

Updated 7 January 2020

3. Elected members

Information relevant to elected members' individual responsibilities rather than their collective role.

3.1 Role and responsibilities

- a. Elected members have different roles and responsibilities. They are elected to represent communities in their area and make decisions for and on behalf of those communities. In practice, this can include dealing with queries and issues from constituents, exploring the impacts of a particular proposal, developing policy and plans, reviewing council decisions, working with other elected members, chairing committees, representing the council's view to central government, engaging with the public, iwi, other stakeholders, making decisions on the use of council land, and agreeing on budgets and council priorities.
- b. Members are active within the communities they represent. This includes belonging to community organisations and owning property. When making decisions as elected members, they must take care that they are acting, and are perceived to be acting, in the interests of their community and the public, not their own interests.

3.2 Conduct, roles and personal interests

3.2.1 Elected Members Conduct

- a. There are expectations of how elected members act, and interact, with other members, staff and the public when they are carrying out their duties. An important part of this is balancing duties and personal interests to minimise or avoid any conflicts of interest.
- b. This section describes the relationship and behavioural expectations of elected members, as set out in the council's Code of Conduct. Conflicts of interest between elected member's duties and personal interests, as set out in legislation and in case law, are discussed in detail in Section 10: How council decisions are made.
- c. Elected members have two key roles, and at times they will need to carefully balance these:
 - **as a member of the Governing Body or local board** - making decisions on

a range of matters

- **as a representative of the community** - elected members represent Auckland's diverse communities as a region and in local board areas.
- d. A ward councillor is required to act in the interests of the whole region while at the same time representing their ward. Where there is a conflict, the councillor is required to act in the best interests of the region, which is what councillors promise to do when they make their statutory declarations. A similar situation exists for a local board member who is elected on a subdivision basis.
- e. It can be difficult to separate a member's public and private roles. For example, members may be asked for their views on a council decision when out with family, or they may wish to sign a petition in their individual capacity. Members should refer to the Council's Code of Conduct for guidance.

3.2.2 Code of Conduct

- a. The Local Government Act 2002 requires the council to adopt a Code of Conduct that publicly sets out expectations for members [1]. Any changes require the approval of 75% or more of the Governing Body's members [2].
- b. The Code applies to all Governing Body members and all local board members [3]. It sets out the following:
- **Objectives** - to enhance the council's effectiveness in meeting its statutory responsibility for good local government, its credibility and accountability within the community, and mutual trust, respect and tolerance between all elected members, as well as elected members and management [4].
 - **Key principles** - honesty and integrity, public interest, declaring private interests, impartiality, accountability, openness, respect, duty to uphold the law, stewardship and leadership [5].
 - **Roles and responsibilities for members, staff, Governing Body, local boards**
 - The relationships and expected behaviours of members.
 - The council's conflict of interest policy.
 - Compliance, including the process for any Code of Conduct complaint.
 - A short explanation of the Local Government Official Information and Meetings Act 1987, and other Acts [6].

3.2.3 Conduct - mandatory relationships and behaviours

- a. Section 7 of the Code explains the expectations for members' relationships with the public, each other and staff, as well as their behaviour, i.e. dealing with confidential information, conflicts of interest and ethics.
- b. It is mandatory for members to comply with these relationship and behavioural requirements. A complaint can be lodged if a member breaches these obligations (see below for this process).
- c. The required relationships and behaviours are:
 - **Relationships with other members** - members are required to conduct their dealing with each other in ways that maintain public confidence, is open and honest, focuses on issues not personalities, and avoids aggressive, offensive or abusive content [1]. It is acknowledged that political behaviour and sparring can be robust; these standards are not to be applied lightly and the usual political style of debating is unlikely to be treated as a Code of Conduct breach. As a general rule, disrespect towards another member at a meeting should be dealt with under Standing Orders at the time.
 - **Relationships with the chief executive and staff** - members are required to operate effectively and there is an expectation for members and staff to show a high level of cooperation and mutual respect. The Code sets out the desired behaviours, including the requirement for members to treat employees with courtesy and respect, and not compromising an employee's impartiality [2]. Failure to observe these behaviours may compromise the council's obligations as a good employer and may expose the organisation to civil litigation and audit sanctions.
 - **Relationship with the community** - the Code acknowledges that effective decision-making depends on productive relationships between elected members and the community. Members are required to accord individual citizens (i.e. members of the public) respect; this includes listening to and deliberating on their views [3].
 - **Relations between the Governing Body and local board** - members are required to show mutual respect and work collaboratively as one council. The relationship between the Governing Body and local boards is outside of the Code's purview [4].
 - **Contact with the media** - the Code sets out rules for media contact, including who can be the first point of contact when representing the council [5]. The Code also acknowledges that members are free to express personal views, provided they follow the principles set out in the Code [6].

