



PALMERSTON NORTH CITY COUNCIL

CODE OF CONDUCT

Adopted by Council 16 November 2022

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Elected Members’ Code of Conduct 2022

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1. Introduction

The Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- Enhance the effectiveness of the Council and the provision of good local government of the community and the city.;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Council to its communities; and
- Develop a culture of mutual trust, respect and tolerance between the members of the Council and between the elected members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in the code.

2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all elected members. The Code is designed to covers the behaviour of members towards:

- Each other;
- The Chief Executive and staff;
- The media; and
- The general public.

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

The Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

3. Values

The Code is designed to give effect to the following values:

1. **Public interest:** members will serve the best interests of the people of Palmerston North and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;

3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality, expertise and integrity of officials;
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.
7. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the local authority principles set out in s14 and the governance principles of s39 of the LGA 2002.

4. Role and responsibilities

The Code of Conduct is designed to strengthen the good governance of Palmerston North City Council. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

4.1 Members

The role of the governing body includes:

- Representing the interests of the people of Palmerston North;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan;
- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 Chief Executive

The Chief Executive is the only person directly employed by the Council itself (s42, LGA 2002). All concerns about the performance of a member of staff must, in the first instance, be referred to the Chief Executive.

The role of the Chief Executive under the LGA 2002 includes:

- Implementing the decisions of the Council;
- Providing advice to elected members;
- Ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of PNCC;
- Facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001;
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of PNCC;
- Providing leadership for the staff of PNCC; and
- Employing, on behalf of the Council, staff, (including negotiation of the terms of employment for those staff).

5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

5.1 Relationships between elected members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that:

- Maintains public confidence;
- Is open, honest and courteous;
- Is focused on issues rather than personalities;
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.

Please note, nothing in this section of the Code is intended to limit robust debate.

5.2 Relationships with staff

An important element of good governance involves the relationship between a council, its chief executive and its staff. The Chief Executive is the employer of all PNCC employees, only the Chief

Executive can hire, dismiss, instruct, or censure any employee. Members will respect arrangements put in place to facilitate this relationship, and:

- Raise any concerns about employees, officers or contracted officials with the Chief Executive;
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor or the Chairperson of the Chief Executive Performance Review Committee;
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer;
- Treat all employees with courtesy and respect and not publicly criticise any employee;
- Not do anything which compromises, or could reasonably be seen as compromising the impartiality of a council officer; and
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees.

Please note, elected members should be aware that failure to observe this portion of the Code may compromise obligations to be a good employer and consequently expose the Council to civil litigation.

5.3 Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that councils have the respect and trust of members of the public. To facilitate trust and respect members will:

- Ensure their interactions with citizens are fair, honest and respectful;
- Be available to listen and respond openly and honestly to citizens' concerns;
- Represent the views of citizens and organisations accurately, regardless of the member's own opinions of the matters raised; and
- Ensure their interactions with citizens and communities uphold the reputation of the Council.

6. Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role, the media needs access to accurate and timely information about the affairs of Council. See the **Elected Members' Media & Social Media Protocol**. The Protocol is based on the value of 'respect for others' and the agreed standards of behaviour outlined in Section 5 Relationships of the Code.

7. Information

Access to information is critical to the trust in which Council is held and its overall performance. A failure to comply with the provisions below can represent a breach of the Code.

7.1 Confidential information

In the course of their duties members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

See **Appendix A** for how Elected Members could respond to queries from the public around claims or litigation against Council.

7.2 Information received in capacity as an elected member

Occasionally members will receive information from external parties which is pertinent to the ability of their Council to properly perform its statutory duties. Where this occurs, and the information does not contravene the privacy of natural persons, the member will disclose such information to other members and the Chief Executive as soon as practicable.

8. Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's partner has a pecuniary interest, such as through a contract with the Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance as to whether they have a pecuniary interest, and if so, may seek 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.

Please note: Failure to observe the requirements of LAMIA could potentially invalidate a decision made, or the action taken, by the Council. Failure to observe these requirements could also leave

the elected member open to prosecution (see **Appendix B**). In the event of a conviction, a vacancy is created, and the elected member is disqualified from office until the next Local Body election.

