



# Code of Conduct for Elected Members

Adopted: December 2023



# 1&2

## Scope & Application

Buller District Councillors and the Mayor (“Elected Members”) have an important role representing the people of Buller. This Code of Conduct (“the Code”) represents a commitment from all Elected Members to maintain high standards of behaviour, which is important for their credibility as district leaders and for the reputation of Buller.

As well as articulating agreed professional and ethical behaviours, encouraging teamwork and facilitating effective local democracy, the Code is of value to the Council as a resource and information guide for existing Elected Members and an aid to the public—enabling the public to evaluate behaviour.

Mission of Council is to serve the residents of the Buller District, conscious of their needs, by providing facilities and services, and, creating an appropriate environment for progress and development while preserving the distinctive natural environment, as well as the cultural and historical environments.

### 1. Scope

The Council is required to adopt a code of conduct (clause 15 of Schedule 7 of the Local Government Act 2002 (‘LGA’)). Once adopted, all Elected Members are required to comply with the Code.

The Code is designed to deal with the behaviour of Elected Members towards:

- each other;
- the Chief Executive Officer (‘CEO’) and staff;
- the media; and
- the public.

It is also concerned with the disclosure of information that Elected Members receive in their capacity as members and information which impacts on the ability of the Council to give effect to its statutory responsibilities.

### 2. Application

**The Code applies to Elected Members at all times.**

The LGA requires Elected Members to comply with the provisions of this Code. Members are also bound by the LGA, the Local Authorities (Members’ Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Financial Markets Conduct Act 2013, the Health and Safety at Work Act 2015, and the Protected Disclosures (Protection of Whistleblowers) Act 2022.

The CEO will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of the above Acts are freely available to Elected Members.

Short explanations of the obligations that each of these Acts has with respect to the conduct of Elected Members are set out in Schedule 1 of this Code.

# 3

# Principles of Governance

The Code gives effect to the following general principles of good governance with which Elected Members have agreed to comply:

## 3.1 Integrity and Honesty

Elected Members will be honest and act with integrity. This includes:

- behaving in accordance with the trust that the public places in them.
- being fair and consistent in dealings with others and following through on commitments.
- not making statements or doing anything that will, or is likely to, mislead or deceive.
- not placing themselves in situations where their honesty and integrity may be questioned.
- being open to constructive feedback.
- complying with relevant legislation and Council policies and procedures.
- making decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

## 3.2 Accountability

Elected Members will:

- comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public to be responsible for their decisions and actions, and be prepared to justify these.
- act in an open and transparent manner.
- ensure Council resources are used prudently.

## 3.3 Respect

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights. This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
- recognising and encouraging ideas and contributions from others.
- being courteous and approachable.
- not engaging in aggressive, offensive, abusive or bullying behaviour.
- not making personal attacks.
- respecting the impartiality and integrity of staff.
- not interrupting when others are expressing their point of view.

## 3.4 Good Faith

Elected Members will faithfully and impartially perform their powers, authorities and duties in the best interest of the community of Buller District. A breach of this Code could indicate a lack of good faith and could be relevant to assessment of personal liability (see explanation of sections 43 to 47 of the LGA set out in Schedule 1 of the Code).

### 3.5 Proper Use of Position

Elected Members must not abuse their position, including they must not:

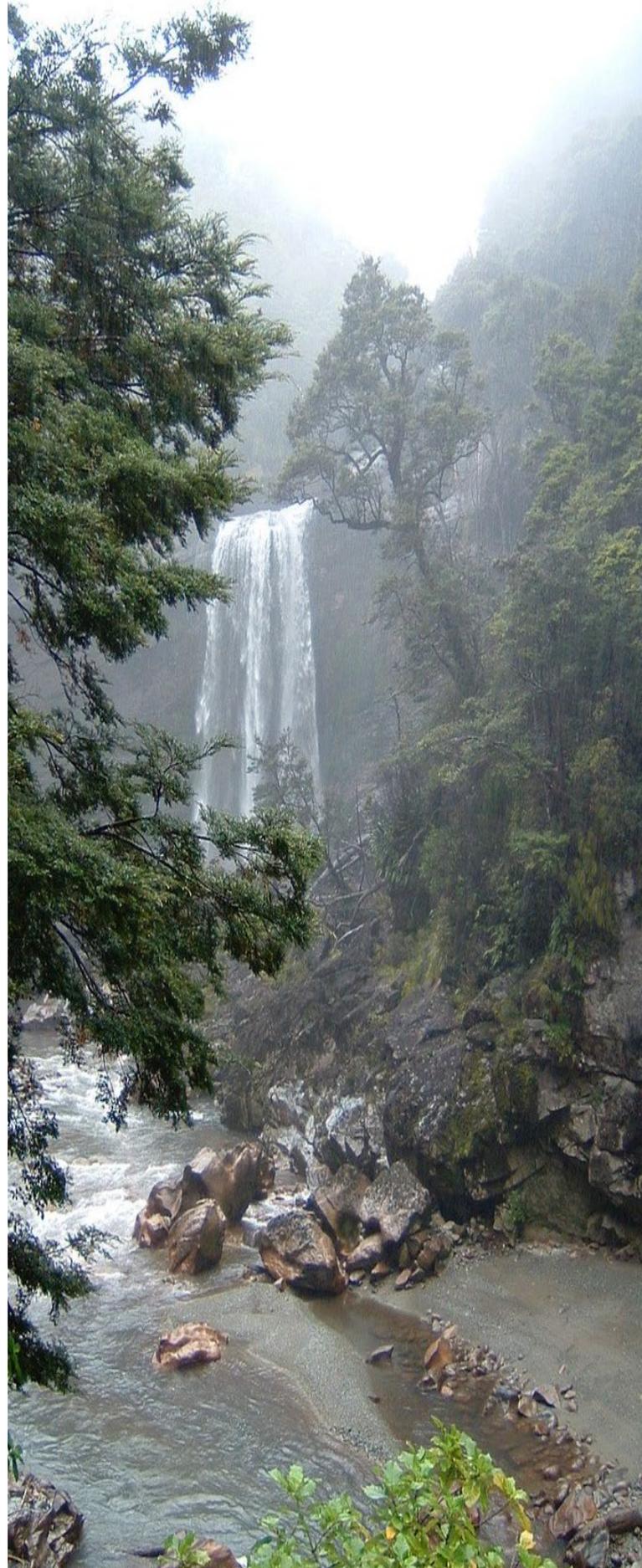
- solicit, demand or request any gift or benefit because of their position.
- claim expenses which are not legitimate.
- fail to declare gifts given to them because of their position (see explanation of declaring gifts set out under Section 5.6 of this Code).
- influence, or attempt to influence, any Council employee, or another member, in order to benefit their own, or family's, personal or business interests.
- 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.
- Use, directly or indirectly, any Council resources and/or branding for the purpose of seeking reelection.

