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Part 1:

Purpose, objectives and expectations

Purpose

The Bay of Plenty Regional Council is a local authority under the Local Government Act (LGA) 2002. Section 15 of Schedule 7, Part 1 of the LGA requires a Local Authority to adopt a Code of Conduct; and, once adopted, all elected members are required to comply with the Code (Clause 15(4), Schedule 7 LGA).

This Code of Conduct sets out principles of good conduct and standards of behaviour expected of the elected members of the Bay of Plenty Regional Council, and is intended to provide guidance to members in exercising their roles, functions and duties as elected community representatives. The Code does not replace the obligations set out in the Local Government Act, the Local Government Official Information and Meetings Act 1987, any other relevant Acts and Council Standing Orders.

Decision-making in relation to Code of Conduct

Council has developed this code as required under the LGA. This code may be amended or replaced at a meeting of the full Council, provided that the motion to amend or replace receives a vote in support of not less than 75% of the members present. The Code of Conduct cannot be revoked without replacement.

Objectives

- To enhance the effectiveness of the Council as an autonomous local authority with statutory responsibility for good local governance of the Bay of Plenty region;
- To ensure the expected conduct of members is clear and understood by members, management and the community;
- To enhance the credibility, transparency and accountability of Council.

Definition of governance

The Office of the Controller and Auditor-General (OAG) in its 2016 report *“Reflections from our audits: Governance and accountability”* defines governance as:

“The systems and processes for leading and guiding an organisation. It is about the arrangements and practices that allow an entity to set its direction and manage its operations to achieve its outcomes and to fulfil its accountability obligations”.

The Local Government New Zealand Know How Guide to Governance (March 2003) gives the following definition of governance:

“Governance is the means for collective action in society, responding to and guiding change that is beyond the capacity of private action... It enables values to be realised... Governance involves the notion of a collective voice, an avenue for resolving questions of competing priorities and determining the public interest”.

The governance model under the LGA is representative democracy. The community elects individuals to make judgements on behalf of the community about what will promote community well-being. Although the model is one of representative democracy, there are strong elements of citizen participation. There are three elements to governance under the LGA:

- Representing the community;
- Setting policy;
- Monitoring and review.

Governance principles

- Good governance requires a clear distinction between the role of governance and the role of management. Clear roles and responsibilities make differing interests transparent and foster effective decision-making.

- Effective relationships based on trust and mutual respect is essential for good governance.
- Governance practices need to support accountability – good governance encourages and results in good accountability which enhances public trust.
- Strategic direction-setting and having a clear strategic purpose are fundamental to effective governance.
- Good governance sets the tone, shapes the culture and demonstrates the desired values and ethics of the organisation.
- **Personal judgement:** Members will be open to other points of view and listen to what others have to say, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions. Members must approach issues with an open mind and without the occurrence or appearance of predetermination or bias.
- **Respect for others:** Members will treat everyone with respect and respect other individual's points of view, opinions, beliefs, and rights. This includes being courteous and approachable; not engaging in aggressive, offensive, abusive or bullying behaviour and not making personal attacks. Members will promote equality by not discriminating unlawfully against any person; and will respect the impartiality and integrity of Council staff.

Expectation of councillors

Governance expectations

- **Duty to uphold the law:** Members should uphold the law and, on all occasions, act in accordance with the trust the public places in them.
- **Public interest:** Members must serve the interests of the region as a whole. Once elected, their primary duty is to the interests of the entire region, not the constituency that elected them.
- **Objectivity:** Members must make decisions on merit, including decisions on appointments, awarding contracts or recommending individuals for rewards or benefits; and should never improperly confer an advantage or disadvantage on any one person, area or organisation.
- **Accountability:** Members will be responsible for their decisions and actions and act in an open and transparent manner, and should be prepared to explain the reasoning behind their actions and decisions. They will ensure resources are used prudently and for their intended purpose.

Expectations of behaviour

- **Honesty and integrity:** Members should demonstrate honesty and integrity at all times. This includes being fair and consistent in dealings with others; following through on commitments made; avoiding the occurrence or appearance of improper behaviour; ensuring statements and actions are not likely to mislead or deceive, and behaving in accordance with the trust placed in them by the public.

Expectations of work practices

- **Care and diligence:** Members will act with reasonable care and diligence in the performance of their duties by balancing individual interests against community interests; giving proper consideration to the business of the Council and ensuring that they are informed on the matters requiring decision; giving careful and responsible consideration to the allocation of resources; and monitoring the effectiveness of Council policies.
- **Organisational vision and values:** Members will acknowledge Council's vision of "*Thriving together – mō te taiao, mō ngā tāngata*" and support staff to demonstrate the organisational values of *Trust, Integrity, Courage, Mana, Kotahi and Whānau* in the performance of their work.
- **Meetings:** Members will attend and participate in all meetings, workshops and any appropriate training opportunities provided; will be prepared for meetings having read relevant material; and will contribute positively to discussion by being open to constructive feedback and not interrupting when other members are expressing their point of view. Members will behave in an orderly, civil manner at all times during a meeting, will follow all directions from the Chair and comply with Council Standing Orders.

- **Legal function:** Members will perform all judicial or quasi-judicial aspects of their work in accordance with natural justice principles; and will undertake all roles and responsibilities in compliance with relevant legislation and Council policies and procedures.

