

UPPER HUTT CITY

# Code of Conduct



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# 1. Introduction

This code of conduct provides guidance on the standards of behaviour that are expected from elected members (together and individually referred to in this code as ("member")) of the Upper Hutt City Council ("Council") in their dealings with:

- each other;
- the Chief Executive;
- staff employed by the Chief Executive on behalf of Council;
- the media; and
- the general public.

## 2. Objectives

The objectives of this code are to enhance:

- the effectiveness of the Council as an autonomous local authority with statutory responsibility for good local government in the City of Upper Hutt;
- the credibility of the Council within its community; and
- mutual trust, respect and tolerance among members as a group and between members and those people with whom members may deal in the course of their duties as members.

## 3. Principles

This code is based on the following general principles of good governance:

- **Public interest**  
Members must serve the interests of the City as a whole.
- **Honesty and integrity**  
Members must not place themselves in situations where their honesty and integrity may be questioned.
- **Objectivity**  
Members must make decisions on merit, including decisions making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability**  
Members must be accountable to the public for their actions and the manner in which they carry out their responsibilities.
- **Openness**  
Members must be open about their actions and those of the Council, and be prepared to justify their actions.
- **Personal judgment**  
Members can and will take account of the views of others, but must reach their own conclusions on the issues before them.
- **Respect for others**  
Members must promote equality by treating people with respect, regardless of race, age, religion, gender, sexual orientation, or disability.
- **Duty to uphold the law**  
Members must uphold the law, and on all occasions act in accordance with the trust the public places in them.
- **Stewardship**  
Members must ensure that the Council uses its resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations to both present and future generations.
- **Leadership**  
Members are leaders in their community and must at all times provide leadership by example.

## 4. Scope of the code

This code applies to:

- All members of the Council, namely the Mayor and Councillors.
- All other persons appointed to any Committee of the Council or subcommittee.

## 5. Roles and responsibilities

### Members

Members, acting as the Council, are responsible for:

- the development and adoption of Council policy;
- monitoring the performance of the Council against its stated objectives and policies and identified community outcomes;
- prudent stewardship of Council resources;
- employment of the Chief Executive;
- representing the interests of the residents and ratepayers of the City of Upper Hutt;
- ensuring overall compliance by the Council with its obligations and responsibilities under the Local Government Act 2002 ("the Act"); and
- ensuring overall compliance by the Council with its obligations and responsibilities under other enactments. A list of such enactments is attached as Appendix A.

Members, as individuals, must comply with:

- the requirements of this code; and
- enactments and other rules of law applicable to the conduct of members. Extracts from, or brief explanations of, some enactments are set out in Appendix B.

The Council makes decisions by passing resolutions, and resolutions are passed by the vote of a majority of members present and voting. Each member gets one vote but if there is an equality of votes, the Mayor [as Chair] has a casting vote.

Individual members [including the Mayor] have no authority to act on behalf of the Council unless the Council expressly delegates such authority by passing a resolution.

### Mayor

The Mayor is elected by the City as a whole and shares the same responsibilities as other members of Council. The Mayor is the ceremonial head of the Council. The Mayor is also responsible for:

- presiding at Council meetings and ensuring the conduct of meetings in accordance with standing orders.
- advocacy on behalf of the community, with the knowledge and support of the Council.
- providing leadership to members

The Mayor, like other members, does not have authority to act on behalf of the Council unless such authority has been expressly delegated by a resolution of Council.

### Deputy Mayor

The Deputy Mayor exercises the same role as any other member but if the Mayor is absent or incapacitated the Deputy Mayor must perform all of the responsibilities and duties of the Mayor, and may also exercise the powers of the Mayor.

## 5. Roles and responsibilities

### **Committee Chair**

A committee chair exercises the same role as any other member but has responsibility to preside over all meetings of the relevant committee and to ensure that the committee acts within the powers delegated to it by the Council (as set out in the Council's Delegations Manual).

