



Code of Conduct

TIKANGA WHANONGA

*Whakatāne-Ōhope Community Board
2019-2022*

whakatane.govt.nz



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Introduction

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

- Enhance the effectiveness of the Whakatāne-Ōhope Community Board and the provision of good local government of the community;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Whakatāne-Ōhope Community Board to its communities; and
- Develop a culture of mutual trust, respect and tolerance between the members of the Whakatāne-Ōhope Community Board, the Council 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 Community Board members 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 Community Board members and information which impacts on the ability of the Whakatāne-Ōhope Community Board to give effect to its statutory responsibilities.

The Code should be read in conjunction with the Community Board'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 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 Community Board, will work together constructively in an accountable and transparent manner.
3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality and integrity of officials.
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 Community Board operates, including a regular review and assessment of the Community Board'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 the Whakatāne-Ōhope Community Board. This requires that the complementary roles of the Community Board and the Management are understood and respected.

Community Boards

Community Boards are constituted under Section 49 of the Local Government Act 2002 (LGA 2002) and their role is detailed under section 52 of the LGA 2002 to:

- Represent and act as advocates for the interests of their community;
- Consider and report on all matters referred to it by the Council or any matter of interest or concern to the Community Board;
- Maintain an overview of services provided by the Council within the community;
- Make an annual submission to the Council for expenditure within the community;
- Communicate with community organisations and special interest groups within the community;
- Undertake any other responsibilities delegated by the Council.

General and specific delegations to Community Boards are contained in the Delegations Register.

Members, acting as the Board, are responsible for:

- Input into Council policy;
- Monitoring the performance of the Community Board against its stated objectives, policies and identified community outcomes;
- Prudent stewardship of the Community Board's resources;
- Representing the interests of the residents and ratepayers of the Community Board Area;
- Ensuring overall compliance with its obligations and responsibilities under the LGA 2002 and all other legislation which prescribe statutory duties for territorial authorities;
- Promoting good relationships with other Community Boards.

Members, as individuals, must comply with:

- The requirements of the Code of Conduct;
- The enactments and other rules of law applicable to the conduct of members.

Board Chairpersons

A Community Board Chairperson exercises the same role as any other member but has responsibility to preside over all meetings of the relevant Board and to ensure that they act within the powers delegated to it by the Council (as set out in the Council's Delegations Register).

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 staff on behalf of the 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.

Relationships between members

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

- Maintains public confidence;
- Is open and 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, the Community Boards and the Chief Executive. Community Board 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 avoid publicly criticising any employee;
- Observe any protocols put in place by the Chief Executive concerning contact between Board members and employees;

Please note: Community Board members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation.

Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that the Community Board earns the respect and trust of community members. To facilitate this respect and trust Board Members will:

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

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 the Community Board.

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

1. In dealing with the media Board members must clarify whether they are communicating a view endorsed by the Community Board or by the Council, or are expressing a personal view.
2. Requests for comment on operational matters should be referred to the Chief Executive.
3. The Chair of the Community Board is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Chair is absent, requests for comment will be referred to the Deputy Chair;
4. The Chair may refer any matter to the Chief Executive for their comment; and
5. 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.
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 Community Board, 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 Community Board 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 the Community Board or Council in promoting the wellbeing of the community; and
 - Social media posts about other Board 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 both the trust in which a community board 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 Board members will occasionally 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 a Community Board member

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

Conflicts of Interest

Community Board members will maintain a clear separation between their personal interests and their duties as Board members in order to ensure that they are free from a conflict of interest (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 Community Board discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's spouse/partner has a pecuniary interest, such as through a contract with the Council. Board members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a Board 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 interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

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

Examples of interests

Types of interests that could create a conflict, either pecuniary or non-pecuniary, for a Board 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 Community Board or 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.

Ethical behaviour

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

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or other members in order to benefit their own, or family's 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 gifts.

Any failure by Board 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, Board 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 Community Board's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment of the Community Board's overall performance and operating style during the triennium².
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the community.

² See **Appendix C**: 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 Board members is included in **Appendix B**: Legislation bearing on the role and conduct of elected members.

Board 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. Members can also be disqualified from office if they are absent without leave from four consecutive ordinary meetings of the Community Board (Schedule 7, Part 1, Clause 5(1)(d) Local Government Act 2002).

Any Board 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 or not 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;
- That the process 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 directly 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 confidence that any hearing will be impartial;
 - 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 that 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.³

Only Community Board members and the Chief Executive may make a complaint under this Code.

Complaint referred to Mayor

On receipt of a complaint made under the provisions of the Community Board'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 an adjudicative body (Code of Conduct Committee) established 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 Board 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 Code of Conduct Committee established for assessing and ruling on complaints. The process, following receipt of a complaint, will

³ 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 list specifically for his or her Council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators.

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.

follow the steps outlined in **Appendix D**: Process where a complaint is referred to an independent investigator, and **Appendix E**: Complaints Procedure – Flow Diagram.