Oath of office

Under the Local Government Act 2002 Councillors are sworn into office after an election. Each Councillor must make and sign the following declaration;

I, _____ declare that I will faithfully and impartially and according to the best of my skill and judgement execute and perform, in the best interests of the Bay of Plenty Region, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Bay of Plenty Regional Council by virtue of the Local Government Act 2002, The Local Government Official Information and Meetings Act 1987 or any other Act.

Ko ahau ko, _____ tēnei e kī whakapuaki nei, e ngākau pono nei, e tōkeke ana hoki, otira, e ai ki ōku mohiotanga katoa, me ōku mana whakawātanga katoa, e mahia ai e au ngā mahi katoa, hei painga taumata mā Te Kaunihera ā-rohe mā Te Moana a Toi te Huatahi, i raro i ngā mana, me ngā ihi, me ngā wehi, kua whakareia mai nei ki au, kua mema nei au ki Te Kaunihera ā-rohe mā Te Moana a Toi te Huatahi, i raro hoki i ngā ture Kāwanatanga a Takiwā o te tau 2002, te ture Kāwanatanga a Takiwā mā ngā Rongo Kātīpa, me ngā Huihuinga o te tau 1987, i raro rānei i ētehi ture kē atu.

Part 2

Roles and responsibilities

This part of the Code describes the roles and responsibilities of elected members, the additional roles of the Chairperson and Deputy Chairperson, and the role of the Chief Executive.

Elected members

Elected members, acting as the Council, are responsible for:

- representing the interests of the residents and ratepayers of the Bay of Plenty Regional Council;
- the development and adoption of Council policy;
- monitoring the performance of the Council against its stated objectives and policies;
- prudent stewardship of council resources; and
- employment of the Chief Executive.

Any individual elected member has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

Elected members, as individuals, shall take responsibility for:

- advising their apologies, leaves of absence and other commitments that impact on the Council's business; and
- appropriate behaviour in public forums or meetings which maintains Council's public standing.

Chairperson

The Chairperson is elected by the elected members of Council at the first meeting following each triennial election. As one of the elected members, the Chairperson shares the same responsibilities as other elected members of Council.

In addition to this, the Chairperson has the following roles:

- The Chairperson is the presiding elected member at Council meetings and is responsible for ensuring the orderly

conduct of business during meetings (as determined in standing orders);

- As an advocate for Council's policies, the Chairperson is expected to undertake high level engagement and leadership of discussions with leaders of other authorities, organisations and community groups. The Chairperson cannot commit the Council to any formal position that the Council has yet to decide on.
- The Chairperson is the formal spokesperson for Council and is the first point of contact for media.
- The Chairperson may at times be an advocate on behalf of the regional community, which may involve promoting the community and representing its interests through stakeholder engagement activities.
- The Chairperson is the ceremonial head of Council; and also provides leadership and guidance to other elected members.

If a complaint is made in relation to the Chairperson, then the Deputy Chairperson will determine the process and all relevant actions normally undertaken by the Chairperson will be undertaken by the Deputy Chairperson.

Deputy Chairperson

The Deputy Chairperson must be elected by the elected members of Council, at the first meeting of the Council following the triennial election. The Deputy Chairperson exercises the same roles as other elected members, and if the Chairperson is absent or incapacitated, the Deputy Chairperson must perform all of the responsibilities and duties, and may exercise the powers of the Chairperson as outlined above.

Committee Chairperson

The Council may create one or more Committees of Council. A Committee Chairperson presides over all meetings of the

Committee, ensuring that the Committee acts within the powers delegated by Council and as set out in the Committee's Terms of Reference. Committee Chairpersons may be called on to act as an official spokesperson for the Council on a particular issue related to the business of the Committee. They may be removed from office by resolution of Council.

Chief Executive

The Chief Executive is appointed by the Council in accordance with section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. The Chief Executive is the employer of all Council staff.

Meeting attendance

Elected members are expected to attend and participate in all Council, Standing Committee and Subcommittee meetings to which they have been appointed, unless they have submitted an apology or obtained a leave of absence in advance for non-attendance.

All Councillors are expected to attend all workshops and those hearings that are held as part of the consultation process on Council documents, such as the Annual Plan and Long Term Plan.

Councillors may be selected to sit in a decision-making capacity on hearings held as part of Resource Management Act (RMA) processes. Section 39B of the RMA requires members of RMA hearing panels to be accredited; accreditation is attained by Councillors completing the Ministry for the Environment's *Making Good Decisions Programme*.

Meeting decisions and collective responsibility

Councils are corporate bodies that have the authority to make decisions and set direction in the best long-term interests of the community. While members have the right to speak and express their opinions at a Council or Committee meeting, they do not have any specific authority to act or make decisions as an individual. Once a matter has been determined at a Council meeting, it becomes the Council's position until lawfully changed at a subsequent Council meeting; and all members must respect that position.

The Chairperson can make statements that accurately report Council decisions; Committee Chairpersons can make statements that accurately report their Committee's decisions or factual statements about Council or Committee decisions.

If a Council decision is contrary to a particular member's point of view, that person's public statements should make it clear that they represent a personal or minority view.