### **Chief Executive**

The Chief Executive is responsible for:

- employing staff on behalf of the Council (including negotiation of the terms of employment for the staff) and providing leadership to them;
- providing advice to the Council;
- implementing the decisions of the Council;
- ensuring that all responsibilities, duties and powers delegated to, or imposed or conferred upon, the Chief Executive are properly performed or exercised;
- managing the Council's activities effectively and efficiently;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council; and
- ensuring overall compliance by the Council with its obligations and responsibilities at law.

## 6. Relationships and behaviours

### Relationships with Other Members

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. Members must conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected;
- are open and honest;
- focus on issues rather than personalities; and
- avoid conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate harassment.

### Relationships with Staff

The effective performance of Council also requires a high level of cooperation and mutual respect between members and staff. To ensure that the required level of cooperation and trust is maintained members must:

- recognise that the Chief Executive is the employer (on behalf of Council) of all staff. Only the Chief Executive may hire or dismiss, or instruct or censure, an employee;
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times. In particular, but without limitation, members must comply with Council's harassment policies;
- treat all staff with courtesy and respect, avoiding conduct which is aggressive offensive or abusive or may constitute unlawful or inappropriate harassment;
- observe any guidelines that the Chief Executive has put in place regarding contact with employees;
- not do anything that compromises, or could be seen as compromising, the impartiality of an employee;
- avoid publicly criticising a staff member in any way, including criticism that reflects on the competence and integrity of the staff member;
- raise concerns about staff only with the Chief Executive; and
- raise concerns about the Chief Executive only with the Mayor.

Members must be aware that any failure to observe this portion of the code may compromise the Council's obligations to act as a good employer, resulting in the Council being exposed to civil litigation, and individual members being exposed to responsibility for loss under s.46 of the Local Government Act 2002.

### Relationships with the Community

Members must act in a manner that encourages and values community involvement in local democracy. The views of members of the public must be accorded respect with members listening to and deliberating on concerns carefully and patiently. Members must avoid aggressive or abusive behaviour towards members of the public.

### Contact with the Media

The media plays an important role in the effective operation of local government. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council.

## 6. Relationships and behaviours

The Chief Executive and Directors have responsibility for dealing with the media in respect of all management, or operational, issues.

Media contact on political issues is the preserve of the Mayor and Councillors.

The following rules apply to media contact by members on behalf of Council:

- no member may speak to the media on behalf of Council unless first approved to do so by resolution of the Council, or of a Committee of the Council, or by the Mayor as set out below;
- the Mayor is the first point of contact for the Council view on any issue. If the Mayor is absent, or unable to act, a matter may be referred to the Deputy Mayor or to the relevant committee chairman (in that order) for a response;
- the Mayor may refer any matter to the relevant committee chairman, a member or to the Chief Executive for comment.

Members remain free to express a personal view in the media at any time but any comments made must observe all requirements of this code and must clearly state that the comments represent a personal view only.

### **Confidential Information**

In the course of their duties members will receive information that is confidential. This will generally be Council information that is either commercially sensitive or is personal to a particular individual or organisation. Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member. Any failure to observe these provisions may affect the Council's performance, by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 or civil litigation, and may expose individual members to responsibility for loss under s.46 of the Local Government Act 2002.

For the purpose of this part of the code to "disclose confidential information" relates to:

- information disclosed from outside the Council to the member in his or her capacity as an elected member on a confidential basis. This means to "disclose confidential information to any other person". (These circumstances will arise only very rarely. See also the section on "Information Sharing" below).
- information disclosed to the member in a public excluded meeting of the Council or a committee. This means to "disclose confidential information to any person who was not present at that publicly excluded meeting".
- any other information disclosed to the member in his or her capacity as an elected member. This means to "disclose confidential information to any other person who is not a member or employee of the Council (but with any disclosure to a member or employee being made on a "need to know" basis)".