9. Register of Interests

Members must, make a declaration of interest annually under the Local Government (Pecuniary Interests Register) Amendment Act 2022. These declarations are recorded in a public Register of Interests maintained by the Council and published on the website. The declaration must include information on the nature and extent of any interest, including:

- a) Any employment, trade or profession carried on by the member for profit or gain;
- b) Any company, trust, partnership etc for which the member is a director, business partner or trustee;
- c) A description of any land in which the member has a beneficial interest within the jurisdiction of the Council; and
- d) A description of any land owned by the Council in which the member is:
 - A tenant; or
 - The land is tenanted by a firm in which the member is a business partner; a company of which the member is a director; or a trust of which the member is a trustee.
- e) Any overseas travel the member has been on within the last 12 months, which was paid for by a non-family member of the member.
- f) Any gifts the member has received with a value of more than \$500 or combine value of \$500.
- g) Any income the member has earned in the last year other than their Council remuneration.
- h) Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note, where a member's circumstances change, they must ensure that the Register of Interests is updated as soon as practicable.

Elected members who are declared bankrupt must notify the Chief Executive as soon as practicable after being declared bankrupt. The Chief Executive will then notify the Mayor and all other elected members.

10. Ethical behaviour

Members will seek to promote the highest standards of ethical conduct. Accordingly, members will:

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or other member in order to benefit their own, or families, personal or business interests;
- Only use the Council's resources (such as facilities, staff time, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- Not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of more than \$500 or gifts with a combined value of \$500 is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

Any failure by members to comply with the provisions set out in this section represents a breach of the code.

11. Creating a supportive and inclusive environment

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. Members are expected to take all reasonable steps to acquire the required skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of Palmerston North City.

12. Disqualification of Members from Office

Elected members are automatically disqualified from office, according to LGA Sch 7 (1) if they:

- Are convicted of a criminal offence punishable by two or more years imprisonment; or
- Breach the provisions of or are convicted of an offence under LAMIA; or
- Cease to be or lose their status as a parliamentary elector.

13. Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, Schedule 7, cl. 15(4)). Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member may make a complaint to that effect. All written complaints will be considered using the complaints procedures outlined in **Appendix C**.

The Chief Executive may bring a code complaint on behalf of PNCC staff or a member of the public.

14. Penalties and actions

Where a complaint is referred to the Council¹, the nature of any penalty or action will depend on the seriousness of the breach.

Where there are no statutory provisions, the Council may require one of the following:

1. A letter of censure to the member;
2. A request (made either privately or publicly) for an apology;
3. Removal of certain Council-funded privileges (such as attendance at conferences);
4. Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
5. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
7. A vote of no confidence in the member;
8. Suspension from committees or other bodies to which the member has been appointed; or
9. Invitation to the member to consider resigning from the Council.

Council may decide that instead of a penalty, one or more of the following may be required:

- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

14.1 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

¹ Refer to Step 5 of Appendix C

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under LAMIA);
- Breaches which result in the Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s44 LGA 2002 which may result in the member having to make good the loss or damage); or
- Breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

15. Review

Once adopted, the Code continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code. Amendments to the Code require a resolution supported by 75 per cent of elected members present at the Council meeting at which the amendment is considered.

The Council will formally review the Code as soon as practicable after the beginning of each triennium in order to ensure that all members have the opportunity to provide their views on the Code's provisions.

Appendix A: Protocol on Responding to Queries on Council Litigation²

Elected Members are under a strict responsibility not to divulge confidential information³ in relation to any potential claim or action against the Council.

In the event that Members are approached relating to matters that are the subject of a potential claim or action against the Council, they should respond in the following manner:

Refer any queries from the public relating to any potential claim to the Chief Executive, or relevant General Manager.

Express absolutely no opinion on the validity or otherwise of Council's actions, or of the complainant's claim.

If pressed, undertake only to offer to put any concerns a plaintiff may about the manner in which a claim is being dealt with by the Council, to the Council.

HOW SHOULD A MEMBER RESPOND?⁴

- Listen to concerns.
- Seek clarification.
- Refer person to appropriate agency, eg. Chief Executive, Solicitor, Consultants, Dispute Tribunal, etc.
- Relay information to Chief Executive or appropriate manager of the Council.
- Advocate on behalf in a limited capacity to the Council.
- Notify the Chief Executive where notice of intention to make a claim against the Council is given, or there are facts present which involve the assertion of action against the Council.

WHAT SHOULDN'T A MEMBER DO?

- Admit liability.
- Settle or make or promise any payment.
- Do anything that may prejudice the insurers defence of litigation.
- Disclose any information that the Councillor has received by way of confidential briefings on the litigation matter.