Proper use of position

Members must not abuse their position and will not:

- solicit, demand or request any gift or benefit because of their position;
- claim expenses which are not legitimate;
- fail to declare gifts or benefit given to them because of their position;
- use information and/or Council resources for any purpose which is not directly related to Council business, including use of Council resources to promote personal or business interests.

Confidentiality

During the course of Council business, members will receive, or have the ability to access, information that may be classified as confidential. This includes information received at meetings which are closed to the public or information that is identified as confidential. Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied. Failure to do so may expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Confidential information includes information that staff has judged there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 ('LGOIMA'). This will often be information that is either commercially sensitive or is personal to a particular individual. The Chief Executive of the Council is responsible for the release of information under LGOIMA.

Members should be aware that electronic communications are public information and may be requested under LGOIMA; this includes emails and also communications made through social media platforms.

Part 3:

Relationships

Other elected members

Elected members will 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;
- promote teamwork;
- focus on issues rather than personalities;
- respect the right of different points of view to be heard; and
- avoid aggressive, offensive or abusive conduct.

Staff

Effective performance of Council requires a high level of co-operation and mutual respect between elected members and staff. Elected members will:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss, instruct, direct or censure an employee;
- treat all employees with courtesy and respect;
- observe any guidelines that the Chief Executive puts in place regarding contact with employees;
- not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers without approval from the Chief Executive;

- not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee; and
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Chairperson or the Deputy Chairperson.

Community

Elected members must act in a manner that encourages and values community involvement in local democracy. Elected members will:

- deal with members of the community in a fair, equitable and honest manner;
- be available to listen and respond to community concerns, but avoid making commitments they cannot deliver;
- strive to understand different points of view within the community;
- make decisions that affect the community only after considering all relevant interests, arriving at balanced and sustainable decisions; and
- refer all operational and management queries to the Chief Executive or appropriate staff member.

Part 4:

Operations

Interaction with the public

Residents are often unaware of the distinction between governance and management and believe individual councillors can issue instructions to Council staff. As a result Councillors are likely to receive telephone calls at all hours and to be contacted at any time by residents who want to make a suggestion, share information or air complaints.

When interacting with members of the public, elected members should:

- show a willingness to listen;
- represent Council's collective position accurately, i.e. personal opinions should be clearly stated as such and should not undermine Council, other members, staff or existing policies or decisions;
- remember that individual elected members have no personal power or legal authority to commit the Council or Committee to any policy, course of action or expenditure.

In the first instance members of the public should call Council toll free between the hours of 8am to 5pm, Monday to Friday (except public holidays) at telephone 0800 884 880 or visit our website www.boprc.govt.nz.

Interaction with media

The media plays an important role in informing members of the public of the opinions of members on issues of public interest. However, members should clearly distinguish in any statement they make to the media between their personal views and views that they purport to express on behalf of Council as a whole or in their role of Councillor. Only the Chairperson and the Chief Executive can speak to the media on behalf of the Council, unless a member has been expressly delegated that authority for a particular topic.

Representation of Council on other bodies

From time to time other organisations ask Council to appoint a representative to their governing body; usually this will be some form of committee or community trust. There are implications in the Local Government Act 2002 for appointing elected members to other organisations. This arises from Part 1 of the Act, which creates two types of organisations for which the Council has governance responsibilities. These are:

- Council organisations – organisations in which the Council controls any proportion of the voting rights, or rights to appoint directors.
- Council-controlled organisations – organisations in which the Council controls 50 percent or more of the voting rights, or has the right to appoint 50 percent or more of the directors.

Accordingly the outside organisations to which the Council has appointed elected members are deemed to be "Council organisations". The Council is obliged, in respect of Council organisations, to have a policy on appointment and remuneration of directors and must monitor the performance of that body.

When representing the Council, members will:

- provide an accurate and fair representation of Council decisions;
- respect Council decisions and policy directions; and
- behave in a manner that maintains and enhances the image of Council.

Procedures for raising operational matters or queries

From time to time elected members may become aware of operational matters that need action, or questions requiring an answer; the member should direct their query to the Chief Executive Officer or relevant General Manager.

Members' expenses

The Chairman and members are able to claim for the reimbursement of expenses incurred while undertaking his/her duties. All claims must adhere to:

- *the Local Government Elected Members (2014/15) (Certain Local Authorities) Determination 2014;*
- *the Policy on Elected and Appointed Members' Allowances and Recovery of Expenses 2013-2016; and*
- *the BOPRC Sensitive Expenditure Policy for Elected Members, June 2014.*

The Chairman's expense claims must be approved by the Chief Executive, the Deputy Chairman, and the Chairman of the Audit and Risk Committee. Other members' expense claims are approved by an appropriate Council Officer with delegated authority.

Procedures for raising policy matters

There are two options for a member to raise a policy matter for consideration by the Council:

- the member can liaise with the Chairman or with the Chair of the appropriate committee. If it is agreed that the matter is one for political decision, then the Chairman or Chair will request the Chief Executive to have the appropriate report compiled.
- the member can follow the procedure for submitting a Notice of Motion. The procedure is outlined in the Council's Standing Orders.