Note: refer to the OAG Guidelines – [“Good Practice for Managing Public Communications by Local Authorities”](#).

### 3.3 Leadership

Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the district. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council.

These principles complement, and work in conjunction with, the governance principles relating to local authorities (sections 14 and 39 LGA).



# 4

# Roles & Responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of the Council's decisions. This section of the Code describes the roles and responsibilities of Elected Members, the Mayor, Deputy Mayor, Committee Chairpersons, and Chief Executive Officer.

## 4.1 Elected Members

Elected Members, acting as the Council, are responsible for governance, including:

- the development and approval of Council plans, policies and budgets;
- monitoring the performance of the Council against its stated objectives and policies;
- prudent stewardship of Council resources; and
- employment of the CEO.

Elected Members are also responsible for representing the interests of the residents and ratepayers of the district.

Unless otherwise provided in the LGA or in the Council's Standing Orders, the Council can only act by majority decisions at meetings. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless provided for by statute or the Council has expressly delegated such authority.

Elected Members are committed to achieving the highest standards of conduct and behaviour at all times and will carry out their role to the best of their skill and judgment. To achieve this, Elected Members should:

- take responsibility for ensuring that they understand their roles and responsibilities and the Code;

- attend all meetings (including for external organisations to which they are appointed), task force groups (as appropriate) and any appropriate training opportunities provided by Council;
- come to meetings prepared, including having read relevant material;
- seek personal and skill development opportunities to effectively fulfil their statutory declaration of office and contribute to the good governance of Buller;
- maintain an appropriate standard of dress at public meetings, events or functions that does not discredit the Council.
- Generally, the more formal the occasion, the more formal the standard of dress required (monthly council meetings are deemed to be a formal occasion).

## 4.2 Mayor

The Mayor is elected by the district as a whole. Section 41A of the LGA states that role of a Mayor is to provide leadership to other members of the Council and to the people of Buller. The Mayor also has the following roles:

- lead the development of the Council's plans (including long-term plan and annual plan), policies and budgets for consideration by members of the territorial authority;
- appoint the Deputy Mayor;

- establish committees of the Council and appoint the chairperson of each committee established. However, nothing limits or prevents the Council from discharging or reconstituting committees or chairpersons of those committees established by the Mayor by way of Council resolution at a later date.
- presiding at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during Council meetings (as determined by Standing Orders);
- advocating on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- ceremonial head of the Council;
- providing leadership and feedback to other Elected Members on teamwork and chairing of committees; and
- keeping the Council informed of matters brought to his/her attention.

### 4.3 Deputy Mayor

If the Mayor has not appointed the Deputy Mayor as noted above, then the Deputy Mayor must be elected by the members of Council, at the first meeting of the Council.

The Deputy Mayor exercises the same roles as other Elected Members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above).

The Deputy Mayor may be removed from office by resolution of the Council.

### 4.4 Committee Chairpersons

A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the Council and the orderly conduct of business during committee meetings (as determined by Standing Orders).

Committee chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees.

Chairpersons may be removed from office by resolution of the Council. The Council may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

### 4.5 Chief Executive Officer

Section 42 of the LGA provides that the CEO is the only person directly employed by the Council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the CEO.

As the principal administrative officer of the local authority, it is the CEO, not the Elected Members, who is responsible for:

- implementing the decisions of the Council;
- providing advice to the Council and its committees;
- ensuring that all responsibilities, duties and powers delegated to him or her, or to any person employed by the local authority, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;
- managing the Council's activities effectively and efficiently;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- providing leadership for the staff of the Council;
- employing staff on behalf of the Council (including negotiation of the terms of employment for the staff of the local authority).

