to any individual's concerns;
- Represent the views of community members and organisations accurately, regardless of the member's own opinions of the matters raised; and
- Ensure their interactions with individuals and communities uphold the reputation of the Council.

Media and social media

The media play an important role in the operation and efficacy of local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council.

Any failure by members to comply with the provisions of this section can represent a breach of the Code.

All points below should be read in conjunction with each other.

1. The Mayor or Chairperson of the appropriate committee of Council is the spokesperson for an official Council view or position on any issue, unless otherwise agreed. Where the Mayor/Chair is absent, requests for comment will be referred to the Deputy Mayor/ Deputy Chair.
2. No other member may comment on behalf of the Council without having first obtained the approval of the Mayor or Chair of the appropriate delegated committee.
3. In dealing with the media elected members must clarify whether they are communicating a view endorsed by the Council, committee or community board, or are expressing a personal view.
4. Requests for comment on operational matters should be referred to the Chief Executive.
5. The Mayor/Chair may refer any matter to the Chief Executive for their comment; and
6. Members are free to express a personal view to the media or on social media at any time, provided the following rules are observed¹:
 - Comments shall be consistent with the Code;
 - Comments must not purposefully misrepresent the views of the Council or the views of other members;
 - Members must adhere to the Council's Social Media Policy;
 - Social media pages controlled by members and used for making observations relevant to their role as an elected member should be open and transparent, except where abusive or inflammatory content is being posted or where posts include inaccurate or misleading information that is inconsistent with the role of Council in promoting the wellbeing of the community; and
 - Social media posts about other members, Council staff or the public must be consistent with the Code.

¹ See **Appendix A**: Guidelines on engaging in personal or unofficial communications.

Information

Access to information is critical to the trust in which Council is held and its overall performance. A failure to comply with the provisions below can represent a breach of the Code.

Confidential information

In the course of their duties, members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

Information received in capacity as an elected member

Occasionally members will receive information from external parties, which is pertinent to the ability of the Council to properly perform its statutory duties. Where this occurs, and the information does not contravene the privacy of natural persons, the member will disclose such information to other members and/or the Chief Executive as soon as practicable.

Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary or non-pecuniary interest, other than an interest in common with the public. This rule also applies where the member's spouse/partner has a conflict of interest, such as through a contract with the Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance as to whether they have a pecuniary or non-pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue. The latter must be done before the discussion or vote.

Please note: Failure to observe the requirements of the LAMIA could potentially invalidate the decision made, or the action taken, by the Council. Failure to observe these requirements could also leave the elected member open to prosecution. In the event of a conviction, elected members can be ousted from office.

Examples of interests

Types of interests that could create a conflict, either pecuniary or non-pecuniary, for a member include but are not limited to:

(a) Pecuniary

- Pursuing a business opportunity;
- Owning shares or other investment or having a beneficial interest in a trust;
- Owing a debt;
- Receiving gifts, hospitality or other benefits.

(b) Non-pecuniary

- Holding strong personal or political views that might indicate prejudice or predetermination;
- Being a relative or close friend of someone who has an interest or could be personally affected by a Council decision;
- Holding another public office;
- Being an employee of another business or organisation;
- Membership of a club, society or association;
- An existing professional or legal obligation such as being a trustee;
- Owing or occupying land.

Register of Interests

Members must annually, make a declaration of interest.² These declarations are recorded in a Register of Interests maintained by the Whakatāne District Council. The declaration must include information on the nature and extent of any interest, including:

- Any employment, trade or profession carried on by the member or the member's spouse/partner for profit or gain;
- Any company, trust, partnership etc. for which the member or their spouse/partner is a director, business partner or trustee;
- A description of any land in which the member has a beneficial interest within the jurisdiction of the Whakatāne District Council; and
- A description of any land owned by the Whakatāne District Council in which the member or their spouse/partner is:
 - A tenant; or
 - The land is tenanted by a firm in which the member or spouse/partner is a business partner, a company of which the member or spouse/partner is a director, or a trust of which the member or spouse/partner is a trustee;
 - Any other matters, which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note: Where a member's circumstances change they must ensure that, the Register of Interests is updated as soon as practicable.

Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an "undischarged bankrupt" must notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the member's adjudication and the likely outcome of the bankruptcy.

² See **Appendix B:** Register of Interests template

Ethical behaviour

Members will seek to promote the highest standards of ethical conduct. Accordingly, members will:

- Claim only for legitimate expenses as determined by the Remuneration Authority, or any other lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families personal or business interests;
- Only use the Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- Not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$50 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available Register of Interests.

Any failure by members to comply with the provisions set out in this section represents a breach of this Code.

Creating a supportive and inclusive environment

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives, and the manner and operating style by which members will work.
- Taking part in any assessment of the Council's overall performance and operating style during the triennium.³
- Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the Whakatāne District.

³ See **Appendix D**: Self-assessment template.

Breaches of the Code

Members must comply with the provisions of the Code (LGA 2002, Schedule 7, clause 15 (4)).

This Code of Conduct does not apply to the extent that specific legislation governs a matter. Applicable legislation that applies to elected members is included in **Appendix C**: Legislation bearing on the role and conduct of elected members.

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years' imprisonment, or if they cease to be or lose their status as an elector, or of certain breaches of the Local Authorities (Members' Interests) Act 1968. Elected members can also be disqualified from office if they are absent without leave from four consecutive ordinary meetings of the Council (Schedule 7, Part 1, Clause 5(1)(d) Local Government Act 2002).

Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

Principles

The following principles will guide any processes for investigating and determining whether a breach under this Code has occurred:

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach complained about;
- That the processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- That the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, that affected parties:
 - Have a right to know that an investigation process is underway;
 - Are given due notice and are provided with an opportunity to be heard;
 - Have a right to seek appropriate advice and be represented; and
 - Have their privacy respected.

Complaints

All complaints made under the Code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint, the Chief Executive must forward the complaint to the Mayor/Chair or, where the Mayor/Chair is a party to the complaint, an independent investigator, drawn from a pool of names or agency agreed in advance.

Please note, only members and the Chief Executive may make a complaint under the Code.

Complaint referred to Mayor/Chair

On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor/Chair will, as the situation allows:

- Interview the complainant to assess the full extent of the complaint.
- Interview the member(s) subject to the complaint.
- Assess the complaint to determine materiality.
- Where a complaint is assessed by the Mayor/Chair to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.
- Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor/Chair will refer the complaint back to the Chief Executive. The Chief Executive will forward it, along with any recommendations made by the Mayor/Chair, to the Council or an adjudicative body (Code of Conduct Committee) established by the Council to assess and rule on complaints made under the Code.⁴

If the Mayor/Chair chooses they may, instead of undertaking an initial assessment, immediately refer the complaint to the independent investigator, via the Chief Executive.

Complaint referred to Independent Investigator

On receipt of a complaint from a member, which concerns the Mayor/Chair, or from the Mayor/Chair after initial consideration, the Chief Executive will forward that complaint to an independent investigator. The investigator will undertake a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or the Code of Conduct Committee for assessing and ruling on complaints.⁵ The process, following receipt of a complaint, will follow the steps outlined in Appendix E: Process where a complaint is referred to an independent investigator, and Appendix F: Complaints Procedure – Flow Diagram.

⁴ Advice on establishing adjudication bodies can be found in the Guide to the Code of Conduct held by the Governance Team of the Whakatāne District Council.

⁵ On behalf of the Council, the Chief Executive will shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a) a list specifically for the Council, b) a list jointly with neighbouring Councils, or c) contract with an agency capable of providing appropriate investigators, such as Equip.

Materiality

An alleged breach under the Code is material if, in the opinion of the Mayor/Chair or independent investigator, it would, bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.

An alleged breach under this Code is non-material if, in the opinion of the Mayor/Chair or independent investigator, any adverse effects are minor and no investigation or referral is warranted.

Penalties and actions

Where a complaint is determined to be material and referred to the Council or Code of Conduct Committee established to consider complaints, the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of the Code, the Council, or the Code of Conduct Committee with delegated authority, may require one or more of the following:

- A letter of censure to the member;
- A request (made either privately or publicly) for an apology;
- Removal of certain Council-funded privileges (such as attendance at conferences);
- Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
- Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
- A vote of no confidence in the member;
- Suspension from committees or other bodies to which the member has been appointed; or
- Invitation to the member to consider resigning from the Council.