Employment of the Chief Executive

The Council is responsible for hiring the Chief Executive; the Chief Executive is responsible for hiring all other Council staff on behalf of the Council. The terms of the Chief Executive's employment are contained within the employment contract between the Chief Executive and the Council.

When the Council reviews the Chief Executive's performance, it is effectively reviewing the performance of the whole organisation. The Council's expectations of the Chief Executive should be expressed as written policies, statements and performance targets.

Any concerns about the performance of the Chief Executive must be addressed in accordance with the procedures contained in the Chief Executive's Employment Contract.

Responding to ratepayer approaches regarding litigation against Council

This section aims to provide elected members with guidelines on how to deal with approaches on matters of litigation. When responding to approaches from residents or the media on such matters, elected members should:

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

Elected members should take care not to:

- Admit liability.
- Settle or promise any payment.
- Do anything that may prejudice the insurer's 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 and is not permitted under the conditions of indemnity to admit liability or to settle a claim. Therefore members need to be aware that when engaging in conversations 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 insurer's later defence of the claim in litigation.

Access to information

Elected members are provided with the information they need to support their governance role and decision-making. If a member feels that insufficient information has been provided on which to make a decision, the member should feel free to request the Chief Executive to provide that information.

The Chief Executive, in considering whether to provide that information, has to consider whether or not the information is relevant to the governance role of the member. The "need to know" principle is also applied. If the information requested is not relevant to the governance role of the elected member, then the provisions of the Local Government Official Information and Meetings Act 1987 are applied and the status of the elected member is the same as any member of the public.

In the event that the Chief Executive declines to provide the information, the member can choose to apply to the Office of the Ombudsman for a review of that decision.

Another option is to raise the matter as a Notice of Motion to gain the support of the Council in releasing the information.

Use of meeting rooms

From time to time members may ask to use the meeting rooms and associated equipment in the Council offices. Generally meeting rooms are not available for meetings other than meetings sponsored directly by the Council.

Dress code

Elected members should maintain an appropriate standard of dress at Committee and Council meetings. 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.

Part 5:

Conflicts of interest

Purpose

This section of the Code of Conduct examines the concept of conflict of interest, explains the importance of identifying and managing conflicts of interest and outlines the expectations and requirements for elected members to identify, disclose and manage their interests.

This section is intended to be a guide for members, not a definitive statement on management of conflicts of interest. Members should also familiarise themselves with best practice for this issue (the Good Practice Guide issued by the Office of the Controller and Auditor-General “*Managing conflicts of interest: Guidance for public entities*” is recommended) and should seek independent legal advice if they have specific concerns.

Definition

A conflict of interest arises where a member’s duties or responsibilities to the Council as a public entity could be affected or perceived to be affected by some other interest or duty the member may have.

The other interest or duty may arise from:

- a member’s own business or financial affairs;
- holding particular roles or positions;
- personal or business relationships; and
- a member’s words or actions which may indicate bias or having a closed mind.

Conflicts of interest cannot always be avoided and can arise without anyone being at fault – how they are identified and managed determines whether they will be a problem. Members need to manage their interests transparently and in a way that does not compromise a decision being made by Council, and must maintain a clear separation between personal interests and duties as elected members.

If conflicts of interest are not identified and managed properly, the risk for Council is grounds being provided for judicial review of Council’s decisions and decision-making process.

Principles

Council acknowledges that managing conflicts of interest is a fundamental part of good public sector administration required to ensure fairness in decision-making, and that rules and expectations around conflicts of interest arise from both legal and ethical requirements:

- The Local Government Act 2002 s14 (1) (a) requires local authorities “*to conduct business in an open, transparent, and democratically accountable manner*”.
- Administrative law principles require that Council must make its decisions “*in accordance with law, fairly and reasonably*”.
- Public ethical expectations are that local authorities conduct business with integrity, honesty, transparency, openness, independence, good faith and in service to the public.

Conflicts of interest generally fall into two categories: pecuniary (financial) and non-pecuniary.

Pecuniary

A pecuniary interest may be direct or indirect and may involve either a financial loss or a financial gain to an elected member or the member’s family. A conflict of interest or bias is presumed to exist when a pecuniary interest is identified.

This type of conflict generally falls under the requirements of the Local Authorities (Members’ Interests) Act 1968. This Act has two specific rules regulating members’ financial interests: members cannot enter into contracts with their local authority worth more than \$25,000 in a financial year; or participate in matters before their local authority in which they have a pecuniary interest other than an interest in common with the public.

A summary of the provisions of the Act are included in this Code; however members should make sure they are familiar with the requirements of the Act. The 2007 document "Guidance for members of local authorities about the law on conflicts of interest" by the Office of the Auditor-General may be useful.

Non-pecuniary

A non-pecuniary interest may also give rise to actual bias or a perception of bias or predetermination for an elected member. A non-financial conflict of interest could arise from a personal or family relationship, involvement with a non-profit or community organisation, or from conduct or beliefs that indicate prejudice or predetermination of viewpoint.

Common law principles require Council decision-making to be procedurally fair and that any decision made is free of predetermination or bias; members must carry out their official role fairly and free from prejudice. The process must not only **be** free from any actual bias, it must also **appear** to be free from any bias – the test is *"whether a fair minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the matter concerned"*.

