

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). 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
- non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations
- demonstrated bias, that is the circumstances 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

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 neither the matter nor the decision. In a case of doubt a Member should withdraw. Members withdrawing:

- must leave the Community Board table and, as a minimum, sit in the public gallery
- should (in protection of their own and the Community Board interests) ensure that their actions are appropriately minuted.

The issue of conflicts of interest is a difficult one for Members. Commonly issues may arise on short notice. Matters which seem straightforward at the outset can also commonly become less clear as a matter 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.

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Voluntary Register of Interests

To assist in the fulfilment of obligations in relation to conflicts of interest Members are encouraged to make a written statement, on a voluntary basis, within three months of the date of election or within three months of the date of adoption of this code, and annually thereafter on or before 31 January in each year, of the nature of their interests which may give rise to conflicts of interest. The matters to be covered by the Member's statement are details of:

- interests in land, whether as owner or tenant, identified by street address or, if there is no street address, by legal description
- investments in company's partnerships or joint ventures. Members are not however required to disclose details of shareholdings in publicly listed companies if those shares are held by the Member through a managed fund in respect of which the Member has no control over share trading decisions and/or the details of those shareholdings are not reasonably ascertainable by the Member
- bankers or any other person firm or organisation with whom the Member has invested money or other assets
- occupation, employment status and name of employer and, if self-employed, the name of the Member's business
- membership of community organisations, for example clubs, environmental protection organisations, churches or charitable bodies
- appointments (except appointments made by the Council) such as appointments to a Health Board, University Council or government agency
- all of the above in respect of the Member's domestic partner
- Travel Undertaken in the previous 12 months where the Member's expenses were defrayed, in whole, or in part, by a 'third' party (other than by way of a gift from a Members partner or a relative)
- Gifts received by the Member in the previous 12 months valued at \$NZ 150 or more from any person (other than a gift from the Member's partner or a relative).

When making this statement the Member must treat any interest in land or investment held by a trust of which the Member is a trustee or beneficiary or a company of which the Member is a director or shareholder the same manner as if that interest was held by the Member.

A worked example of a Statement of Interest is attached as Appendix 3.

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)
- not solicit, demand, or request any gift, reward or benefit by virtue of their position
- notify the Chief Executive, on a voluntary basis, if any gifts are accepted by a Member, in his or her capacity as a Member. If the gift exceeds \$150.00 in value, the Chief Executive will immediately make an appropriate entry in the Member's register of interests.

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Standing Orders

Members must abide by the Standing Orders adopted by the Community Board.

Community Boards Conduct Review Board

Compliance with the code, by Members, will be monitored by the Community Boards Conduct Review Board "(the Review Board)". This Review Board will consist of four Community Board Members, one nominated by each of the four Waitakere City Community Boards; namely Henderson Community Board, Massey Community Board, New Lynn Community Board and Waitakere Community Board, together with one person who is neither an elected member nor a staff member and who has dispute resolution skills (subject to the availability of adequate resources to meet any costs incurred in respect of the independent member).

All alleged breaches of the code must be reported to the Review Board in writing, make a specific allegation of a breach of the code, and provide corroborating evidence. The Review Board may also investigate an alleged breach on its own motion. The Review Board will investigate the alleged breach and may prepare a report for consideration by the respective Community Board. Before beginning any investigation, the Review Board will notify the Member in writing of the complaint and afford the Member a full opportunity to respond to the complaint. The Community Board concerned, will consider any report in open meeting of the Community Board, except where the alleged breach relates to the misuse of confidential information, or which would otherwise be exempt from public disclosure under LGOIMA.

For the avoidance of doubt, the Review Board is not a committee or a subcommittee of the Council, or of the Community Board, to which the requirements of LGOIMA apply. The Board shall enquire into and deliberate upon, all complaints and own motion investigations, in private.

Consequences of a breach

Where an alleged breach of the code is reported to the Community Board by the Conduct Review Board and the Community Board finds, by a majority, that the Member has breached the code then the Community Board may apply such sanctions as are lawfully within its power.

The form of any penalty that the Community Board 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 other bodies as representative of the Community Board
- removal of any special status of the member, such as the position of Deputy Chairperson or Chairperson of a Subcommittee
- if it appears that a breach of the code also constitutes a statutory offence then the Community Board may refer the circumstances of that breach to the relevant body for further action

A resolution by the Community Board 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. With the exception only of an allegation 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, except as provided for in Appeals Procedure, below.

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Appeals Procedure

Any Member aggrieved by any recommendation made by the Community Boards Conduct Review Board, or the decision of any Community Board relating to any report submitted by the Community Boards Conduct Review Board, may appeal to the Executive of the Auckland Region and Far North Community Boards Association Inc. After considering the appeal, the Regional Executive may uphold or set aside the original decision of the respective Community Board on the matter in question.

All

APPENDIX A

Legislation that confers obligations or responsibilities on local authorities:

Airport Authorities Act 1966
Animals Act 1967
Animals Law Reform Act 1989
Arts Council of New Zealand Toi Aotearoa Act 1994
Auctioneers Act 1928
Biosecurity Act 1993
Building Act 1991
Building Research Levy Act 1969
Burial and Cremation Act 1964
Bylaws Act 1910
Children's Health Camp Act 1972
Citizenship Act 1977
Civil Aviation Act 1990
Civil Defence Act 1983
Civil List Act 1979
Commerce Act 1986
Companies Act 1993
Conservation Act 1987
Consumer Guarantees and Fair Trading Act
Copyright Act 1994
Counties Insurance Empowering Act 1941
Dangerous Goods Act 1974
Disabled Persons Community Welfare Act 1975
District Courts Act 1947
Dog Control Act 1996
Dog Control and Hydatids Act 1982
Earthquake Commissions Act 1993
Electricity Act 1992
Employment Relations Act 2000
Energy Companies Act 1992
Engineers Registration Act 1924
Fencing Act 1978
Fencing and Swimming Pools Act 1987
Financial Reporting Act 1993
Fire Services Act 1975
Food Act 1981
Foreshore and Seabed Endowment Revesting Act 1991
Forest and Rural Fires Act 1977
Gas Act 1992
Goods and Services Tax Act 1985

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Harbours Act 1950
Health Act 1956
Health and Safety in Employment Act 1992
Higher Salaries Commission Act 1977
Historic Places Act 1993
Housing Act 1955
Housing Corporation Act 1974
Human Rights Act 1993
Income Tax Act 1994
Impounding Act 1955
Insolvency Act 1967
Interpretation Act 1999
Land Act 1948
Land Drainage Act 1908
Land Settlement Promotion and Land Acquisition Act 1952
Land Transfer Act 1952
Land Transport Act 1993
Libraries and Mechanics' Institute Act 1908
Litter Act 1979
Local Authorities (Members' Interests) Act 1968
Local Electoral Act 2001
Local Government (Rating) Act 2002
Local Government Official Information and Meetings Act 1987
Machinery Act 1950
Meat Act 1981
Minimum Wage Act 1983
Municipal Insurance Act 1960
National Provident Fund Restructuring Act 1990
New Zealand Bill of Rights Act 1990
New Zealand Geographic Board Act 1946
New Zealand Library Association Act 1939
New Zealand Walkways Act 1990
Noxious Plants Act 1978
Oaths and Declarations Act 1957
Ombudsmen Act 1975
Pawnbrokers Act 1908
Petroleum Act 1937
Plumbers and Gasfitters and Drainlayers Act 1976
Privacy Act 1993
Property Law Act 1952
Prostitution Reform Act 2003
Public Works Act 1981
Queen Elizabeth the Second National Trust Act 1977

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