A Council or Code of Conduct Committee with delegated authority may decide that instead of a penalty, one or more of the following may be required:

- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- Breaches which result in the Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s44 of the LGA 2002 which may result in the member having to make good the loss or damage); or
- Breaches relating to the commission of a criminal offence, which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

General Protocols

Dress Code

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

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

Use of Facilities

- Equipment and technology provided to elected members is set out in the Elected Members' Expenses Rules;
- The retiring room is primarily intended for the use of members;
- Pool cars are available for travelling to seminars and conferences, and members must adhere to the Council's Use of Vehicle Policy when booking and using these cars;
- Members may not use Council resources for personal business (including campaigning).

Procedures for Raising Operational Matters

Members may be contacted by the public regarding routine service requests, e.g. leaking water tobies. These service requests need to be forwarded to the customer service centres. Alternatively, the elected members could relay operational matters directly to the Chief Executive or applicable General Manager.

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

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

Procedures for Raising Policy Matters

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

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

Responding to Ratepayer Approaches Regarding Potential or Actual Litigation Against the Council

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

- Listen to concerns;
- Seek clarification;
- Refer the person to appropriate contact or agency, e.g. Solicitor, Consultants, Disputes Tribunal, etc.;
- Relay information to the Chief Executive of the Council;
- Notify the Chief Executive where notice of intention to make a claim against the Council is given, or there are facts present that involve the assertion of action against the Council.

Elected members should take care not to:

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

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

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

Review

Once adopted, a Code of Conduct continues in force until amended by the Council. The Code may be amended at any time but cannot be revoked unless the Council replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75% of the members of the Council present at a Council meeting where the amendment is considered.

The Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be considered by the Council with potential changes for improvement.

Appendix A: Guidelines on engaging in personal or unofficial communications⁶

There is a big difference in speaking “on behalf of Council” and speaking “about” the Council. While your rights to free speech are respected, please remember that the community and colleagues have access to what you share. The following principles are designed to help you when engaging in **personal or unofficial** communications that may also refer to your Council.

- **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
- **You are responsible for your actions.** Anything you post on social media or make comment to the media on that can potentially damage the Council’s image will ultimately be your responsibility. You are encouraged to participate in personal or unofficial communications but in so doing you must exercise sound judgment and common sense.
- **Be an “advocate” for compliments and criticism.** Even if you are not an official spokesperson for the Council, you are one of its most important advocates for monitoring the media/social media landscape. If you come across positive or negative remarks online, in print or on air, about the Council or its activities that you believe are important, you are encouraged to share them with the governing body.
- **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts on social media about the Council or its activities you should consider referring the posts to the Council’s authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.
- **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in the media/social media. The public may find it difficult to separate personal and Council personas. Commenting in any forum (online, in print or on air), particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
- **Never share sensitive and confidential information** provided by the Council, such as public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.
- **Elected Members’ social media pages should be open and transparent.** When commenting on matters related to the Council, no members should represent themselves falsely via aliases or differing account names. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

⁶ Based on the Ruapehu District Council Code of Conduct.

Appendix B: Register of Interests template



Whakatāne District Council

REGISTER OF INTERESTS FOR ELECTED MEMBERS

All elected members are required to maintain a clear separation between their personal interests and duties, and their role as an elected member of the Council. Disclosing conflicts of interest is the responsibility of the elected member concerned. The public must have confidence that elected members are acting impartially in their decision-making and use of publically funded resources. All disclosures of conflicts of interests by elected members are recorded in the Register of Interests updated annually and maintained by the Governance Team.

Name of Member: _____ Spouse/Partner's name: _____

Signature: _____ Date: _____

Declared employment or business interest	Spouse/partner declared employment or business interest	Is this a Council appointment? Yes or No	Is the interest as an owner, partner, lessee, lessor, director, trustee, board member or other (please specify)	Is the interest <ul style="list-style-type: none"> • Pecuniary • Non-pecuniary • Actual • May be perceived 	Comments
Address of any land in which a beneficial interest is held within the Council boundaries (member and her/his partner)			Is the interest as an owner, partner, lessee, lessor, director, trustee, board member or other (please specify)	Is the interest <ul style="list-style-type: none"> • Pecuniary • Non-pecuniary • Actual • May be perceived 	Comments
Address of any land owned by the Council rented to the member or spouse, or to a firm or organisation in which the member or spouse is a director or trustee			Is the interest as an owner, partner, lessee, lessor, director, trustee, board member or other (please specify)	Is the interest <ul style="list-style-type: none"> • Pecuniary • Non-pecuniary • Actual • May be perceived 	Comments

Appendix C: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz.