² Resolution Council 23 June 1997

³ Confidential information includes any information shared with elected members in confidence.

⁴ Resolution Council 26 April 1999

Appendix B: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- A person, or partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected member's family trust and the Council.

Determining whether a pecuniary interest exists

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." (Office of the Auditor-General, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors:

- 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 other 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 legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention need to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

The contracting rule

A member is disqualified from office if he or she is "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are 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 you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

"Is there a real danger of bias on the part of the 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?"

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 focus should be 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 or not they might be perceived as biased, members must also take into account 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 they 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).

Local Government (Pecuniary Interests Register) Amendment Act 2022 (Amendment to the Local Government Act 2002)⁵

The Local Government (Pecuniary Interests Register) Amendment Act creates a public register of members' financial interests, to provide transparency and to strengthen public trust and confidence in local government processes and decision-making.

The Act amends the Local Government Act 2002. It makes it mandatory for elected members to declare their pecuniary interests and an offence if they fail to do so. Members are required to declare any financial interest in companies (shares or employed to), trusts, property or land. There is also a requirement to declare any overseas travel which was paid by a non-family member, declare any gifts valued over \$500 and any financial payments received by the member outside of their councillor salary.

Unlike LAMIA, there is no requirement for elected members to declare the interests of their family members on the register, however elected members are still bound by LAMIA which requires they not participate in a debate or vote if they or their partner has a financial interest in an item.

Each member must make a declaration of interests (DOI) after the election and review it annually by the end of February. Members can seek an amendment to their DOI at any time.

The Act requires Council to keep a register of the financial interest of all elected members on the website and to retain the information for 7 years.

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 (LGOIMA) sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected members

⁵ Act comes into effect November 2022

should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another member is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

Under this Act 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, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

Crimes Act 1961

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- Use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

The Local Government Act 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles, and details the 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 s44 LGA 2002, it is found that one of the following applies:

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

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:

- a) Without the member's knowledge;
- b) With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) Contrary to the manner in which the member voted on the issue; and
- d) 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 (s47 LGA 2002).

Appendix C: Making and withdrawing a complaint

Principles

The following principles will guide the process for investigating and determining whether or not a breach under the code has occurred:

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- That the processes 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 the Code. This includes, conditional on the nature of an alleged breach, directly affected parties:
 - Have a right to know that an investigation process is underway;
 - Are given at least five working days' notice before any meeting and are provided with an opportunity to be heard;
 - Have confidence that any hearing will be impartial;
 - Have a right to seek appropriate advice and be represented at any meeting they attend during the process; and
 - Have their privacy respected.

A complaint can be withdrawn at any stage.

Definition of Terms

Independent Investigator - person responsible for investigating the complaint (appointed from the list agreed by Council).

Parties – the complainant and the elected member(s) concerned.

Complainant – Elected Member(s) or Chief Executive that makes the complaint

Elected Member(s) concerned – Elected Member(s) who is the subject of the complaint

Material Breach – A breach is considered material if in the opinion of the independent investigator, it would bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.

Non-material Breach – A breach is considered non-material if in the opinion of the independent investigator, any adverse effects are minor and no investigation or referral is warranted.

1. Making a Complaint

- A complaint can be initiated by an elected member(s) or the Chief Executive⁶.
- It must be in writing to the Chief Executive unless it involves the Chief Executive, in which case it should be presented to the PNCC's Legal Counsel. (**Note:** Legal Council will follow the same process outlined in the table below in steps 1 – 5 and references to Chief Executive will be replaced with PNCC's Legal Counsel.)
- Allegation of a breach must indicate in writing which part of the code has been breached and include supporting evidence("complaint").

On receipt of a complaint the Chief Executive must, unless they have good reasons not to do so, provide a copy of the complaint to the Elected Member(s) concerned and ascertain if the Elected Member acknowledges that there could be a breach of the Code of Conduct.

The Chief Executive will inform the Mayor (or the Deputy Mayor, if the complaint involves the Mayor) that a complaint has been received and is being investigated. The details of the complaint should not be shared to protect the privacy of the individuals involved.

2. Acknowledgement of complaint and determining process

If the Elected Member concerned acknowledges there may be a potential breach of the Code, then the Chief Executive will confirm if both parties are willing to attend mediation. If both parties agree, the Chief Executive will initiate the process for mediation as set out at (3).

If the Elected Member concerned does not acknowledge a potential breach of the Code or one of the parties does not agree to mediation, then the Chief Executive will initiate an independent investigation as set out at (4) below.