## 6. Relationships and behaviours

### Information Sharing

The purpose of this part of the code is not only to ensure a cooperative sharing of information among members but also to enable the Council to fulfil its obligations under the Local Government Official Information and Meetings Act 1987 ["LGOIMA"] generally and under s.44A LGOIMA (Land Information Memorandum) and s.31 of the Building Act 2004 (Project Information Memorandum).

A member may occasionally be offered information, including documents, in his or her capacity as an elected member which relate to the ability of the Council to give effect to the provisions of the Act, or any other legislation for which the Council is responsible (for example, without limitation, Resource Management Act 1991, Building Act 2004 and Dog Control Act 1996). Such information, when received, must be shared with other members and, in an appropriate case, the Chief Executive.

If information of that nature is offered on a confidential basis the member must:

- inform the supplier of the information that the member may have a disclosure obligation under this code.
- inform the supplier that public disclosure of information received by the Council is governed by LGOIMA and that under LGOIMA public disclosure may occur without the supplier's consent.
- decline to receive the information if the supplier insists upon absolute confidentiality.

The only exception to the requirement of this part of the code arises where the information in question would, once received, be exempt from disclosure upon a request for disclosure made under LGOIMA.

Determination of the availability of an exemption under LGOIMA is delegated to the Chief Executive, and all such matters must be referred to the Chief Executive before the information or document is received.

One possible outcome, of consideration of the availability of an exemption, is that internal dissemination of the information or document may be restricted, on a "need to know" basis.

### Conflicts of Interest

The phrase "Conflicts of Interest" is used to describe three distinct and separate circumstances where there is or may be a conflict between the personal interests, or the conduct of a member, and that member's duties as an elected member. The statutory and common law rules relating to conflicts of interest are part of the rules of natural justice. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision. Members performing their duties will on occasion be making political decisions (for example when making policy or adopting planning documents) and on other occasions be acting in a judicial or semi judicial capacity (for example when considering resource consent applications or matters relating to exemptions from statutory requirements or bylaws).

## 6. Relationships and behaviours

There is some limited scope for flexibility in respect of political decisions, but absolutely no scope for flexibility in relation to judicial or semi-judicial decisions.

The three classes of conflict of interest are:

- A pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss. These matters are regulated, in part, by the Local Authorities (Members' Interests) Act 1968. The provisions of that Act are summarised in Appendix B.
- A non-pecuniary interest that may give rise to a perception of conflict between interest and duty. Examples could be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.
- Demonstrated bias, which is the circumstance where a member by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that the member may approach the consideration of a decision on that issue with an open mind. This class is most likely to be relevant in judicial or semi-judicial proceedings.

Members must take a precautionary approach to all conflicts of interest. Members must ensure that where an audit office ruling is sought, under the Local Authorities (Members' Interests) Act 1968, the application for exemption is made on a timely basis. Where a conflict of interest is established, members must take no part in the discussion of the matter or the decision. In a case of doubt, a member should withdraw.

Members withdrawing:

- must leave the Council table and, as a minimum, sit in the public gallery; and
- should (in protection of their own and the Council's interests) ensure that their actions are appropriately recorded in the minutes of the meeting.

The issue of conflict of interest is a difficult one for members. It is common for issues to arise on short notice. It is also common for a matter that seems straightforward at the outset to become less clear as it progresses. Vigilance by members is required. While the decision to disqualify is ultimately a matter for the member alone, members are encouraged to seek guidance and assistance from their colleagues or the Chief Executive.

### **Ethics**

Members must observe the highest personal standards of ethical conduct. Members must:

- claim only for legitimate expenses laid down by any remuneration determination and any policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or other interests associated with the member;
- not use Council resources for personal business (including campaigning);

## 6. Relationships and behaviours

- not solicit, demand, or request any gift, reward or benefit by virtue of their position; and
- notify the Chief Executive if any gifts are accepted by a member, in his or her capacity as a member.

### **Standing Orders**

Members must abide by the standing orders adopted by Council.