While the Council is ultimately accountable, its function is not to make detailed decisions on operational matters. The Council, committee structures and Elected Members day-to-day dealings with the CEO should recognise the statutory responsibilities of the CEO for the effective management of Council staff and for implementing the decisions of the Council.

# 5

## Relationships & Behaviours

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This section of the Code sets out the Council's agreed standards of behaviour between members; members and staff; and members and the public. Any failure by members to meet the standards set out in this section represents a breach of this Code. For clarity, sections 5.1 to 5.3 include (but is not limited to) any written communication between Elected Members, or from an Elected Member, including through social media platforms.

### 5.1 Relationship with Other Members

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

- maintain public confidence in the office to which they have been elected;
- are open and honest;
- focus on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- avoids conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behaviour.

### 5.2 Relationship with the Chief Executive Officer and Staff

Elected Members should be aware that failure to observe the standards in section 5.2 of the Code may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and/or audit sanctions.

Effective performance of the Council requires a high level of cooperation and mutual respect between Elected Members and staff. Members will:

- recognise the CEO is the employer (on behalf of the Council) of Council staff and only the CEO (or his/her delegate) may hire, dismiss, instruct or discipline an employee;
- make themselves aware of the obligations that the Council and the CEO have as employers and observe those requirements at all times;
- treat all Council staff with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees);
- observe any guidelines that the CEO puts in place regarding contact with employees;
- 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;
- raise concerns about employees only with the CEO, and concerns about the CEO only with the Mayor or Deputy Mayor;
- not seek to improperly influence staff in the normal undertaking of their duties.

### 5.3 Relationships with the public

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will:

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy.

### 5.4 Contact with the Media

The media plays an important part in local democracy. To fulfil this role, the media needs access to accurate and timely information about the affairs of the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an Elected Member in their own right.

The following rules apply for media contact on behalf of the Council:

- the Mayor is the first point of contact for the official view on any issue, unless delegations state otherwise. Where the Mayor is absent, any matters will be referred to the Deputy Mayor or relevant Committee chairperson.
- No other member may comment officially on behalf of the Council without having first obtained the approval of the Mayor or (where delegated) the relevant Committee chairperson.
- Elected Members are free to express a personal view in the media, at any time, provided the following rules are observed:
  - i. media comments must not state or imply that they represent the views of the Council;
  - ii. where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the member must not state or imply that his or her statements represent a majority view;

- iii. media comments must observe the other requirements of the Code, e.g. not disclose confidential information; compromise the impartiality or integrity of staff; or avoids aggressive, offensive or abusive comments which reflects adversely on the member or the Council; and
- iv. media comments must not be misleading and should be accurate within the bounds of reasonableness.



## 5.5 Information available to Elected Members

Any failure by members to act in the manner described in this section 5.5 will be treated seriously and will immediately be referred by the CEO to an independent investigator for assessment under section 6.2 and Schedule 3 of this Code.

### Confidentiality

To enable Elected Members to properly discharge their duties, members are entitled to, and receive, a broad range of information which is publicly accessible. In the course of their duties, Elected Members will also receive 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.

Elected Members may also be provided with, confidential information held by Council. Confidential information includes information that staff have determined 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 Council's Privacy Officer is responsible for the release of information under LGOIMA.

Elected Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Elected Member. Elected Members should be aware that failure to observe these provisions relating to confidential information will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. They may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

A breach of confidentiality could also indicate a lack of good faith which may be relevant to the assessment of personal liability (see explanation of sections 43 to 47 of the LGA set out in Schedule 1 of the Code).

### Information received in capacity as an Elected Member

Members will disclose to other members and, where appropriate the CEO, any information received in their capacity as an Elected Member that concerns the Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that is the member's duty to disclose the information and will decline the offer if that duty is likely to be compromised.

Elected Members are accountable to the public.

- All official information held by them personally, whether on Council equipment or their own personal equipment is subject to the LGOIMA.
- Official information, if sought as part of a request, must be made available immediately to the CEO (or nominee) so that it can be assessed in terms of the requirements of the LGOIMA.

## 5.6 Gifts and Hospitality

A person in a position of trust, such as an Elected Member, should not make a profit through his or her office. The Crimes Act 1961 and the Secret Commissions Act 1910 deals with corruption and the obtaining of gifts as an inducement or reward for acts in relation to the Council's affairs (refer to Schedule 1). Gifts can include discounts, commissions, bonus or deductions.

Acceptance of gifts, services or hospitality may be considered as a bribe or perceived as undue influence. Elected Members must notify the Governance Assistant (or delegate) if any gifts are accepted for inclusion in the Gifts Register maintained by the Council. Where a gift to the value of \$150 or more is offered to a member, it will also be included in the Register of Members Interests maintained by the Council.

As guidance:

- The cumulative value of recurring gifts received each financial year from the same donor must be disclosed. For example, if someone provides a member with concert tickets at different times through the year, the total value of those tickets over the relevant financial year is to be disclosed.
- A member is not required to disclose tickets to events for which that member is required to attend as the Council's representative.
- Working lunches and social occasions should be undertaken with a recognition of the public perception regarding undue influence on Elected Members.

### 5.7 Conflicts of Interest

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 ('LAMIA') could potentially invalidate a decision made, or action taken, by the Council. Failure to observe these requirements could also leave the Elected Member open to prosecution. In the event of a conviction, Elected Members can be removed from office.