Examples

Types of interests that could create a conflict (either pecuniary or non-pecuniary) for a member include:

- Holding another public office;
- Being an employee, advisor, director or partner of another business or organisation;
- Pursuing a business opportunity;
- Membership of a club, society or association;
- An existing professional or legal obligation such as being a trustee;
- Owning or occupying land;
- Owning shares or other investment or having a beneficial interest in a trust;
- Owning a debt;
- Receiving gifts, hospitality or other benefits;
- 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.

Management

Conflicts of interest are inevitable and can arise at any time, but do not necessarily have to become problems if managed appropriately. Members are responsible for arranging their affairs to prevent conflicts arising where possible and to manage their interests in a transparent way that does not compromise any decision being made by Council.

There are three important steps for Council and members to take in managing members' interests and any possible conflicts:

- Recognising there is a conflict of interest;
- Disclosing the conflict of interest; and
- Managing the risks associated with the conflict of interest.

Identification and disclosure

This is primarily the responsibility of the member. The member will always have the most complete knowledge of their own affairs and will usually be in the best position to realise when there is a connection between Council business and another personal interest. The member is obliged to identify a conflict and disclose it to Council in a timely and effective manner. Members are advised to take a precautionary approach to disclosure of interest; it is safer and more transparent to disclose an interest even if uncertain a conflict exists.

Interests register

To assist with disclosure, Council maintains an interests register, which lists all members' interests currently identified. Members are requested to complete an interest disclosure form on election or appointment and are then prompted to review and update their interests every six months.

Disclosure at meetings

If a member is aware that a topic due to be discussed at a Council meeting raises the potential of a conflict of interest, the member must make a disclosure to the chairperson in advance of the meeting so an appropriate course of action can be decided.

If a matter in which a member has an interest arises during a meeting, the member should declare that interest before the matter is discussed and the meeting will decide if any other management measures are required. The declaration and any measures taken will be recorded in the minutes of the meeting.

Declaration of conflict of interest is included as a standard item in Council agenda and the possibility of a conflict arising should be considered seriously. Any new interests disclosed at a meeting will also be added to the Council's interest register.

Management measures

Declaring a conflict is not always sufficient management action; Council needs to evaluate how an outside observer might reasonably perceive the situation and carefully consider if further action is necessary to avoid or mitigate the effects of the conflict of interest.

Apart from where management measures are specified in legislation, the Council has the primary responsibility to determine the appropriate next steps to manage a conflict. Deciding how to manage a conflict requires careful judgement and an assessment of seriousness based on directness of connection between interests and significance of effect.

Council's expectation is that generally, where a conflict arises, a member should not take part in the Council's decision-making process around that matter. However, there are a range of actions available to manage a conflict, depending on severity, including:

- Taking no further action – transparency of declaration sufficient;
- Seeking agreement from all affected parties to the member's continued involvement;
- Seeking a formal exemption to allow participation e.g. from the Office of the Auditor-General;
- Requiring additional oversight or review of the member;
- Withdrawal from discussion and/or voting on a particular item of business at a meeting, either by leaving the table and joining the public or by leaving the room entirely;
- Exclusion from a committee or working group dealing with the issue;

- Re-assignment of tasks or duties;
- Agreement not to do something;
- Restricting access to information or withholding confidential information;
- Relinquishing the private interest; and
- Resignation or dismissal from one or other position, role or entity.

There are no definitive guidelines or rules regarding identifying and managing a non-pecuniary conflict of interest as each situation, and the risk posed by the conflict, must be assessed on its own particular facts. The Good Practice Guide issued by the Office of the Controller and Auditor-General "*Managing conflicts of interest: Guidance for public entities*" contains conflict management scenarios which provide useful examples.

Members' pecuniary interests are largely managed under the Local Authorities (Members' Interests) Act 1968, which specifies the measures to be taken in the event of a conflict. Section 6(5) states that a member must:

- Declare the interest to the meeting;
- Abstain from discussion and voting; and
- Ensure the disclosure and abstention is recorded in the minutes of the meeting.
- A member may apply to the Auditor-General for an exemption from the requirements of the Act and to participate in the decision-making process even where a pecuniary interest exists.

Consequences

For a member, breaching a statutory rule regarding conflict of interest such as in the Local Authorities (Members' Interests) Act, can lead to a criminal conviction, loss of office or a fine. Mismanaging a non-pecuniary conflict could potentially open up a member to civil liability if there has been a breach of duty.

For the Council, if a conflict of interest gives rise to actual or apparent bias or predetermination, then the Council's decision-making process could become subject to judicial review and a decision declared invalid. The risk, delay and expense of defending a decision against any type of legal challenge can be significant.

For both the Council and members, there is a risk of public criticism and damage to reputation.