### **Response to breaches of the code**

The exact nature of the action the Council may take will depend on the nature of the breach and whether there is any statutory provision that deals with it.

Where there is an alleged breach of a statutory provision then the Council could ask the authority responsible for administering the provision, to investigate the allegation. Members of the public are also able to make complaints about alleged breaches of statutory provisions to the administering authority and the authority is also able to investigate such allegations of its own initiative.

Where a member is alleged to have breached the code but the allegation does not involve any breach of a statutory provision then the Council, if satisfied after proper investigation that the allegation has been proved, may apply such sanctions as are lawfully within its power.

The form of any penalty that the Council may apply will depend on the nature of the breach, and may include the following:

- Censure of the member, by letter and/or in open meeting.
- Removal of the member from representation on Council committees or as representative of the Council on other organisations.
- Removal of any special status of the member, such as the position of Deputy Mayor or Chairman of a committee.

A resolution by the Council that a breach of the code has occurred, and/or recording the penalty to be applied, will be final and binding on the member to whom that resolution relates and all other members. Excepting only where an allegation is made of a breach of the rules of natural justice, no member shall seek to review or challenge the outcome under standing orders, the Act, or by judicial process.

## Appendix A

### **Legislation that confers obligations or responsibilities on local authorities:**

Arts Council of New Zealand Toi Aotearoa Act 1994  
Biosecurity Act 1993  
Building Act 2004  
Burial and Cremation Act 1964  
Civil Defence Emergency Management Act 2002  
Consumer Guarantees Act 1993  
Criminal Disclosure Act 2008  
Dog Control Act 1996  
Domestic Violence Act 1995  
Electricity Act 1992  
Employment Relations Act 2000  
Fair Trading Act 1986  
Fees and Travelling Allowances Act 1951  
Fencing Act 1978  
Fencing of Swimming Pools Act 1987  
Financial Reporting Act 1993  
Food Act 1981  
Forest and Rural Fires Act 1977  
Gambling Act 2003  
Goods and Services Tax Act 1985  
Hazardous Substances and New Organisms Act 1996  
Health Act 1956  
Health and Safety in Employment Act 1992  
Historic Places Act 1993  
Holidays Act 2003  
Human Rights Act 1993  
Income Tax Act 2007  
Immigration Act 2009  
Impounding Act 1955  
Injury Prevention, Rehabilitation and Compensation Act 2001  
Land Act 1948  
Land Transport Act 1998  
Litter Act 1979  
Local Authorities (Members' Interests) Act 1968  
Local Electoral Act 2001  
Local Government Act 1974  
Local Government Act 2002  
Local Government (Rating) Act 2002  
Local Government Official Information and Meetings Act 1987  
Machinery Act 1950  
Minimum Wage Act 1983  
Ombudsman Act 1975  
Parental Leave and Employment Protection Act 1987  
Privacy Act 1993  
Prostitution Reform Act 2003  
Public Bodies Contracts Act 1959  
Public Records Act 2005  
Public Works Act 1981

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Racing Act 2003  
Railways Act 2005  
Rating Valuations Act 1998  
Rates Rebate Act 1973  
Reserves Act 1977  
Residential Tenancies Act 1986  
Resource Management Act 1991  
Road User Charges Act 1977  
Sale of Liquor Act 1989  
Secret Commissions Act 1910  
Securities Act 1978  
Smoke-free Environments Act 1990  
Transport Act 1962  
Unsolicited Electronic Messages Act 2007  
Wages Protection Act 1983  
Waste Minimisation Act 2008

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Legislation relevant to the conduct of members (Note: These Acts are available in electronic format at the Council's Public Library).

### **LOCAL GOVERNMENT ACT 2002 (extracts)**

#### **10 Purpose of Local Government**

The purpose of local government is:

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future.