- **Confidential information** - members often receive confidential information to help their decision-making. The Code clearly states that members must not disclose or use confidential information for any purpose other than originally intended [7].
- **Conflicts of interest** - the Code includes the council's conflicts of interest policy. A conflict of interest occurs when a member's personal interest interferes with their public duty. The Code identifies two types, financial and non-financial. Members are required to follow the conflict of interest policy and make full and complete annual declarations of interest [8].
- **Ethics** - members are expected to help the council promote high standards of ethical conduct by claiming only for legitimate expenses, not influencing or attempting to influence any council employees to take actions that may benefit the member, member's family or business interests, not using any council resources for person business, and not soliciting or requesting any gift or reward because of their position [9].
- **Other conduct matters** - members are required to attend meetings, dress in a way that does not discredit the council, and not to use council resources in a way that gives an electoral advantage [10]. Members are also required to notify the chief executive as soon as possible if they are declared bankrupt [11].
- **Auditor-General guidelines and case studies** - as might be expected, conflicts of interest and the behaviour of elected members have been the subject of a number of complaints to the Auditor-General. For further information, on how conflicts of interest arise, see the Illustrative case studies on the Auditor-General's website.

3.2.4 Breaching the code

- a. The Code of Conduct sets out the process for dealing with complaints about a member's conduct by another member, a member of the public, or staff. The complaint must be in writing, make a specific allegation and provide corroborating evidence [1].
- b. If the complaint comes from a member of the public, it is up to the chief executive to decide whether the complaint constitutes a breach. In making this decision, the chief executive may consult a convenor of the Independent Conduct Review Panel. Complaints that are frivolous, vexatious or adequately resolved may be dismissed.

- c. The process allows for the complainant to provide further information (if required) and for the member to advise the chief executive of any steps taken to resolve the complaint. The complaint will be referred to the Independent Conduct Review Panel if the parties are unable to resolve the matter.
- d. The panel is required to establish fair procedures and make a recommendation on the complaint. The Governing Body or local board (depending on the member's role) may censure, remove from representative bodies or dismiss the member as chair if the recommendation relates to a non-statutory matter. The meeting will decide if the report is to be kept confidential for privacy, or other, reasons. The member and complainant don't take part in the process.
- e. If the matter does deal with statutory provisions, then resolving the matter requires a different process. For example, a member may be liable under the Local Authorities (Members' Interests) Act if the complaint involves a financial conflict of interest. The Governing Body or local board may refer the issue to the appropriate entity; this does not prevent the police, the Auditor-General or the public taking independent steps.

3.2.5 Declaration when taking office

- f. All elected members must make an oral declaration when taking office.
- g. "I, AB, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, the best interests of (*region or district*), the powers, authorities, and duties vested in, or imposed upon, me as (*mayor, chairperson or member*) of the (*local authority*) by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act" [1].
- h. This public declaration signals the high standards to which elected members are to be held. They are charged with making decisions in the best interests of the entire community, being the whole Auckland region for Governing Body members and the whole local board area for local board members.

3.2.6 Register of declarations

- a. In the interests of transparency and accountability, the Code of Conduct requires all elected members to make a full and complete declaration of their interests as at 30 June each year. These are recorded in the council's Register of Interests.
- b. Each declaration should set out the member's interests, including company directorships and controlling interests, shares and bonds in companies and business entities, any employment, beneficial interests in trusts, membership of community organisations, appointments to outside entities, interests in land, debtors, creditors,

travel costs paid by third parties, gifts (including hospitality) received over \$300 in value and discharged debts over \$300 paid for by other parties (existing limit - refer to policy). For further information, on registered members interests, see Elected member declarations on Auckland Council's website.