Materiality

An alleged breach under the Code is material if, in the opinion of the Mayor/Chair or independent investigator, it would, bring the Community Board or Council into disrepute or, if not addressed, adversely affect the reputation of a Board 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 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 Code of Conduct Committee with delegated authority, may require one or more of the following:

- A letter of censure to the Board 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 Community Board Chair or Deputy Chair;
- 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 Board member;
- Suspension from committees or other bodies to which the Board member has been appointed; or
- Invitation to the Board member to consider resigning from the Community Board.

A 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 Community Board member liable for criminal prosecution).

General Protocols

Dress Code

Board members should maintain an appropriate standard of dress at meetings of the Community Board. 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;
- A neat and tidy standard of dress is appropriate for ordinary Board meetings and engaging with members of the public;
- Council meetings are a formal occasion therefore a more formal standard of dress is appropriate if a Board member is attending.

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 Board members could relay operational matters directly to the Chief Executive or applicable General Manger.

Council officers recognise that when a Board 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 Board member. This is so that the Board member is aware of what action has been taken when next approached by the member of the public.

While Board members should refrain from getting 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 Community Board are as follows:

- (a) Socialise the idea with other Board members.
- (b) Liaise with the Board Chairperson. If it is agreed that the matter is one for political consideration, then the Chairperson will discuss the matter with the Mayor or Chief Executive.
- (c) The Board may make recommendations to the appropriate Council Committee or the Council on any policy matters.

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, Community Board members should:

- Listen to concerns;
- Seek clarification;
- Refer person to appropriate 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.

Board 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 Board 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. Board 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 a Board 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 Board 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 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 Community Board. The Code can be amended at any time but cannot be revoked unless the Community Board replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75% of the members of the Community Board present at the meeting at which the amendment is considered.

Community Boards are encouraged to formally review their existing Code and either amend or readopt it as soon as practicable after the beginning of each triennium.

Appendix A: Guidelines on engaging in personal or unofficial communications⁵

There is a big difference in speaking “on behalf of Council/Community Board” and speaking “about” the Council/Community Board. 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 refer to your Council/Board.

- **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, Community Board or their 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 or Community Board, 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, Community Board or their activities, that you believe are important, you are encouraged to share them with the governing body/Community Board.
- **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts on social media about the Council, Community Board or their activities you should consider referring the posts to the Council or Board’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/Board) and personal lives.** Members need to take extra care when participating in media/social media. The public may find it difficult to separate personal and Council/Board personas. Commenting in any forum (online, in print, on air), particularly if your opinion is at odds with what Council or Board 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 or Board, such as public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.
- **Members’ social media pages should be open and transparent.** When commenting on matters related to the Council or Community Board, no members should represent themselves falsely via aliases. 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 or Community Board into disrepute.

⁵ Based on the Ruapehu District Council Code of Conduct.

Appendix B: Legislation bearing on the role and conduct of Community Board members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of Community Board 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 a Community Board member's family trust and the Council.

Determining whether a pecuniary interest exists

Community Board members may be 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, Board 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?

Board members may seek assistance from the Chief Executive 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 Board 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.

Board 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 Community Board's Standing Orders.)

The contracting rule

A Board member is disqualified from office if he or she is "concerned or interested" in contracts with the Council and 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, or Community Board) 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 Board 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.

Board 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, Board 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 Community Boards. Of particular importance for the roles and conduct of Community Board members is the fact that the Chairperson has the responsibility to maintain order at meetings, but all Board members should accept a personal responsibility to maintain acceptable standards of address and debate. No Board member should:

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

See Standing Orders of the Whakatāne-Ōhohe Community Board for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for a Community Board member 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 a Community Board 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.

Community Board members convicted of these offences will automatically cease to be members of the Board.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places members in the same position as company directors whenever Council offers stock to the public. 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.

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, Community Board members can be held personally accountable for losses incurred by the Council or Community Board where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

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

Board 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:

- Without the member's knowledge;
- With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- Contrary to the manner in which the member voted on the issue; and

- 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 Board members will also be responsible for paying the costs of proceedings (s47 LGA 2002).

Appendix C: Self-Assessment Template

Please rate how you view the performance of community board members collectively (acting as the Community Board) 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 our community board area.

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

B. We are effective in being part of a coordinated approach to promote the community board area.

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.

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 Community Board area.

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

H. Community Board 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 region 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.

The analysis of results may provide a useful starting point for discussions on the overall performance of the community board, and provide some insight into areas where improvements may be possible.

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

Step 1: Chief Executive receives complaint

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

1. 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. Respondent that a complaint has been made against them, the name of the investigator and refer them to 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 the complaint is:

1. Trivial or frivolous and should be dismissed;
2. Outside the scope of the Code and should be redirected to another agency or institutional process;
3. Minor and non-material; and
4. Material and a full investigation 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, 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 seek guidance from the Board Chairperson or Mayor; and/or
- That the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to 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 Community Board and 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 affected parties;
- 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 prepare a report for the Code of Conduct Committee with delegated authority, 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 full report prepared by the investigator.

Step 5: Process for considering the investigator's report

The investigator's report will be considered by the 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 the Code itself.

The 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 the LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the 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 this Code.

Where the report of the Code of Conduct Committee is referred to the Council, it will be heard in open session, unless ground for exclusion of the public exists and its recommendations accepted without debate.

Appendix E: Complaints Procedure – Flow Diagram