#### **14 Principles Relating to Local Authorities**

- (1) In performing its role, a local authority must act in accordance with the following principles:
  - (a) a local authority should:
    - (i) conduct its business in an open, transparent, and democratically accountable manner; and
    - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:
  - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
  - (c) when making a decision, a local authority should take account of—
    - (i) the diversity of the community, and the community's interests, within its district or region; and
    - (ii) the interests of future as well as current communities; and
    - (iii) the likely impact of any decision on each aspect of wellbeing referred to in section 10:
  - (d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:
  - (e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and
  - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
    - (fa) a local authority should periodically –
      - (i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and
      - (ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and

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- (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
  - (h) in taking a sustainable development approach, a local authority should take into account:
    - (i) the social, economic, and cultural well-being of people and communities; and
    - (ii) the need to maintain and enhance the quality of the environment; and
    - (iii) the reasonably foreseeable needs of future generations.
- (2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

### **39 Governance Principles**

A local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of members, is clear and understood by members and the community; and
- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and
- (d) a local authority should be a good employer; and
- (e) a local authority should ensure that the relationship between members and management of the local authority is effective and understood.

### **40 Local Governance Statements**

- (1) A local authority must prepare and make publicly available, following the triennial general election of members, a local governance statement that includes information on -
- (a) the functions, responsibilities, and activities of the local authority; and
  - (b) any local legislation that confers powers on the local authority; and
    - (ba) the bylaws of the local authority, including for each bylaw, its title, a general description of it, when it was made, and, if applicable, the date of its last review under section 158 or 159; and

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- (c) the electoral system and the opportunity to change it; and
  - (d) representation arrangements, including the option of establishing Maori wards or constituencies, and the opportunity to change them; and
  - (e) members' roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and
  - (f) governance structures and processes, membership, and delegations; and
  - (g) meeting processes (with specific reference to the applicable provisions of the Local Government Official Information and Meetings Act 1987 and standing orders); and
  - (h) consultation policies; and
  - (i) policies for liaising with, and memoranda or agreements with, Maori; and
  - (j) the management structure and the relationship between management and elected members; and
  - (k) equal employment opportunities policy; and
  - (l) key approved planning and policy documents and the process for their development and review; and
  - (m) systems for public access to it and its elected members; and
  - (n) processes for requests for official information.
- (2) A local authority must comply with subsection (1) within 6 months after each triennial election of members of the local authority.
- (3) A local authority must update its governance statement as it considers appropriate.

### **41 Governing Bodies**

- (2) A territorial authority must have a governing body consisting of members and a mayor elected in accordance with the Local Electoral Act 2001.
- (2A) A governing body of a local authority is responsible and democratically accountable for the decision-making of the local authority.
- (3) A chairperson of a regional Council, or a mayor of a territorial authority, is a Justice of the Peace during the time that he or she holds the office of chairperson or mayor.
- (4) An employee of a local authority who is elected to be a member of the local authority's governing body must resign from his or her position as an employee of

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the local authority before taking up his or her position as a member of the local authority.

### **43 Certain Members Indemnified**

- (1) A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the Local Electoral Act 2001 or appointed by the local authority, for:
  - (a) costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and
  - (b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.
- (2) Subsection (1) does not apply to a member's liability for a loss under Section 46.
- (3) To avoid doubt, a local authority may not indemnify a director of a council-controlled organisation for any liability arising from that director's acts or omissions in relation to that council-controlled organisation.

### **44 Report by Auditor-General on Loss Incurred by Local Authority**

- (1) For the purposes of this section and sections 45 and 46, a local authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the local authority has not been fully compensated for the action or omission concerned:
  - (a) money belonging to, or administrable by, a local authority has been unlawfully expended; or
  - (b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
  - (c) a liability has been unlawfully incurred by the local authority; or
  - (d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.
- (2) If the Auditor-General is satisfied that a local authority has incurred a loss, the Auditor-General may make a report on the loss to the local authority, and may include in the report any recommendations in relation to the recovery of the loss or the prevention of further loss that the Auditor-General thinks fit.
- (3) The Auditor-General must send copies of the report to the Minister and every member of the local authority.