3.2.7 Access to confidential information

- a. One of the foundations of local government is openness and transparency. All information held by council is public by default [1]. Confidential information is information that is able to be legally withheld from request by the public. It is information which could cause harm to the council or other parties if made public and elected members have an obligation to keep confidential any confidential information to which they have access.
- b. In the course of their duty, elected members are entitled to have access to all necessary information to allow them to properly discharge their duties and carry out their role. This can include confidential information [2]. This is referred to as the “need to know” principle. This information is generally provided through council reports, staff answering questions and providing advice at meetings, and informally in workshop briefings.
- c. Elected members are obliged (under the Code of Conduct) to ensure any confidential information provided to them is kept confidential. Failure to observe this requirement may expose the council to litigation. It may also inhibit information flow and undermine confidence in the council. For example, releasing information about an individual could result in a Privacy Act breach, while releasing commercially sensitive information around commercial negotiations could result in the council being disadvantaged in those negotiations.

3.2.8 Relationship with the chief executive and council staff

- a. The Local Government Act requires the Governing Body to appoint a chief executive and cannot delegate the decision to a smaller group. The chief executive is the only employee directly appointed by the Governing Body. All other employees are appointed by the chief executive [1].
- b. Elected members need to be aware that their position can come across to junior staff members as having more power than they individually possess [2]. As governors, elected members should interact mainly with senior staff or designated staff providing them with advice or support.
- c. A healthy and productive relationship between governance and management, and between decision-making by elected representatives and operational activity, is

essential to an authority's effectiveness. Problems in this relationship can have a significant effect on all levels of the organisation.

3.2.9 Relative responsibilities of the chief executive and elected members

- a. The chief executive, who is appointed and employed by the Governing Body [1], is responsible for employing council staff [2], implementing Governing Body and local board decisions, and providing advice to the Governing Body and local boards [3].
- b. Elected members and the chief executive need to have a clear and shared understanding of their different roles and responsibilities. In broad terms, the elected members have a governance role and the chief executive is responsible for managing the organisation and implementing governance decisions. However, in practice it is not always easy to identify where the line falls.
- c. The Auditor-General has commented on the difference between local authority governance and operational roles:

"[Having a] representational role and connection with the community is part of the role of an elected member, but so is the responsibility for steering and governing a substantial organisation with complex responsibilities."

"The governance role is about maintaining the broad view. It is about setting direction and policy, making significant decisions, testing advice to ensure that it is sound, monitoring the activities of management to ensure that what is being implemented will achieve the objectives, keeping an eye on risks of all kinds, and safeguarding the overall quality of the relationship between a council and its community. When members of a governing body become too involved in operational matters, the risk is that nobody maintains the broad view for the organisation and checks that the overall direction is still appropriate..." [4]

- d. Elected members should not play too limited a role or leave too much to managers, nor should they get too involved in day-to-day managing. Both situations create risks.

3.2.10 Gifts, fees, endorsements and outside activities

- a. Elected members may receive gifts in their political or personal capacity, but need to be mindful of the perception that accepting a gift can bring. They must declare every gift received of more than NZ\$300 (this is the current limit), excluding gifts from family members. The Code of Conduct states that where they are part of the decision-making process, they should not accept any gifts from parties tendering for contracts or taking part in a regulatory process.
- b. Key principles for elected members to consider before accepting a gift include:

- their declaration on taking office to act in the best interests of Tāmaki Makaurau as a whole or their local board area [1]
 - possible public perception that receiving the gift might affect their ability to approach decisions fairly and without a conflict of interest
 - that Auckland Council needs to “conduct its business in an open, transparent, and democratically accountable manner” [2]
- c. Public confidence in elected members’ ability to carry out their duties impartially will be enhanced if information on gifts, fees, endorsements and outside activities received or undertaken by elected members is readily available. This is generally provided through:
- an elected member declaring an interest in a particular agenda item at a business meeting, withdrawing from the debating table and taking no part in the discussion or voting on an item
 - the annual declaration of interests (see Elected member declarations on Auckland Council's website [3])
- d. The perception of a conflict of interest is as important as the reality when it comes to gifts, fees, endorsements and outside activities. A perceived conflict of interest undermines the public’s confidence in elected members and their ability to make decisions lawfully and fairly.
- e. The laws around bribes and inappropriate gifts or rewards are covered in the Secret Commissions Act 1910 and the Crimes Act 1961, and are listed in the Code of Conduct.

3.2.11 Remuneration

- a. All elected members are expected to invest time in their governance and constituency roles in serving the Auckland public and are paid for their role.
- b. Salaries are set by the Remuneration Authority [1]. This independent body determines remuneration, allowances and expenses payable to:
- the mayor and the minimum allowable remuneration for members of the Governing Body
 - chairs and members of local boards [2].
- c. As a result of a comprehensive review in 2018, a governance remuneration pool was established to reflect the size of the total governance roles of councils rather than the number of councillors. The pool is the total amount that must be paid in remuneration to councillors. The pool does not include remuneration for the mayor and local board members.