Schedule 2 of this Code sets out the Code's conflict of interest requirements. Elected Members must fully acquaint themselves, and adhere strictly to, these requirements.

Ultimately, it is up to each member's own judgement as to whether they have an interest that needs to be disclosed or declared, and what action they take (if any) as a consequence.

The requirements cover two classes of conflict of interest:

- **A financial conflict of interest:** is one where a decision or act of the governing body could reasonably give rise to an expectation of financial gain or loss to an elected member.

A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in.

There are particularly strict provisions (and penalties) relating to dealing with a financial conflict of interest.

- **A non-financial conflict of interest** does not have a personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

Elected Members are required to complete declarations of interest following their inauguration, and to update their declarations as and when required.

### 5.8 Bankruptcy

Elected Members who are declared an undischarged bankrupt shall notify the CEO when elected or as soon as practicable after being so declared. The member will provide the CEO with a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.

### 5.9 Disqualification from Office

The LGA and Standing Orders provide for disqualification of Elected Members from office for example, if they:

- are convicted of a criminal offence punishable by two or more years imprisonment;
- cease to be an elector or become disqualified for registration as an elector under the Electoral Act 1993;
- breach the LAMIA; or
- are absent without approved leave from the Council for four consecutive ordinary meetings of the Council.



# 6

## Breaches of the Code

Members must comply with the provisions of this Code (clause 15(4), Schedule 7, LGA). The exact nature of the action taken to resolve any allegations relating to misconduct of an Elected Member will depend on the nature of the alleged breach and whether there are statutory provisions dealing with the issue in question.

### 6.1 Principles

The following principles will guide any processes for investigating and determining whether 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;
  - have their privacy respected.

### 6.2 Complaints Process

Only an Elected Member, or the Chief Executive Officer (either for him/herself or on behalf of an employee), who believes that the Code has been breached by the behaviour or action of a member, may make a complaint to that effect. A complaint may be made as a result of a single incident or as the culmination of a series of incidents.

Before making a complaint, members are encouraged to resolve the matter by discussion with the member alleged to have committed the breach.

All complaints made under this Code must be made in writing and addressed to the CEO, setting out the alleged breach of the Code and providing corroborating evidence. On receipt of a complaint, the CEO must follow the process set out in Schedule 3. For the purpose of the Code, (an) Elected Member(s) who is/are the subject of a complaint under the Code is/are 'the respondent'.

#### Panel of Independent Investigators

On behalf of the Council, the CEO will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for the purpose of undertaking an assessment of complaints (when required) and making recommendations to the Council. The CEO may prepare a list specifically for the Council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators. The Panel of Independent Investigators is not a committee of the Council.

## Materiality

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

An alleged breach of section 5.5 of the Code (Information available to Elected Members) will automatically be considered material and referred to an independent investigator for assessment.

## 6.3 Penalties and actions

Where a complaint is determined to be a material breach of the Code and referred to the Council for determination, 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:

- a letter of censure to the member;
- a request (made either privately or publicly) for an apology; a vote of no confidence in the member;
- removal of certain Council-funded privileges or Council appointments;
- restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- limitation on any dealings with Council staff so that they are confined to the CEO only;
- suspension or removal from Committees (including joint committees), task forces or other Council bodies; or
- an invitation for the member to consider resigning from the council.

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

- attend a relevant training course; and/or
- work with a mentor for a period; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

## Breaches of Legislation

If there are statutory provisions dealing with the issue in question, the issue will not be dealt with as a breach of the Code but may be addressed in accordance with the relevant statutory provisions:

- Issues relating to members' interests may render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and, if convicted, the Member can be removed from office;
- Issues which result in the Council suffering financial loss or damage may be reported on by the Auditor General under the LGA, which may result in the member having to make good the loss or damage;
- Issues relating to the commission of a criminal offence may leave the Elected Member liable for criminal prosecution.

Council may refer an issue to the relevant body, any member of the public may make a complaint to that body, or the Auditor General or the Police may take action of their own initiative.

### Breaches of the Code during meetings

It is expected that compliance with the provisions of this Code during a meeting shall be dealt with by the Chairperson of that meeting, within Standing Orders, at the time the breach arises.

Elected Members should raise alleged breaches of the Code with the Chairperson at the time. If an Elected Member believes that an alleged breach of the Code has not been dealt with adequately by the Chairperson at a meeting, that Elected Member may initiate the procedures set out in Section 6.2 and Schedule 3 in the Code.

# 7

## Review or Changes to the Code

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The Council may by resolution of 75 percent or more, change the Code at any time. The Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be presented to the full Council for its consideration and vote. The Code should be read in conjunction with the Council's Standing Orders.



# Summary of Legislation

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This Schedule is a summary of the legislative requirements that have some bearing on the duties and conduct of Elected Members. Copies of the legislation can be found on [www.legislation.govt.nz](http://www.legislation.govt.nz) or requested from the Governance Assistant.