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse/partner or a company in which they have an interest). In relation to pecuniary interests, the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- A person, or spouse/partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their spouse/partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the Council.

Determining whether a pecuniary interest exists

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned." (OAG, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors.

- What is the nature of the decision being made?

- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor/Chair or other person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists, members may adopt a least-risk approach, which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

The contracting rule

A member is disqualified from office if he or she is "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

"Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members' focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise. However, he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the Chairperson has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another Councillor is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about the Council, other members, any employee of the Council or any member of the public.

See the Standing Orders of the Whakatāne District Council for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

Crimes Act 1961

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- Use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

Protected Disclosures Act 2000 (Whistle-Blower Protection)

The Protected Disclosures Act 2000 was amended in May 2009 to provide protection to elected members. Under the Act the definition of an employee of a public sector organisation (PSO) includes elected members of the governing body of an organisation.

Under the Act an employee who discloses information about a serious wrongdoing by the PSO is protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the employee. Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources, conduct that has serious risks to public health and safety; conduct that has serious risk to the maintenance of law; conduct that constitutes an offence; and oppressive, improper discriminatory conduct, gross negligence or gross mismanagement by a public official.

Protection under the Act applies where an employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and desires protection under the Act.

The Act requires disclosure by an employee to follow the internal procedures of the PSO. The Council is required to establish internal procedures to address the receipt of and dealing with information about serious wrongdoing in or by the Council.

The Council adopted a Protected Disclosures Policy on 31 March 2010. It is currently under review (February 2020) to ensure it complies with the requirements of the Protected Disclosures Act 2000 to promote the public interest of facilitating the disclosure of serious wrongdoing and protecting employees and Elected Members who make disclosures.

The Policy is available on the Council's website www.whakatane.govt.nz

Health and Safety at Work Act 2015 (HSWA)

The Health and Safety at Work Act 2015 (HSWA) is New Zealand's primary workplace health and safety legislation. The Act requires that workers and others are given the highest level of protection from workplace health and safety risks, so far as is reasonably practicable. This includes workplace risks to both physical and mental health.

The Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace, and for the person conducting a business or undertaking (PCBU) (i.e. the Council) to ensure, as far as is reasonably practicable, the safety of workers and others who may be impacted by the work the business undertakes.

Under the HSWA, an "Officer" is any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking. Elected Council members (which include the Mayor and Councillors but excludes Community Board members) and the Chief Executive are by default identified as "Officers". The previous Council resolved that the General Managers are also to be identified as "Officers".

Officers have obligations of due diligence (s44), which are:

- a) To acquire, and keep up-to-date, knowledge of work health and safety matters; and
- b) To gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and
- c) To ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- d) To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- e) To ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- f) To verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

The duties of the Officers and of the PCBU are independent of each other. This means if a PCBU has failed to meet its duty but the Officers exercised due diligence then they would not be personally liable for the health and safety failings.

The Council has implemented a Due Diligence programme to help ensure its Officers meet their obligations under the Act, involving regular inspections by the Executive Team of work areas. The results of the inspections are reported back to each Ordinary Council meeting as part of a general health and safety management report.

The Local Government Act 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles and details the personal liability of members.

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

- a) Money belonging to, or administered by, the Council has been unlawfully expended; or
- b) An asset has been unlawfully sold or otherwise disposed of by the Council; or
- c) A liability has been unlawfully incurred by the Council; or
- d) The Council has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Under s46 LGA 2002, members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) Without the member's knowledge;
- b) With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) Contrary to the manner in which the member voted on the issue; and
- d) In circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situations, members may also be responsible for paying the costs of proceedings (s47 LGA 2002).