- d. Auckland Council is required to make recommendations to the Remuneration Authority on how the governance remuneration pool should be allocated between the councillors. The recommendations must include a rate for base councillor remuneration and rates for positions of additional responsibility that the governing body wishes to recognise.

- e. The Remuneration Authority considers the mayor, other Governing Body members and local board chairs to be full-time. All other local board members are part-time. The Remuneration Authority determination and elected members' remuneration for the current year can be viewed on Auckland Council's [website](#).

- f. In making its determination, the Remuneration Authority needs to consider a number of factors [3]. These are:
- fair relativity with comparable positions
 - the need to be fair to the individuals whose pay is being set and to ratepayers
 - the requirements of the job
 - the need to recruit and retain competent individuals
 - any prevailing adverse economic conditions (which may lead the authority to set remuneration at a rate lower than might otherwise have been the case)
 - the requirement to minimise the potential for types of remuneration to distort behaviour [4].
- g. For further information on the Remuneration Authority's local government process, see Remuneration Setting for Local Authorities on the Remuneration Authority's [website](#).
- h. Remuneration is set annually and includes:
- salaries (of differing roles)
 - vehicle mileage allowance when travelling on council business
 - travel time allowance (for journeys over one hour duration)
 - communications allowance (when using their own equipment).
 - childcare allowance

In the years between the assessments of the 'governance pool', all local government elected member remuneration will be changed on an annual basis using the same public sector equivalent formula that the Remuneration Authority uses for parliamentary remuneration.

- i. The Remuneration Authority also requires Auckland Council to develop and adopt an expense and allowance policy for elected members. This needs to set out policies and procedures around issues such as:
- principles and scope
 - allowances and benefits
 - travel rules and processes
 - land and sea transport
 - air travel
 - accommodation

- travel expenses
- professional development programmes and conferences
- catering, hospitality and entertainment
- approval processes

- breach of expense and reimbursement rules.
- j. Under current legislation, elected members are treated as self-employed and are subject to withholding tax, responsible for paying their own ACC levies and do not receive council contributions to Kiwisaver or superannuation schemes.

3.2.12 Provision of offices, technology and support staff

- a. The whole organisation supports the governance structure as appropriate. In addition, there is dedicated support provided for the mayor, Governing Body and local boards.
- b. The provision of offices and support staff differs depending on an elected member's role. The mayor has an office and staff working directly to support their statutory and constituency roles. See Section 4.9: The Office of the Mayor for more information. The Local Government (Auckland Council) Act 2009 sets a minimum level of the council's overall budget to fund the mayoral office (at least 0.2% of the budget).
- c. Each Governing Body member is provided with an office and office equipment, along with support and politically neutral advice for their governance and constituency roles through the councillor support advisor team.
- d. The support provided for local board members varies. The local board chair will usually be supplied with an office and equipment, while local board members have a shared work space. Support for local board chairs and local board members are provided by each board's local board services team.
- e. Elected members are also offered an integrated technology solution to help them in their roles and minimise the use of paper [1].
- f. All information on council-supplied technology remains the council's property and is subject to the Local Government Official Information and Meetings Act (LGOIMA). Council information held by an elected member on a privately-owned device may still be subject to LGOIMA, depending on the facts. See Section 12: Official Information for more information.
- g. The policy prohibits elected members using council supplied technology for electioneering purposes. The technology is also not available for use by an elected member's family or friends.
- h. Elected members may supply their own technology provided it is compatible with council's systems and standards. Members can claim an allowance, depending on the personal technology used.

3.2.13 Engaging with the public

- a. Traditionally members interact with the public in two ways:
 - **Governance decision-making** - many governance decisions require consideration of the views of those affected or interested in the decision. This can include giving the public the opportunity to comment on council proposals and ensuring those comments are carefully considered prior to a decision being taken. More detail on how the council consults its communities can be found in the Significance and Engagement Policy. See also Section 10: How council decisions are made.
 - **Constituency role** - members of the public are free to contact an elected member with questions, queries or complaints. Depending on the issue, the public could contact a local board member, a ward councillor or the mayor. In general, if an issue is purely local it is best to approach a local board member; if an issue is of regional consequence it may be more appropriate to approach a ward councillor or the mayor.
- b. Elected members should act in a manner that encourages and values community involvement in local democracy [1].
- c. The mayor has an important statutory role in leading council engagement with the public. In addition to the role shared with all other elected members, the mayor is charged with ensuring there is effective engagement between the council and the people of Tāmaki Makaurau (including those too young to vote, of different ethnicities, cultures, interests and location) [2].
- d. Local boards have a statutory role to engage with their communities as part of their role to make decisions on local matters, provide local leadership and support strong local communities [3].