The Chief Executive must send a letter to the parties, notifying them which option has been undertaken and explaining the process that will be followed.

3. Mediation

If the Elected Member concerned acknowledges that there could be a breach of the Code and the parties agree, the Chief Executive will engage **Manawatū Restorative Practices Trust** to facilitate a formal restorative practice process.

⁶ Refer to section 13

The **Manawatū Restorative Practices Trust** will receive reasonable remuneration. The cost of the mediation provider will be paid for by Council. If either party chooses to obtain independent advice whether legal or otherwise this will be at the party's own expense.

If the parties reach a resolution during mediation, the complaint will be considered resolved. This may include a confidential settlement agreement. The Chief Executive will be informed that a resolution was reached on the matter but not necessarily the terms of any agreement settlement. The Chief Executive will inform the Mayor that the complaint has been resolved who will inform elected members.

If a resolution is not reached between the parties and the complainant wishes to pursue the complaint, the Chief Executive will refer the complaint to an Independent Investigator see (4).

4. Investigator makes Preliminary Assessment

If the Elected Member concerned does not acknowledge the breach or one party does not agree to mediation the Chief Executive will refer the complaint to an Independent Investigator (from the list appointed by Council).

The Independent Investigator may receive reasonable remuneration paid by PNCC. If elected members choose to obtain independent advice whether legal or otherwise this will be at the member's own expense.

On receipt of a complaint the investigator will make a preliminary assessment as to whether:

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

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

On receiving the investigator's preliminary assessment report, the Chief Executive will:

1. where an investigator determines that a complaint is **frivolous or without substance**, inform the parties directly and the Mayor of the investigator's decision. Unless there are grounds for confidentiality, in which case the Mayor will not be informed of the decision.
2. in cases where the investigator finds that the complaint involves a **potential legislative breach** and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

3. in cases where the investigator determines that there has been a **non-material breach** of the Code, advise both parties of the investigator's decision and if the investigator chooses to, a recommended course of action appropriate to the breach, neither of which are open to challenge. The recommendation may include recommending that the Elected Member concerned seek guidance from the Mayor; or attend appropriate training to increase their knowledge and understanding of matter that led to the complaint.

Any recommendations made in response to a **non-material breach** are non-binding on the elected member(s).

4. where a complaint is found to be a **material breach** of the Code the investigator will inform the Chief Executive. The Chief Executive will inform the parties of the investigator's findings and that a formal investigation will take place following the process set out below at (5).

5. Investigator makes Formal Investigation

Where an investigator determines that there has been a material breach of the Code they will prepare a report for the Chief Executive on the seriousness of the breach. A formal investigation will take place and in preparing that report the investigator may:

- Meet with both parties separately. Both parties will be given a copy of the full complaint, (and supporting evidence) at least five working days before meeting the investigator and will be offered the opportunity to bring a support person to any meeting they attend.
- Meet with and consult any affected third parties as they determine necessary.
- Gather any relevant documents or information they determine necessary to inform their report.

The investigator's report may make a recommendation on whether or not a penalty, or other form of action, should be imposed.

The investigator's report will be shared with both parties, who will be given the opportunity to comment on the report. The investigator may choose to incorporate any comments made by either party into their report.

The investigator will provide a final report detailing their findings on the seriousness of the breach of the Code and rationale for that finding to the Chief Executive.

6. Council to deliberate and determine penalties or actions (if required)

On receipt of the investigator's report the Chief Executive will prepare a report for the Council which will include the investigator's report.

The Chief Executive's report will be considered in a public meeting except where the alleged breach concerns matters that justify the exclusion of the public, such as a matter that would

otherwise be exempt from public disclosure under s48 of LGOIMA, in which case it will be a closed meeting.

When the complaint is heard in private, the decision will be released to the public when no staff member is involved.

The complainant, Elected Member concerned and any other 'interested' elected members involved in the complaint should declare an interest and not participate in deliberations.

The Council will consider the Chief Executive's report and may adopt, modify or reject the recommendations. Having considered the findings, the Council will determine penalty, or some other form of action, to be imposed.

The Council will inform the parties of its decision in writing.

The form of penalty that may be applied will depend on the nature and seriousness of the breach and may include the actions set out in section 14 of this Code.

Note: No appeal right is included in the Code as all members are able to make use of the processes set out in standing orders for revoking Council decisions or alternatively a Council decision can be subject to a judicial review.



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