Summary of types of interests and risks

Type of conflict	Relevant law	Legal risks
<p>Does the member or member's spouse, partner or business stand to gain or lose financially from the Council's decision?</p> <p>If yes – pecuniary conflict.</p>	<p>Local Authorities (Members' Interests) Act 1968</p>	<p>For the member: Criminal conviction; loss of office; fine.</p> <p>For the Council: Judicial review.</p>
<p>Is the decision likely to affect someone the member is closely associated with or an organisation they belong to?</p> <p>If yes, is there a risk the member will be seen to be biased because of that association?</p> <p>If yes – non-pecuniary conflict.</p>	<p>Common law</p>	<p>For the member: No personal liability.</p> <p>For the Council: Judicial review.</p>
<p>Is the decision likely to affect another organisation the member has a role in?</p> <p>If yes, is there a risk the member will be seen to be acting in the interests of the other organisation? Is there a risk the member might breach obligations to either organisation such as confidentiality or loyalty?</p> <p>If yes – conflict of roles.</p>	<p>Common law</p>	<p>For the member: Potential civil liability if breach of duty owed.</p> <p>For the Council: Judicial review.</p>
<p>Is there a risk that people will think the member has made up their mind about a matter before they have listened fairly to all arguments?</p> <p>If yes – predetermination.</p>	<p>Common law</p>	<p>For the member: No personal liability.</p> <p>For the Council: Judicial review.</p>

Part 6:

Compliance

While a breach of the Code of Conduct does not constitute an offence under the Local Government Act 2002, Clause 15 (4) of Schedule 7 of the Act states that, “a member of a local authority must comply with the Code of Conduct of that local authority”.

Where a member is found to have breached this code of conduct, Council will consider what sanctions are available and whether they should be applied.

Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, schedule 7, clause 15). 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 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 breach complained about,

that the roles 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 this Code. This requires, 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 this Code must be made in writing and forwarded to the Chairman or Chief Executive. On receipt of a complaint, the Chairman and Chief Executive must conduct a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.

Investigation, advice and decision

The process, following receipt of a complaint, will follow the steps outlined in Appendix A.

Materiality

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the Council into disrepute or, if not addressed, reflect adversely on another member of the Council.

Penalties and actions

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

Material breaches

In the case of material breaches of this Code, the Council may require one or more of the following:

- 1 a letter of censure to the member,
- 2 a request (made either privately or publicly) for an apology,
- 3 a vote of no confidence in the member,
- 4 removal of certain Council-funded privileges (such as attendance at conferences),
- 5 restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed),
- 6 limitation on any dealings with Council staff so that they are confined to the Chief Executive only,
- 7 suspension from committees or other bodies, or
- 8 an invitation for the member to consider resigning from the Council,
- 9 removal of Council owned devices where misuse has occurred

Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- 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 s 44 (2) 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).

Appendix A:

Process for the determination and investigation of complaints

Step 1: Chairman/Chief Executive receives complaint

On receipt of a complaint, the Chairman¹ and Chief Executive will advise the respondent and the complainant that a complaint has been received and inform them of the process that will be followed.

The Chairman and Chief Executive will then assess whether:

- 1 the complaint is frivolous or without substance and should be dismissed,
- 2 the complaint is outside the scope of the Code and should be redirected to another agency or process,
- 3 the complaint is non-material, and
- 4 the complaint is material and a full investigation is required.

In making the assessment, the Chairman and Chief Executive may make whatever initial inquiry is necessary to determine the appropriate course of action. The Chairman and Chief Executive has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

Step 2: Chairman and Chief Executive make preliminary assessment

In making a preliminary assessment the Chairman or Chief Executive will:

- 1 where it is determined that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the decision;
- 2 in cases where it is found that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.
- 3 in cases where there is doubt as to the nature of the breach the complaint will be refer to an independent investigator, approved by the Chairman, in conjunction with the Chief Executive.

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

If the subject of a complaint is found to be non-material the Chairman and the Chief Executive may recommend a course of action appropriate to the breach, such as:

- (a) that the respondent seek guidance from the Chairman or other such person as directed,
- (b) that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The Chairman or Chief Executive will advise both the complainant and the respondent of the 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.

¹ Where the complaint relates to the Chairman, or if the Chairman is the Complainant, then the Deputy Chair will replace the Chairman.

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

If under the preliminary assessment, the breach is found to be material or “a case to be answered”, the Chairman and Chief Executive will refer the complaint to an investigator. The Chairman or Chief Executive will also:

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

inform the 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.

If the subject of a complaint is found to be material the investigator will inform the Chairman and 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:

- (a) consult with the complainant, respondent and any affected parties,
- (b) consult with the complainant, respondent and any affected parties,
- (c) undertake discussions with relevant parties, and/or
- (d) refer to any relevant documents or information.

On receipt of the investigator’s report, the Chief Executive will prepare a report for the Council 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