3.2.14 Protocols around media and speeches

- a. The media naturally has a keen interest in many aspects of council decision-making and service delivery. To fulfill its role it needs access to accurate, timely information. All elected members will receive approaches from the media for comment and should follow the Code of Conduct's protocols [1]:

- The mayor is the first point of contact for the official view on any issue. When the mayor is absent matters will be referred to the deputy mayor or relevant committee chair. The mayor can also refer matters to the relevant committee or local board chairs.
 - The local board chair (or their delegate) may comment on behalf of the local board in relation to local matters where decision-making, public consultation or advocacy is the responsibility of the local board.
 - No other member of the Governing Body or local board may comment on behalf of the council unless they have first obtained the approval of the mayor or local board chair (depending on whether the matter relates to the Governing Body or a local board). See Auckland Council's media policy.
- b. Elected members may choose to respond immediately to media inquiries and assistance from the council's communications team is available to ensure that media releases and responses are accurate. The News Media Policy outlines the support available [2].
- c. Elected members can express a personal view to the media at any time. It should be made clear, however, that:
- they are not representing the views of the Governing Body or local board
 - statements do not represent the majority view if they are contrary to a Governing Body or local board decision or council policy
 - any media comment made in a personal capacity must also observe other requirements of the Code of Conduct, e.g. not disclosing confidential or legally privileged information, compromising the impartiality or integrity of staff, or denigrating other elected members
- d. Comments made by members in their personal capacity are not covered by the qualified privilege of those made during business meetings.
- e. Help is available to elected members speaking on behalf of the council. This support may include drafting speeches or speaking notes. These will present information in a fair and politically neutral manner. Council communications assistance will not promote or be perceived to promote a sitting member's re-election prospects or personal profile.

3.2.15 Pre-election period

- a. Members standing for re-election will, in effect, wear two hats during the pre-election period, i.e. three months prior to local body elections - firstly, in their role as an

elected member making decisions on behalf of their community and, secondly, their personal capacity as a candidate running for elected office.

- b. Elected members must comply with the council's Local Government Election Year Policy for Elected Members [1]. This requires that elected members do not use council resources for electioneering and ensures that a clear distinction is drawn between their two roles. Further information can be found in Section 16: Representation and reorganisation.

3.3 Resignations and vacancies

3.3.1 Resignations

- a. Elected members are able to resign their office by notice in writing addressed and delivered to the chief executive. A resignation takes effect on the day on which it is delivered to the chief executive.
- b. If a member of the Governing Body or a local board resigns prior to the end of the term, an extraordinary vacancy arises. Section 117 of the Local Electoral Act 2001 (LEA) sets out the options and process for filling the vacancy or allowing the vacancy to remain until the end of the term.

3.3.2 Vacancy more than 12 months before the next triennial election

- a. If a vacancy occurs more than 12 months before the next local government triennial election, it must be filled by an election (by-election) under section 117(1) of the LEA. For further information see Section 17: Elections.
- b. The election must be held not later than 89 days after the date the electoral officer receives notice of the vacancy from the council's chief executive (section 120).
- c. If no-one is nominated for a by-election, the Governing Body or local board may (by resolution) fill the vacancy by appointment (section 117A).

3.3.3 Vacancy within 12 months of the next triennial election

- a. A vacancy can be filled by appointment or left vacant if it occurs within 12 months of the next local government triennial election [1]. The procedure is:
 - upon being made aware of the vacancy, the council's chief executive must immediately notify all remaining members of the Governing Body or local board concerned (section 117(2))
 - the Governing Body or local board must at its next ordinary meeting or, if that is not practical, at the subsequent ordinary meeting determine by resolution either

- i) that the vacancy will be filled by appointment by a person named in the resolution who is qualified to be elected as a member, or
 - ii) that the vacancy is not to be filled (section 117(3)).
- b. If the person named in a resolution is not available, the vacancy remains and the process begins again (section 117(4)).
- c. The Governing Body or local board must immediately give public notice of its decision if it resolves not to fill the vacancy (section 119).
- d. A vacancy in the office of mayor must be filled. See Section 4: The Mayor of Auckland for further information.