## Local Government Act 2002 ('LGA')

### Governance Principles

In performing its role the Council must act in accordance with nine broad principles as set out in section 14(1) of the LGA as follows:

- conduct its business in an open, transparent, and democratically accountable manner; and give effect to its identified priorities and desired outcomes in an efficient and effective manner;
- make itself aware of and have regard to the views of all its communities;
- when making a decision, take account of the diversity of the community and the various community's interests;
- the interests of future as well as current communities and the likely impact of any decision on these interests;
- provide opportunities for Maori to contribute to its decision-making process;
- collaborate and cooperate with other local authorities;
- undertake commercial transactions in accordance with sound business practices and assess periodically the expected returns from investing in or undertaking a commercial activity;
- ensure prudent stewardship and efficient and effective use of its resources in the interests of the district;
- take a sustainable development approach that takes into account the social, economic and cultural interests of people and communities and the need to maintain and enhance the quality of the environment and the reasonably foreseeable needs of future generations.

If any of the principles are in conflict, the Council must resolve that conflict in an open, transparent and democratically accountable manner. These principles are helpful in determining the governance structure as they are indicative of the spirit and intent of the LGA and govern the way in which the Council undertakes decision-making. A Council that is seen to act in conflict with these principles can be subject to judicial review.

In deciding on a governance structure, section 39 is also helpful to consider as it defines the following governance principles:

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

## Decision-Making Responsibility

Every decision made by a local authority, including a decision not to take any action, must be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA. Specifically, the Council must during the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess the options in terms of their advantages and disadvantages;
- identify those options which involve a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga;
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter;
- determine the matters significance in relation to Council's Significance and Engagement Policy;
- identify whether the proposed decision would be significantly inconsistent with any existing policy or plan;
- establish and maintain processes to provide opportunities for Maori to contribute to the decision-making process;
- consider ways in which the Council may foster the development of Maori capacity to contribute to the decision-making process;
- provide relevant information to Maori;
- undertake consultation in accordance with the principles of consultation as set out in section 82.

## Significance and Engagement

A higher standard of compliance with the decision making process is required when the Council is making a significant decision. The definition of "significance" is defined in the LGA and in the Council's Significance and Engagement Policy.

If the Council determines that the decision or matter is significant in terms of the Council's Policy, then the Council must apply greater diligence in regards to the decision making requirements of the LGA.

This includes the degree to which different options are identified and assessed and the extent to which community views are considered, including whether consultation is required.

The more significant a matter, the greater the level, and detail, of analysis is required.

Section 78 alone does not require the Council to undertake a consultation process, provided the Council has sought to make itself aware of the views of those interested or affected. The Council may, for example, have gathered information through a process, formal or informal, which has provided the Council with the information it needs to take community views into account. The Significance and Engagement Policy provides guidance on when consultation will and will not be undertaken.

## Personal liability of members

Although having qualified privilege, Elected Members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under section 44 LGA, it is found that one of the following applies:

- money belonging to, or administered by, a local authority has been unlawfully expended; or
- an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- a liability has been unlawfully incurred by the local authority; or
- a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- without the member's knowledge;
- with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- contrary to the manner in which the member voted on the issue; and
- in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (section 47 LGA 2002).

## Local Authorities (Members' Interests) Act 1968 ('LAMIA')

LAMIA regulates situations where an Elected Member's personal interests impinge, or could be seen as impinging on their duties as an Elected Member.

Members may contact the Office of the Auditor General ('OAG') for guidance as to whether that member has a pecuniary interest, and if so, may seek (through an application from the Council) an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The CEO must also seek approval from the OAG for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the Elected Member open to prosecution under the LAMIA. In the event of a conviction Elected Members can be removed from office. Further guidance is detailed under Schedule 2 of the Code.

## Local Government Official Information and Meetings Act 1987 ('LGOIMA')

The purpose of LGOIMA is to provide for the availability to the public of official information held by local authorities, and to promote the open and public transaction of business in meetings of local authorities.

The general principle is that information held by local authorities is to be made available unless there is good reason for withholding it. The principal grounds for withholding information are set out in sections 6 and 7 of LGOIMA.

LGOIMA sets out a number of statutory procedures and requirements for local authority meetings. Meetings are to be publicly notified, and open to the public unless there is good reason for withholding information and excluding the public.

The Chair has the responsibility to maintain order at meetings, but all Elected Members should accept personal responsibility to maintain acceptable standards of address and debate in line with the principles detailed in section 3 of this Code.

## Secret Commissions Act 1910 ('SCA')

It is unlawful for an Elected Member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result. It is also unlawful for an Elected Member (or officer) to present false receipts to the local authority.

If convicted of any offence under the SCA, a person can be imprisoned for up to 7 years. Elected Members convicted of an offence will be removed from office.

## Crimes Act 1961

It is a crime for any 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 the local authority. It is also a crime for any Elected Member to use information acquired in his or her official capacity for 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 removed from office.

## Financial Markets Conduct Act 2013 ('FMCA')

The FMCA regulates the offer, issue and re-sale of financial products, which includes shares, debt securities and derivatives.

Council is unable to issue shares, but can issue debt securities and derivatives, and may from time to time sell financial products. If Council does issue financial products or, in certain cases, sells financial products that it holds, members will be potentially subject to personal liability for breaches of the offer and other provisions of the FMCA.

## Health & Safety at Work Act 2015 (‘HSWA’)

HSWA came into force on 4 April 2016. Its focus is the protection of workers and other people against harm to their health, safety and welfare by eliminating or minimising risks at workplaces.