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### **45 Local Authority to Respond to Auditor-General**

- (1) On receipt of a report from the Auditor-General, the local authority must, within 28 days, respond in writing to the Auditor-General, and send a copy of the response to the Minister.
- (2) The local authority's response must:
  - (a) respond to each of the Auditor-General's recommendations; and
  - (b) include a statement as to what action, if any, the local authority intends to take in respect of the loss.
- (3) The Minister may extend the period of time within which the local authority must forward its response.
- (4) An individual member of the local authority may respond to the Auditor-General:
  - (a) by making a separate response to the Auditor-General, and sending a copy to the local authority and the Minister, within the time required for the local authority's response; or
  - (b) with the consent of the local authority, by incorporating that member's response in the local authority's response.
- (5) The local authority must, as soon as practicable after the expiry of the time for forwarding its response, table in a meeting of the local authority that is open to the public a copy of the Auditor-General's report, the local authority's response, and any response of an individual member of the local authority not incorporated in the local authority's response.

### **46 Members of Local Authority Liable for Loss**

- (1) If the Auditor-General has made a report on a loss to a local authority under section 44, then, without limiting any other person's liability for the loss, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.
- (2) If the members of the local authority or any other person or persons do not pay the amount of the loss to the Crown or the local authority within a reasonable time, the Crown may commence proceedings to recover the loss from any or all of those members.
- (3) Any amount recovered by the Crown under subsection (2), less all costs incurred by the Crown in respect of the recovery, must be paid by the Crown to the local authority concerned.
- (4) It is a defence to any proceedings under subsection (2) if the defendant proves that the act or failure to act resulting in the loss occurred:
  - (a) without the defendant's knowledge; or

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- (b) with the defendant's knowledge but against the defendant's protest made at or before the time when the loss occurred; or
- (c) contrary to the manner in which the defendant voted on the issue at a meeting of the local authority; or
- (d) in circumstances where, although being a party to the act or failure to act, the defendant acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any of the following persons:
  - (i) an employee of the local authority whom the defendant believed on reasonable grounds to be reliable and competent in relation to the matters concerned:
  - (ii) a professional adviser or expert in relation to matters that the defendant believed on reasonable grounds to be within the person's professional or expert competence.

### **47 Members May Be Required to Pay Costs of Proceeding in Certain Cases**

- (1) This section applies if, in a proceeding commenced by the Attorney-General, the local authority is:
  - (a) held to have:
    - (i) disposed of, or dealt with, any of its property wrongfully or illegally; or
    - (ii) applied its property to any unlawful purpose; or
    - (iii) permitted the reserves that it must manage to be used for purposes not authorised by law; or
  - (b) restrained from acting in the ways referred to in paragraph (a).
- (2) If subsection (1) applies, costs and other expenses arising out of the proceeding or incurred in doing the things to which the proceeding relates:
  - (a) must not be paid out of general revenues by the local authority; and
  - (b) must be paid, by order of the Court, by the members of the local authority who, by voting or otherwise, assented to the acts concerned.
- (3) The Court must not make an order under subsection (2) against a member of the local authority if the member proves that, in doing the act concerned:
  - (a) the member acted in good faith and in accordance with the written advice of the solicitor to the local authority; or
  - (b) the member acted honestly and reasonably and, having regard to all the circumstances of the case, the member ought fairly to be excused.

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### SCHEDULE 7 (LOCAL GOVERNMENT ACT 2002)

#### 1 Disqualification of Members

- (1) A person's office as a member of a local authority is vacated if the person, while holding office as a member of the local authority:
- (a) ceases to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993; or
  - (b) is convicted of an offence punishable by a term of imprisonment of 2 years or more.
- (2) If sub clause 1 (b) applies:
- (a) The disqualification does not take effect:
    - (i) until the expiration of the time for appealing against the conviction or decision; or
    - (ii) if there is an appeal against the conviction or decision, until the appeal is determined; and
  - (b) The person is deemed to have been granted leave of absence until the expiration of that time, and is not capable of acting as a member during that time, and is not capable of acting as a member during that time.
- (3) A person may not do an act as a member while disqualified under sub clause (1) or while on leave of absence under sub clause (2).