3.3.4 Appointment process

- a. It is up to the Governing Body or local board to determine the process for selecting an appointee as there is no statutory process. This may include calling for expressions of interest, determining reasonable criteria for any person who wishes to be considered for appointment, selecting an interview panel (which may be the entire Governing Body or local board), interviewing candidates, and deliberating before making a decision.
- b. As there is limited time before a resolution must be made under section 117(3), the Governing Body or local board may need to hold an extraordinary meeting to determine whether it wishes to begin an appointment process and how it will select the candidate.
- c. However, it is equally open for the Governing Body or local board to simply decide to appoint the next highest polling candidate in the relevant ward or local board area, or to adopt any other reasonable process for selecting the appointee. Democracy Services, Local Board Services and Legal Services are available to assist the Governing Body or local board determine an appropriate process.

Procedure following appointment

- a. The Governing Body or a local board must immediately give public notice of the resolution, and the appointment process or criteria if it fills a vacancy under section 117(3) or section 117A.
- b. The Governing Body or local board must confirm the appointment by resolution no later than 30 days after the date of this public notice. The appointed person is treated as having been elected to fill the vacancy on the date on which the resolution is made (section 118(2)).

3.4 Personal liability, insurance and qualified privilege

3.4.1 Personal liability

Indemnity of members

- a. Members of Auckland Council (including local board members [1] and appointees to council committees or other subordinate decision-making bodies) are indemnified by Auckland Council for the following [2]:
 - costs and damages for any civil liability, as long as the member was acting in good faith and in pursuance of the responsibilities or powers of Auckland Council (or relevant committee or other subordinate decision-making body)
 - costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member

Personal liability for losses incurred

- a. Elected members may be liable (jointly and separately) for the losses of Auckland Council where [3]:
 - council money has been unlawfully spent
 - an asset has been unlawfully sold or otherwise disposed of by the council
 - a liability has been unlawfully incurred by the council
 - the council has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.
- b. Members are only liable for such losses if the Auditor-General issues a report on those losses to the Minister of Local Government [4]. The Auditor-General has not issued a report on losses incurred by a local authority since the Local Government Act was enacted in 2002 (although the possibility has been considered) [5].
- c. If the Auditor-General issues such a report and members do not pay the amount of the loss to the Crown or to Auckland Council within a reasonable time, the Crown may take proceedings against any or all of the members to recover the losses [6]. Any amount recovered by the Crown is payable to Auckland Council (less any costs of recovery incurred by the Crown) [7].
- d. However, individual members are not liable if they prove the act (or failure to act) that resulted in the loss occurred [8]:
 - without their knowledge
 - with their knowledge but against their protests made at or before the time when the loss occurred

- contrary to the manner in which they voted on the issue
 - in circumstances where they acted in good faith and in reliance on reports, information, or professional or expert advice given by
 - i) an Auckland Council employee whom they reasonably believed was reliable and competent in relation to the matters concerned
 - ii) a professional adviser or expert in relation to matters that they reasonably believed to be within the person's professional or expert competence.
- e. A local board member can be liable only in respect of a matter that is the responsibility of their local board [9].

Personal liability for costs

- a. Members may also be liable to pay the costs and expenses of a proceeding commenced by the Attorney-General, where Auckland Council is held to have disposed of or dealt with property wrongfully or illegally, applied its property to an unlawful purpose, or permitted the reserves it manages to be used for unlawful purposes [10].
- b. Such costs must be paid, by order of the court, by the members who, by voting or otherwise, agreed to the acts concerned [11].
- c. A member will not be liable where they prove that, in doing the act concerned, they [12]:
 - acted in good faith and in accordance with written legal advice from a lawyer acting for Auckland Council or
 - acted honestly and reasonably, and having regard to all the circumstances of the case, it would be fair for the member to be excused.

3.4.2 Insurance

- a. Elected members are included as an insured party under Auckland Council's various insurance policies. This means members are granted protection under the council's insurance cover when fulfilling their official roles.
- b. Some of the policies under which elected members are protected include:
 - Public liability insurance – elected members are indemnified against claims by a third party arising from personal injury and/or property damage.