The HSWA places obligations on four duty holders- a person conducting a business or undertaking (‘PCBU’); officers of a PCBU; workers; and other people at a workplace. Council as a PCBU holds the primary duty of care under HSWA i.e. to ensure so far as is reasonably practicable, the health and safety of its workers and of other workers whose activities Council influences or directs.

Each elected member is an ‘officer’ (being a person occupying a position in a body corporate that is comparable with that of a director of a company), responsible under HSWA for exercising due diligence to ensure that the Council is meeting its health and safety responsibilities under HSWA. The CEO and Senior Leadership Team are also officers under HSWA.

The due diligence duty of officers supports the primary duty of care owed by a PCBU – placing duties on individuals whose decisions significantly influence the activities of a PCBU, therefore influencing whether the PCBU meets its statutory duties.

Unlike the Chief Executive Office and Senior Leadership Team, Elected Members are not required to be directly involved in the day- to- day management of health and safety. They are, however, still required to take reasonable steps to understand Council’s operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations under the HSWA.

This duty does not extend to ensuring that a council controlled organisation (‘CCO’) complies with the HSWA, unless the Elected Member is also an ‘officer’ of that CCO.

Taking ‘reasonable steps’ requires each Elected Member to exercise the care, diligence and skill a reasonable officer would exercise in the same circumstances, taking into account matters including the nature of Council’s business, and the Elected Member’s position and nature of his/her responsibilities.

Most officers can be convicted of an offence for failing to meet their due diligence obligations, whether or not a PCBU is convicted of an offence. Elected members, however, when acting in the capacity of an elected member of the Council are expressly exempted from prosecution.

## Protected Disclosures (Protection of Whistleblowers) Act 2022

Organisations, both public and private sector, have responsibilities under the Act as receivers of protected disclosures, including sometimes as appropriate authorities. Public sector organisations must have appropriate internal procedures for protected disclosures and must publicise these procedures widely.

The Protected Disclosures (Protection of Whistleblowers) Act 2022 seeks to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns.

Council’s [policy](#) applies to current and former employees, Contractors, consultants, secondees and volunteers at Council. This policy also applies to any persons concerned (or previously concerned) in the management of the Council, including elected or appointed members and Mayor.

The processes contained within this policy are intended only for situations involving allegations of serious wrongdoing where Council’s usual reporting or complaints processes e.g. a grievance under the code of conduct, are not appropriate.

# Conflicts of Interest

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## General

Elected Members are expected to approach decision making with an open mind- 'faithfully and impartially' and in 'the best interests of Buller District'. Elected Members must therefore be careful that they maintain a clear separation between their personal interests and their duties as a member of Council (as governing body, and as a member of a Council committee or other Council body). They must exercise care to avoid situations where they have, or appear to have, a conflict of interest.

Elected Members must carry out their duties free from bias (whether actual or perceived). Bias is the common factor in all conflict of interest situations. The rule about bias applies to both financial and non-financial conflicts of interest and is summed up in the saying 'no one may be judge in their own cause'.

In the local government context, financial conflicts of interest are governed primarily by the Local Authorities' (Members' Interests) Act 1968 ('LAMIA') and non-financial conflicts of interest are governed by the common law rule about bias.

Broadly speaking, a conflict of interest exists when an elected member could use, or uses, their position to further their own interests or those of their partner, or spouse. The various types of conflict of interest include:

- Direct financial interest- where a decision or act of the Council could reasonably give rise to an expectation of financial gain or loss to an elected member.
- Indirect financial interest- where cash doesn't change hands directly but, for example, may influence the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in;
- Non-financial interest- where an elected member's responsibilities as a member of Council could be affected by some other separate interest or duty that he/she may have in relation to a matter as a result of, for example, a personal relationship, or involvement with an external organisation, or from conduct that indicates prejudice or predetermination.

Conflicts of interest can be:

- Actual: where the conflict of interest already exists;
- Potential: where the conflict is about to happen, or reasonably could happen; or
- Perceived: where other people might reasonably think an Elected Member is not being objective or his/her position as an Elected Member has been compromised.

## Financial conflicts of interest

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

*"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."* (OAG, 2001)

Members should consider the following factors in considering whether they have a financial interest.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision- do I have a reasonable expectation of gain or loss of money by making that decision?

- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor or another person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek independent legal advice. Where uncertainty exists, members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

The two specific rules in the LAMIA relate to:

### 1. Contracts

An Elected Member is disqualified from office, or from election to office, if that member is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year (unless there is an exemption granted by the Office of the Controller and Auditor-General ('OAG')).

The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which a member is interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by the member.

It is an offence under LAMIA for a person to act as a member of the Council (or Council committee) while disqualified.

### 2. Participation in decision-making

Elected Members must not participate in any Council discussion or vote on any matter in which they have a financial interest (either directly or indirectly), other than an interest in common with the public.

Both rules apply in the case of an interest or concern through an Elected Member's spouse or partner, or through a company or trust.

## How is bias determined?

Bias is determined by asking the following question:

*“Is there, to a reasonable, fair-minded and informed observer, a real danger of bias on the part of a member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”*

It is natural to expect that Elected Members will bring their own experience and knowledge to the decision-making process; that members may already have views – even strong or publicly stated views – about the matter; and that political considerations may play a part in the decision.

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members should focus on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a “closed mind”); and
- members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether they might be perceived as biased, members must also consider the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

## Declarations of interest

To help identify possible conflicts of interest the Council operates a Register of Members' Interests.