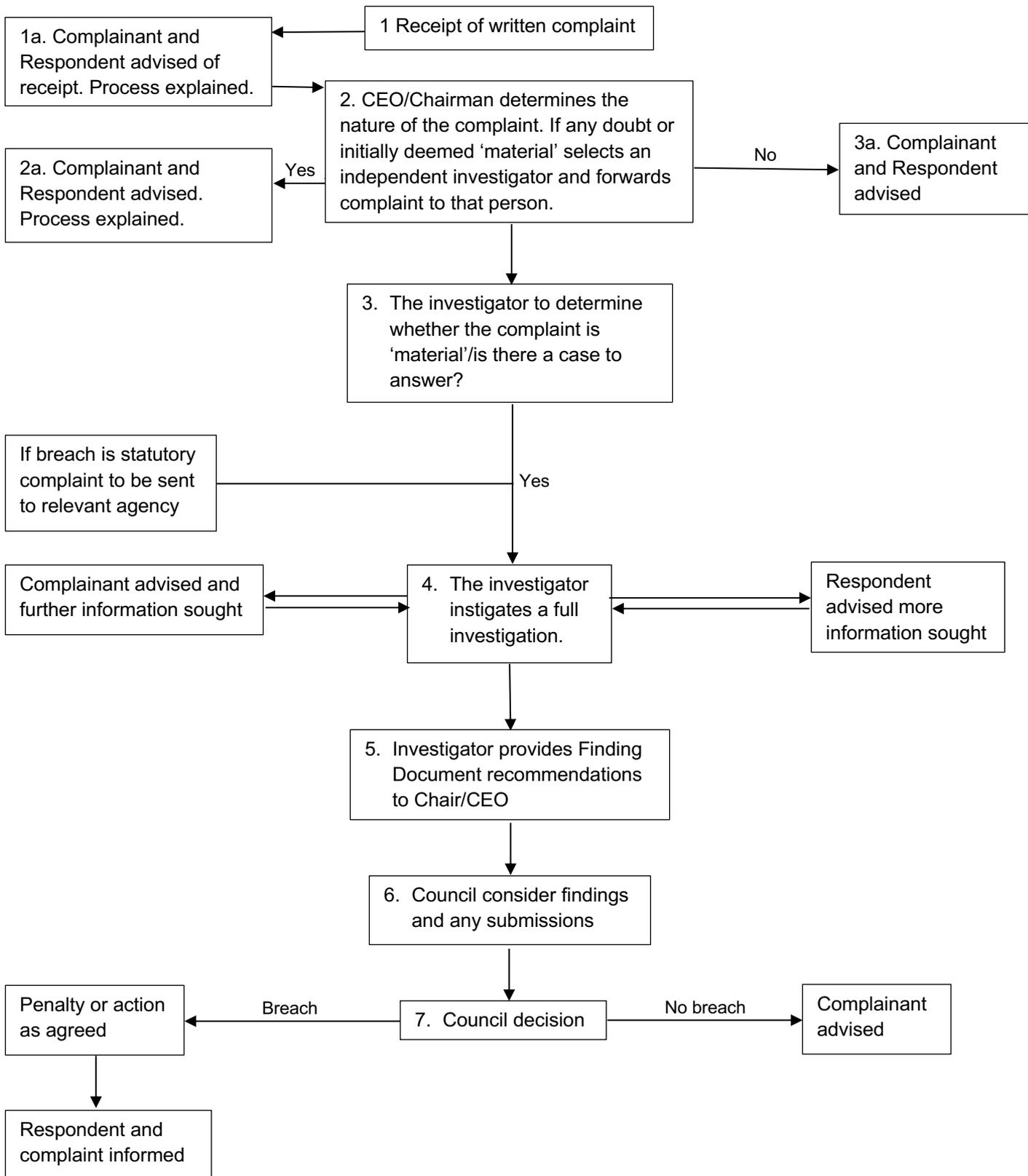
Depending upon the nature of the complaint and alleged breach, the investigator’s report may be considered by the full Council, excluding the complainant, respondent and any other ‘interested’ members.

The Council will consider the Chief Executive’s report in open meeting, except where the alleged breach concerns matters, that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator’s report, the Council will give the member against whom the complaint has been made, an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in Part 6 Penalties and actions of this Code.

Complaints Procedure – Flow Diagram



Disqualification from office

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 of the local authority from four consecutive ordinary meetings of the local authority (Schedule 7, Part 1, Clause 5(1)(d) Local Government Act 2002).

Declaration of bankruptcy

In terms of Paragraph 15(5) of Schedule 7 of the Local Government Act 2002, Council is required to consider whether it must require a member/newly elected member to declare whether or not they are an undischarged bankrupt. When a person is declared bankrupt it can raise questions about the soundness of that person's financial management skills, and their judgement in general. Therefore whenever an elected member is declared bankrupt, they must notify the Chairman and Council of this as soon as practicable after being declared bankrupt.

Relationship between the Code of Conduct and other legislation

This Code of Conduct does not apply to the extent that specific legislation governs a matter. Specific legislation includes:

Local Government Act 2002

Much of the work of members is done at meetings of the Council and its committees and subcommittees. Schedule 7, Clause 27 of this Act sets out the requirement for a local authority to adopt a set of Standing Orders which provide for the standard of conduct expected of a member at its meetings and those of its committees. Schedule 7, Clause 16 provides that a member must abide by the Standing Orders, and may be required to leave a meeting if a ruling is made under the Standing Orders.

Schedule 7 Clauses 6 to 13 of this Act provide for the determination of the remuneration of Elected Members by the Remuneration Authority (RA). The RA, from time to time, sets the overall pool from which remuneration is paid and approves specific annual and, where appropriate, daily or hourly rates, and approves expense reimbursement and vehicle mileage rules. When seeking reimbursement of such expenses, members are required to provide a signed declaration as to compliance with the relevant rules and policies.