- Professional indemnity insurance – elected members are indemnified against claims for breach of professional duty (legal duty of care owed by the elected member) arising out of a negligent act, error or omission in respect of a number of activities. This includes local authority meetings, resolutions arising from local authority meetings and any matter upon which the elected member has a statutory duty or power to provide information, advice or approval or perform any duties and arising out of such information advice, approval or performance.
- Business travel insurance – insurance cover in relation to overseas travel and travel within New Zealand involving more than a 50km radius (other than commuting).

3.4.3 Qualified privilege

- a. Auckland Council meetings must generally be held in public [1]. Therefore, in order to allow free and frank discussion, oral statements and matters published in meeting agendas and minutes supplied to members of the public are covered by qualified privilege [2].
- b. Qualified privilege is a legal defence to a claim of defamation. Qualified privilege allows certain people in a position of authority or trust to make statements or communicate or publish statements that would otherwise be considered defamatory.
- c. Statements made or matters published will only be protected from liability for defamation as long as they are made in accordance with the relevant standing orders and where [3]:
 - The speaker is not predominately motivated by ill will.
 - The speaker is not otherwise taking improper advantage of the opportunity to have a matter published.

3.5 Removal from office

- a. The mayor and councillors are voted in to office for a three-year term. They cannot be removed by Governing Body resolution, by the Local Government Commission, or by the Minister of Local Government [1] (or any other central government minister). However, the mayor or councillor will no longer hold office if they:
 - resign
 - die or become mentally incapable [2]

- are absent without leave from four consecutive meetings (other than extraordinary meetings)
 - are disqualified from office. This occurs if the member
 - i) is convicted of voting or taking part in a council decision in which they have a financial interest (if the member does not successfully appeal the decision) contracts with the council and the value of the contract(s) is more than \$25,000 in any one financial year
 - ii) no longer qualifies as an elector (i.e. is no longer a New Zealand citizen or permanent resident)
 - iii) is convicted of an offence punishable by two years or more imprisonment [3], (the two year timing reflects a policy decision to make sure that individual minor offences do not disqualify a Governing Body member).
- b. There will be a new election for a vacant position if a vacancy occurs more than 12 months before the next triennial general election [4]. This is referred to as a by-election. Depending on timing, there is the option that the role remains vacant, or a person is appointed without an election.

3.6 Footnotes

3.2.2 Code of Conduct

[1] Schedule 7, clause 15.

[2] Schedule 7, clause 15(6).

[3] The Code does not apply to Independent Māori Statutory Board member appointees to committees (see the definition of “member in the Local Government Act 2002 and the interpretation section to the Code of Conduct, section 1). Some parts of the code (e.g. conflicts of interest and confidentiality) will apply to IMSB members through other means, for example, through standing orders.

[4] Section 4 of the Code.

[5] Section 5 of the Code

[6] Schedule 7, clause 15(2) LGA 02.

3.2.3 Conduct - mandatory relationships and behaviours

[1] Section 7.1 of the Code.

[2] Section 7.2 of the Code.

[3] Section 7.3 of the Code.

- [4] Section 7.4 of the Code.
- [5] Section 7.5 of the Code.
- [6] Section 7.5 of the Code.
- [7] Section 7.6 of the Code.
- [8] Section 7.7 of the Code.
- [9] Section 7.8 of the Code.
- [10] Section 7.9.1 – 7.9.3 of the Code.
- [11] Section 7.9.4 of the Code.
- [12] <http://www.oag.govt.nz/2007/conflicts-public-entities/part5.htm>

3.2.4 Breaching the Code

- [1] Section 8.2 of the Code.

3.2.5 Declarations when taking office

- [1] Local Government Act 2002 Schedule 7, Part 1, Clause 14.

3.2.7 Access to Confidential Information

- [1] Local Government Official Information and Meetings Act 1987
- [2] Elected Members Code of Conduct Section 7.6 Confidential Information

3.2.8 Relationship with the chief executive and council staff

- [1] Most of this section is from <http://www.oag.govt.nz/2012/local-govt/part6.htm>.
- [2] Unless a decision has been delegated to an individual elected member (or is otherwise set out in statute, e.g. the role of the mayor) elected members' power is exercised through their collective decisions at formal meetings.

3.2.9 Relative Responsibilities of the chief executive

- [1] Local Government Act 2002, s 42(1), Sch 7 cls 33-35.
- [2] Local Government Act 2002, s 42(2)(g).
- [3] Local Government Act 2002, s 42(2)(a), 42(2A).
- [4] Auditor-General's Inquiry into the Mangawhai Community Wastewater Scheme (Kaipara) (2013), para 25.20 and 25.22.