Elected Members must make full and complete declarations of interests following the Inaugural Meeting of Council (after local government elections or by-election, as appropriate), and then every six months, using the Register of Members' Interests Declaration Form. These declarations of interests are a key individual responsibility of all Elected Members. They must notify the Council of the nature and extent of any interest as further detailed in the declaration form.

Declarations will be recorded in a Register of Members' Interests maintained by Council. The Register (or a fair and accurate summary of its contents) will be available for public inspection. A summary will be published on the Council's website.

The Register does not remove the requirement to disclose conflicts of interest as they arise. Members must therefore advise the Council, as soon as practicable during the year, if any new interests arise; complete a declaration of interests form every six months and update the Register whenever a member's interest has changed. Members must also declare their interests at meetings where matters in which they have a conflict of interest arise. The Elected Member must:

- declare the existence of a conflict to the meeting (the member does not have to disclose the nature of the interest concerned, though he or she is required if the interest is a financial one);
- abstain from discussion and voting (take no part in the consideration of the matter). Depending on the issue, the member may consider it best to leave the meeting room itself.

## General awareness and support

There is no simple binding rule that covers all conflict of interest situations – each situation must be evaluated on its individual merits. If an Elected Member is in any doubt as to whether he/she should declare an interest and stand aside from decision-making (including a decision to take no action), then he/she should seek guidance from the Mayor immediately; seek advice from the OAG (as to whether there is a financial interest) or from his/her own lawyer.

In some situations of pecuniary interest, a member may be able to obtain an exemption from the OAG to allow him/her to participate or vote on a particular issue. Any exemptions must be obtained before the discussion or vote takes place.

*The Auditor General can retrospectively approve contracts that would otherwise disqualify a member under the Act, in limited cases.*

In a case of doubt, a member should refrain from discussing or voting on the matter in question and preferably physically withdraw from the meeting. The minutes of the meeting will record the member's declaration of interest and absence from voting.

Relevant guidelines include:

- ['Guidance for Members of Local Authorities about the Local Authorities' \(Members' Interests\) Act 1968'](#) – Office of the Auditor General 2010;
- ['Managing Conflicting Interests in Local Government: The Local Authorities \(Members' Interests\) Act 1968 and Associated Issues'](#) – Department of Internal Affairs August 2011;

## Consequences of bias and/or breach of the LAMIA

An Elected Member will be automatically disqualified from office if he/she is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year.

If an Elected Member has a financial interest in a matter and participates in discussion and voting on it, he/she will have committed an offence under the LAMIA. In the event of a conviction, an Elected Member can be removed from office.

An Elected Member's bias (whether actual or perceived) has the potential to invalidate the particular decision made, or the action taken, by Council (if successfully challenged by way of judicial review).

If an Elected Member's conduct has contributed to Council incurring a loss; that conduct could also result in personal financial liability under section 46 of the LGA (refer to Schedule 1).

# Process for the investigation and determination of complaints

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## Summary

There is a five-stage process for dealing with complaints under the Code of Conduct:

### Stage 1:

Acknowledgement of the complaint and the respondent is informed.

### Stage 2:

Preliminary assessment of the complaint – led by either the CEO or an independent investigator.

### Stage 3:

Informal resolution of complaint (where alleged breach is considered non-material).

### Stage 4:

Independent investigator assessment where:

- the alleged breach is considered material;
- the complaint has not been able to be resolved informally; or
- the complaint is otherwise referred to an independent investigator by the CEO.

### Stage 5:

The Council's consideration of the investigator's report.

## Stage 1: Acknowledgment of complaint

1. Within two working days of receipt of a complaint, the CEO will:
  - a. acknowledge receipt and refer the complainant to the process for dealing with the complaint under this Code.
  - b. inform the respondent that a complaint has been made against them and refer them to the process for dealing with the complaint under this Code.

## Stage 2: Preliminary assessment of complaint

2. The CEO, with the Mayor (or Deputy Mayor if the complaint involves the Mayor) will assess whether:
  - a. the complaint is frivolous or without substance and should be dismissed;
  - b. the complaint is outside the scope of the Code and should be redirected to another agency or process;
  - c. the subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the complaint;
  - d. the complaint is not material and should progress to informal resolution (refer to Stage 3); or
  - e. the complaint is material and a full investigation is required by an independent investigator (refer to Stage 4). An alleged breach of section 5.5 of the Code is deemed to be material.
3. The CEO may request further information/evidence from the complainant in support of the complaint and, if considered appropriate, may also request a preliminary statement in response from the respondent.
4. Where the CEO and the Mayor (or Deputy Mayor) determines the complaint falls under paragraphs 2(a) or (c) above, the CEO will inform the complainant and the respondent directly. The CEO will also inform other Elected Members of the decision, unless there are grounds for the matter to remain confidential.

5. If it is determined that the complaint involves a potential legislative breach and is outside the scope of the Code, the CEO will forward the complaint to the relevant agency and inform both the complainant and respondent of the action.
6. Where the CEO and Mayor (or Deputy Mayor) determine the complaint is material, the matter must immediately be referred to an individual investigator for assessment (Stage 4).
7. The CEO has full discretion to refer any complaint to an independent investigator at any stage, even if it is considered not material.
8. The preliminary assessment of a complaint under Stage 2 will be completed within seven working days of receipt of the complaint. If additional time is required to complete the assessment, the CEO must notify the complainant and respondent with the date when the preliminary assessment is expected to be completed.