Local Authorities (Members' Interests) Act 1968

Section 6 of this legislation sets out the restriction that a member of a local authority or committee is not to discuss or vote on any question in which they have a (direct or indirect) pecuniary interest, other than an interest in common with the public. Indirect interest may be through a spouse, partner, or company. "Pecuniary interest" is not defined, but the Audit Office test is:

"whether, if the matter were dealt with in a particular way, discussing or voting on the matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned".²

If an elected member or a member of a committee has a pecuniary or non-pecuniary interest, they are required to complete and submit a declaration listing specific personal interests. Council passed a resolution on 15 October 2009 that:

1 Each member of the Council completes an Interests Register form and returns the completed form to Group Manger, Corporate Services at a specified time.

² Controller and Auditor-General (2010) Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968 – Good practice guide, Part 3 – p.19.

- 2 *A 'nil' return form must be submitted by those Councillors who have not interests to declare.*
- 3 *Each return is compiled to complete an Interests Register and that this becomes an appendix to the Councils Code of Conduct document.*
- 4 *The Interests Register is reviewed every six months.*

Section 3 of this Act provides for restrictions on contracts between the Council and its Elected Members. An Elected Member may be disqualified from office who (directly or indirectly) is concerned or interested in contracts with the council under which the total payments made, or to be made, by or on behalf of the council exceed \$25,000 in any financial year. However, a number of exceptions and exemptions exist. As well, approval to exceed the \$25,000 limit can be sought on behalf of the Elected Member, before the event, by the Council from the Audit Office. The Audit Office has limited ability to grant retrospective approval.

In these matters the onus is on the Elected Member. The Audit Office may be contacted for guidance. If there is any doubt over the nature of their interest in a matter, the Elected Member is encouraged to discuss the situation with the Chief Executive, prior to the issue being discussed or voted upon. For further information refer to the 'Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968'.

Local Government Official Information and Meetings Act 1987

This Act obliges Councils to make official information available unless there is good reason to withhold it. It provides for:

- access by members of the public to information held by the Council, including information on themselves;
- transparency and accountability in decision-making through providing for public awareness of, and admission to, meetings of local authorities (unless there is good reason to restrict public admission);
- the protection of official information held by local authorities and the deliberations of local authorities where it is in the public interest, and/or commercial or personal privacy needs to be preserved; and
- procedures for the achievement of these purposes.

The grounds for withholding information are generally set out in section 7 of this Act. The Act is binding on Elected Members and applies to disclosures made to the public by them of any information held in their capacity as an Elected Member. It does not limit disclosures to the Council in accordance with the requirements of this Code of Conduct.

Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 (the Act) is a significant change to health and safety legislation and introduces the concepts of Officers and safety due diligence. The Act came into force on 4 April 2016 and is a new way of approaching health and safety in New Zealand. The Act is designed to:

- Ensure everyone has a role to play.
- Makes everyone's responsibilities clear.
- Focuses on managing risk.
- Requires those who create the risk to control the risk.
- Requires businesses to engage with their workers and enable them to participate on an ongoing basis.
- One of the most significant changes is the introduction of the role of Officer and the requirement for Officers to conduct due diligence duties.

What is an Officer and what do they need to do?

For the Bay of Plenty Regional Council the role of Officer includes members (elected and appointed), the Chair and the Chief Executive.

Officers must ensure the business is meeting its health and safety responsibilities by conducting due diligence to ensure the business meets its duties under the Act. To do this Officers must take reasonable steps to:

- Keep up to date knowledge of health and safety.
- Understand the operations and risks of the business.
- Ensure and check that their business has appropriate resources and processes for health and safety.
- Elected members of a Council are not required to exercise due diligence over a Council Controlled Organisation (CCO) providing they are not Officer of that CCO e.g. a member will be an Officer of a CCO if they are on the Board of the CCO.

Bay of Plenty Regional Council and elected members as Officers under the Act

Bay of Plenty Regional Council works with elected members to ensure Bay of Plenty Regional Council and its Officers can meet their responsibilities under the Act.

Liabilities of Officers under the Act

The Act provides for enforcement measures to be taken for a breach of the Act. Enforcement measures can carry fines, which need to be paid in some cases by the organisation and in some cases personally by the Officer.

Elected members as Officers have an exemption under the Act from some of these offences (Sections 47-49). Offences that elected members as Officers can be liable for include offences such as a failure to comply with an improvement notice; insurance is not available to cover the cost of such fines.

Secret Commissions Act 1910

Under this Act it is unlawful for an Elected 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 2 years, or be fined up to \$1000, or both. A conviction would trigger the ouster provisions (Clause 1 of Schedule 7 of the Local Government Act 2002) and result in the removal of the Elected Member from office.

Crimes Act 1961

Under this Act it is unlawful for an Elected Member 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 their duties for their, or another person's, monetary gain or advantage.

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

Securities Act 1978

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.

Public Audit Act 2001

This Act makes Councils and elected members individually accountable for:

- any unlawful expenditure;
- any liability incurred illegally; or
- when a Council "wilfully or negligently" fails to collect money it is entitled to receive.

The Office of the Controller and Auditor General is authorised to jointly and severally surcharge every member of a local authority for offences under this Act. If any elected member is bankrupted, then that member's share of the charge is divided amongst the other members.

Availability of the Code of Conduct

This Code is available for inspection at the Council's offices during ordinary business hours and at Council's website www.envbop.govt.nz.

Copies will also be provided to interested members of the community upon request and the Code is described in the Council's Governance Statement.