#### 15 Code of Conduct

- (1) A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.
- (2) The code of conduct must set out:
- (a) understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including:
    - (i) behaviour toward one another, staff, and the public; and
    - (ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that:
      - is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and
      - relates to the ability of the local authority to give effect to any provision of this Act; and
  - (b) a general explanation of:
    - (i) the Local Government Official Information and Meetings Act 1987; and
    - (ii) any other enactment or rule of law applicable to members.

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- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.
- (4) A member of a local authority must comply with the code of conduct of that local authority.
- (5) A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.
- (6) After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.
- (7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

### **LOCAL AUTHORITY (MEMBERS' INTERESTS) ACT 1968**

This Act regulates the circumstances where a member has a pecuniary interest in a matter before the Council.

#### **Contractual interests**

No person may be elected to a Council, or once elected remain a member, if the value of any contracts between the Council and that member exceed \$25,000 in any financial year. This prohibition applies to all forms of contract, including ongoing supply contracts and one-off contracts (including contracts for the sale of property by or to the Council). In the event of breach the member is automatically disqualified from office and may not seek a re-election at the by-election that follows. The member is however authorised to stand at the next triennial election. On a conviction for an offence the member may be fined up to \$200.

#### **Other pecuniary interests**

A member may not participate in the discussion or voting on a matter in which the member directly or indirectly has a pecuniary interest, except an interest in common with the public. If a member is convicted of a breach of this requirement then a fine of up to \$100 may be imposed and disqualification from office is automatic. A disqualified member may however stand for election at a by-election.

#### **Additional points**

- The interests covered by this Act extend to include interests held by the member's spouse, companies in which the member holds shares or is a director, other business structures or trusts in which the member has an interest. The word "spouse" is not defined in the statute, but the prudent course is to use this word in a modern i.e. domestic partner sense, a "spouse" ceases to be a spouse on separation.
- the Audit Office has an ability to grant exemptions on application. A retrospective exemption may be granted in respect of contractual arrangements but not in respect of other pecuniary interests.

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- The requirements of this Act are complex. It is strongly recommended that members familiarise themselves with the provisions of the Act. The publication by Audit New Zealand "Financial Conflicts of Interest of Members of Governing Bodies" published in September 2001 is a very useful starting point.

### **LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 ("LGOIMA")**

#### **Official Information**

LGOIMA contains rules relating to the disclosure of information held by a local authority to a member of the public on request. The underlying principle of the Act is that information should be made available unless there is good reason to withhold it. There are a number of grounds for withholding information, principally contained in s.7 of the Act.

The obligations of LGOIMA are binding on members and apply to the disclosure of information by a member in respect of any information held by that member (in his or her capacity as member) to a member of the public. It does not apply to the disclosure of information to the Council in accordance with the requirements of the Code of Conduct.

#### **Meetings**

LGOIMA also regulates and sets out the procedural requirements for meetings of local authorities (including territorial authorities), the publication of agenda, procedures for discussion with the public excluded and access by the public to the minutes of meetings.

### **SECRET COMMISSIONS ACT 1910**

It is unlawful for a 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 2 years, or fined up to \$1000, or both. (A conviction triggers the disqualification provisions in Clause 1 of Schedule 7 of the Act and will result in automatic disqualification of the member from office.

### **CRIMES ACT 1961**

It is unlawful for a 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.
- Use information gained in the course of the member's duties for monetary gain or advantage by the member.

These offences are punishable by a term of imprisonment of 7 years or more. Members convicted of these offences will also be automatically disqualified from office.

### **SECURITIES ACT 1978**

The Securities Act places members in the same position as company directors whenever Council offers shares in a company to the public. Members may be personally liable if

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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. (These circumstances will arise only very rarely, if ever).