### Stage 3: Informal Resolution

9. Where the CEO and the Mayor (or Deputy Mayor) determine the complaint falls under paragraph 2(d) (refer to Stage 2), they will endeavour to settle the matter informally between the parties within 10 working days from the completion of Stage 2. The process for informal resolution must be fair to, and include, the affected parties.
10. The outcome of this initial process may be that the parties reach an informal agreement to resolve the complaint, in which case no further action is required. A written record of the informal agreement must be kept by the CEO's office.
11. If agreement is not possible between the parties under Stage 3, the CEO will refer the complaint to an independent investigator for full investigation.
12. For clarity, Stage 3 is not available if the complaint has been assessed as material under Stage 2 or referred to an independent investigator under paragraph 7 above.

### Stage 4: Independent Investigator Assessment

13. Where the CEO and the Mayor (or Deputy Mayor) determines the complaint falls under paragraph 2(e) in Stage 2, or the complaint is not otherwise resolved, the CEO will refer the complaint to an independent investigator selected from the approved Panel of Independent Investigators.
14. On receipt of a complaint the investigator will, if appropriate, assess whether:
  - a. the complaint is frivolous or without substance and should be dismissed;
  - b. the complaint is outside the scope of the Code and should be redirected to another agency or process;
  - c. the subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the complaint;
  - d. the complaint is non-material; or
  - e. the complaint is material and a full investigation is required.
15. The investigator must carry out their assessment in accordance with the principles in section 6.1 and within the terms of engagement provided by the CEO. The assessment must be completed and sent to the CEO as soon as possible, no later than 20 working days from the date the complaint is referred to the investigator (unless otherwise agreed with the CEO).
16. In making the assessment, the investigator may make whatever initial inquiry is necessary to determine the materiality of an alleged breach and to recommend the appropriate course of action. The investigator has full discretion to recommend any complaint is dismissed which, in their view, fails to meet the test of materiality.
17. On receiving the investigator's assessment, the CEO will:
  - a. where an investigator determines that a complaint is frivolous or without substance or previously been assessed and actioned under the Code, inform the complainant and the respondent directly and inform other Elected Members (if there are no grounds for confidentiality) of the investigator's decision; or

- b. in cases where the investigator finds that the complaint involves a potential legislative breach and is outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

#### Stage 4A: Actions where a breach is found to be non-material

18. The investigator will inform the CEO if they find the breach is non-material as part of their assessment (under Stage 4), and, if they choose, recommend a course of action appropriate to the breach, such as the respondent:
- a. receiving direction from the Mayor (or Deputy Mayor as appropriate) regarding behaviour or conduct expected from Elected Members;
  - b. attending appropriate training or counselling to better understand the behaviour or conduct that is expected from Elected Members in circumstances that lead to the complaint.
19. The CEO, in consultation with the Mayor (or Deputy Mayor, as appropriate) may determine which recommendation, if any, from the independent investigator's assessment should be actioned. The CEO will advise both the complainant and the respondent of the investigator's findings, which are not open to challenge, and any recommendations to be actioned. The CEO will also notify other Elected Members, unless there are grounds of confidentiality. A written record must be kept by the CEO's office.
20. If the CEO and Mayor (or Deputy Mayor) do not agree on the investigator's recommendations to be actioned, the CEO must report the investigator's assessment to the Council for determination (refer to Stage 5).

#### Stage 4B: Actions where a breach is found to be material

21. The investigator will inform the CEO if they find that the breach is material as part of their assessment (Stage 4). The CEO will then inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach.
22. In preparing the report the investigator must:
- a. consult with the complainant, respondent and any affected parties; and
  - b. refer to any relevant documents or information provided by the CEO, and may undertake a hearing with relevant parties.
23. On receipt of the investigator's report, the CEO will prepare a report for Council, which will meet within a month of the CEO receiving the investigator's report to:
- a. consider the findings of the investigator's report; and
  - b. determine whether a penalty, or some other form of action, will be imposed.

The CEO's report will include the full report prepared by the investigator, including any recommendations.

24. The CEO will share the investigator's report with the complainant and respondent under strict confidentiality inviting them to reply in writing as to whether they agree to the findings and whether they wish to make a written submission for consideration by the Council. The complainant and respondent must not disclose or discuss the investigator's report with any person other than the CEO and/or Mayor (or Deputy Mayor, as appropriate) prior to the Council meeting being held to determine the complaint.

## Stage 5: The Council's consideration of an investigator's report

25. The CEO's report (with the investigator's full report or assessment, and any submission from the complainant or respondent, attached) will be considered by the full Council, excluding any interested members (including the complainant (if relevant) and respondent), only if:

- a. the CEO and Mayor do not agree on which recommendations from the investigator, if any, are to be actioned for a non-material breach (refer Stage 4A) or;
- b. the breach is found to be material (refer State 4B)

26. The Council will consider the CEO's report in an open meeting, except when 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 section 48 of the LGOIMA, in which case it will be a Public Excluded meeting.

27. Before making any decision in respect of the investigator's report the Council will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings may not otherwise take part in these proceedings.

28. The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 6.3 of this Code.