3.2.10 Gifts, fees, endorsements and outside activities

- [1] Local Government Act Schedule 7, Clause 14.
- [2] Local Government Act 2002, Section 13(a)(1).

[3] See above sub-section on Register of Declarations.

3.2.11 Remuneration

[1] <http://remauthority.govt.nz/>.

[2] Local Government Act 2002, Schedule 7 Clause 6.

[3] Remuneration Authority Act 1977 Section 18. 18A and Local Government Act 2002, Schedule 7 Clause 7

[4] E.g. if elected members were to receive an allowance for attending part of a meeting, this could provide an unintended incentive to leave a meeting as soon as the attendance allowance had been earned.

[5] <https://www.remauthority.govt.nz/assets/Uploads/REM/remuneration-setting-for-local-authorities.pdf>

3.2.12 Provision of offices, technology and support staff

[1] See Attached file

3.2.13 Engaging with the Public

[1] Code of Conduct section 7.3 Relationships with the community.

[2] Local Government (Auckland Council) Act 2009 Section 9.

[3] Ibid, sections 13 & 16.

3.2.14 Protocols around media and speeches

[1] <http://www.aucklandcouncil.govt.nz/sitecollectiondocuments/aboutcouncil/governingbody/codeofconductelectedmembers.pdf>

[2] <https://acintranet.aklc.govt.nz/EN/departments/communications/Communications%20and%20public%20affairs%20policies%20and%20pro/Auckland%20Council%20News%20Media%20Policy%202013.pdf>

3.2.15 Pre-election period

[1] <https://www.dia.govt.nz/Resource-material-Our-Policy-Advice-Areas-Local-Government-Policy>

3.4.1 Personal Liability

[1] Local Government Auckland Council Act 2009 s 11A(1).

[2] Local Government Act 2002 s 43(1).

[3] Local Government Act 2002 ss 44(1) and 46(1), LGACA09 s 11A(1).

[4] Local Government Act 2002 ss 44 and 46(1).

[5] Auditor-General *Kaipara District Council: The Auditor-General's decision on requests to make a report under section 44 of the Local Government Act 2002* (19 August 2015) at 6.1.

[6] Local Government Act 2002 s 46(2).

[7] Local Government Act 2002 s 46(3).

[8] Local Government Act 2002 s 46(4).

[9] Local Government Auckland Council Act 2009 s 11A(2).

[10] Local Government Act 2002 s 47(1).

[11] Local Government Act 2002 s 47(2).

[12] Local Government Act 2002 s 47(3).

3.4.3 Qualified privilege

[1] Local Government Official Information Meetings Act 1987 ss47.

[2] Local Government Official Information Meetings Act 1987 ss 52 and 53; Standing Order 1.3.9 of the Standing Orders of the Governing Body; and Standing Order 3.16 of the Local Board Standing Orders.

[3] Local Government Official Information Meetings Act 1987 ss 52 and 53; Standing Order 1.3.9 of the Standing Orders of the Governing Body; and Standing Order 3.16 of the Local Board Standing Orders.

3.5 Removal from Office

[1] The Minister of Local Government can decide to intervene in council matters including by appointing a commission for the Auckland region (to act in place of all the governing body elected members). The Minister can be asked to exercise this power at the written request of governing body: Local Government Act 2002, 258F(1)(d) This would have the effect of removing all Governing Body members.

[2] This requires the member to be subject to a property order made under section 31 of the Protection of Personal and Property Rights Act 1988: Local Government Act 2002, Schedule 7, cl5.

[3] Local Government Act 2002, Schedule 7, cl 1-5.

[4] Local Electoral Act 2001, section 117(1).

Key Documents

Appointment and Remuneration Policy for Boards Members of Council Organisation

Civil Defence Emergency Management Act 2002

Code of Conduct

Code of conduct for elected members

Interpretation Act 1999

Ngāti Whātua Orākei Claims Settlement Act 2012

Ngāti Whātua o Kaipara Claims Settlement Act 2013

Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008

Local Boards Standing Orders

Local Electoral Act 2001

Local Government Act 2002

Local Government (Rating) Act 2002

Local Government (Auckland Council) Act 2009

Local Government Official Information and Meetings Act 1987

Public Audit Act 2001

Standing Orders