Appendix D: Self-Assessment Template

Please rate how you view the collective performance of the governing body in the following areas:

A rating of 1 indicates an excellent level of performance through to a rating of 4 indicating that the collective performance of elected members could improve significantly.

A. We act together as a team to deliver value to the people of Whakatāne District.

1 2 3 4 **(please circle)**

B. We are effective in being part of a coordinated approach to promote the Whakatāne District.

1 2 3 4 **(please circle)**

C. We have effective working relationships with key stakeholder groups.

1 2 3 4 **(please circle)**

D. We have an effective working relationship with Council staff through members' interactions with the Chief Executive.

1 2 3 4 **(please circle)**

E. We engage effectively with the community on issues of importance to them.

1 2 3 4 **(please circle)**

F. We are well prepared and well equipped to make informed decisions in our capacity as elected representatives.

1 2 3 4 **(please circle)**

G. We participate appropriately in debates and act collectively in the best interests of the Whakatāne District.

1 2 3 4 **(please circle)**

H. Council decisions are made in an open and transparent fashion.

1 2 3 4 **(please
circle)**

I. We treat each other with mutual respect and demonstrate tolerance to different points of view in order to arrive at the best decisions for the Whakatāne District as a whole.

1 2 3 4 **(please
circle)**

J. We have a clear sense of direction and understanding.

1 2 3 4 **(please
circle)**

The objective of this assessment is not necessarily that all members should agree.

It is to provide an indication of areas where we are doing well and areas where we can make improvements. The analysis of results will provide a useful starting point for discussions on the overall performance of the governance functions of the Council, and provide some insight into areas where action can be taken to raise performance.

Appendix E: Process where a complaint is referred to an independent investigator

Step 1: Chief Executive receives complaint

On receipt of a written complaint under the Code, whether from a member (because the complaint involves the Mayor/Chair) or from the Mayor/Chair after an initial assessment, the Chief Executive will refer the complaint to an investigator selected from a list agreed at the start of the triennium. The Chief Executive will also:

1. Inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
2. Inform the respondent that a complaint has been made against them, the name of the investigator and remind them of the process for dealing with complaints as set out in the Code.

Step 2: Investigator makes preliminary assessment

On receipt of a complaint, the investigator will assess whether:

1. The complaint is trivial or frivolous and should be dismissed;
2. The complaint is outside the scope of the Code and should be re-directed to another agency or institutional process;
3. The complaint is minor or non-material; or
4. The complaint is material and a full assessment is required.

In making the assessment, the investigator may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties, which are then forwarded to the Council's Chief Executive. On receiving the investigator's preliminary assessment the Chief Executive will:

1. Where an investigator determines that a complaint is trivial or frivolous, inform the complainant, respondent and other members (if there are no grounds for confidentiality) of the investigator's decision.
2. In cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the Chief Executive who will then inform the complainant, the respondent and members.

Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as:

- That the respondent is referred to the Mayor/Chair for guidance; and/or
- That the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-binding on the respondent and the Council.

Step 4: Actions where a breach is found to be material

If the subject of a complaint is found to be material, the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach. In preparing that report, the investigator may:

- Consult with the complainant, respondent and any directly affected parties; and/or
- Undertake a hearing with relevant parties; and/or
- Refer to any relevant documents or information.

On receipt of the investigator's report, the Chief Executive will send a copy of the report to the complainant and the respondents inviting them to reply in writing as to whether or not they agree to the findings and whether they wish to make a written submission for consideration by the Council or Code of Conduct Committee. The Chief Executive will prepare a report for the Council or Code of Conduct Committee charged with assessing and ruling on material complaints, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the investigator's full report.

Step 5: Process for considering the investigator's report

The investigator's report will be considered by the Council or Code of Conduct Committee established for considering reports on Code of Conduct complaints, or any other body that the Council may resolve, noting that the process will meet the principles set out in section 12.1 of the Code.

In order to avoid any suggestion of bias, a Code of Conduct Committee should be established at the start of a triennium.

The Council, or Code of Conduct Committee, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the Council or Code of Conduct Committee will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in clause 13.1 of the Code.

The report, including recommendations from the Council or Code of Conduct Committee, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.

Appendix F: Complaints Procedure – Flow Diagram

