

Chairperson and Community Board Members
ŌTAKI COMMUNITY BOARD

2 FEBRUARY 2016

Meeting Status: **Public**

Purpose of Report: For Decision

NEW POLICY ON DECLARATION OF MEMBERS' INTERESTS

PURPOSE OF REPORT

- 1 This report presents for the Board's adoption a new policy on Elected Members' Declarations of Interest (see Appendix 1).

DELEGATION

- 2 The Board has the authority to consider this matter under clause 10.28 of the Governance Structure and Delegations (11 June 2015 version): *'Authority to undertake any other responsibilities that are delegated to it by the local authority.'*

BACKGROUND

- 3 In 2015 auditors suggested that it would be useful to have a policy to improve the management of the declaration of interests process and so a draft policy was developed and presented to Council in December. Council adopted the policy noting that it would be subsequently circulated through each Community Board. Council agreed that the new Policy and the Register of Interests should be published on the Council website.
- 4 Before the adoption of the new policy the declaration process involved Democracy Services circulating every six months a proforma for completion by Elected Members describing any conflicts of interest they may have. The completed proformas were then entered into a register held by Democracy Services. The register is made available to auditors on request. Under the new policy there will be no change to this process.
- 5 Additionally the 'Declaration of Interests Relating to Items on the Agenda' remains a standing item on each meeting's Order Paper. It is up to each Elected Member to decide whether they have a conflict of interest (whether pecuniary or non-pecuniary) and what to do about it.

ISSUES AND OPTIONS

Issues

- 6 The new policy covers pecuniary and non-pecuniary interests and relies on Elected Members and appointed members identifying and declaring these. Generally pecuniary interests are treated more strictly (i.e. there are legal penalties) than non-pecuniary interests. But it is in the interests of Elected

Members to be scrupulous around actual or potential conflicts of interest whether these involve financial issues or not.

CONSIDERATIONS

Policy considerations

- 7 As this is a new policy there are no relevant prior to existing Council policies. It is proposed to review the new policy every five years to ensure its currency and alignment with sector developments.

Legal considerations

- 8 The declaration of pecuniary interests by Elected Members is enshrined in the Local Authorities (Members' Interests) Act 1968. The provisions of this Act apply to community boards.
- 9 The declaration proforma at Appendix 1 of the policy was cleared by legal counsel.

Financial considerations

- 10 There are no financial considerations.

Tāngata whenua considerations

- 11 The policy also applies to non-elected appointees: the Māori representatives on Council's three major Standing Committees and the external independent member on the Audit and Risk Subcommittee.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 12 This matter has a low level of significance under Council policy.

Consultation already undertaken

- 13 No previous consultation has been required.

Engagement planning

- 14 An engagement plan is not needed to implement this decision.

Publicity

- 15 The new policy and the Register of Interests have been published on the Council website in the interests of increased transparency around Council's workings.

RECOMMENDATIONS

16 That the Ōtaki Community Board adopts the new policy “Declaration of Members’ Interests” as at Appendix 1 of report Corp-16-1799 noting its adoption by Council on 10 December 2015.

Report prepared by	Approved for submission	Approved for submission
Vyvien Starbuck-Maffey	Kevin Currie	Wayne Maxwell
Democracy Services Manager	Group Manager Regulatory Services	Group Manager Corporate Services

ATTACHMENT

Appendix 1 – Policy on Declaration of Members’ Interests

KĀPITI COAST DISTRICT COUNCIL POLICY

Corporate Policy Title:	MEMBERS' DECLARATION OF INTERESTS		
Policy No:		Pages:	1 – 5
Group Responsible:	Corporate Services		
Approval Dates:			
– Originally approved on:		10 December 2015	
– Next review due on:		December 2020	

1. POLICY OBJECTIVE(S)

The objective of this policy is to achieve transparent, consistent, timely and effective management of the declaration of interests by members of Council decision-making bodies (whether elected or appointed).

2. CONTEXT

- 2.1 Public officials, whether elected or appointed, need to exercise care to avoid situations where they have, or appear to have, a conflict of interest.
- 2.2 Broadly speaking, a conflict of interest exists when a member could use, or uses, their position to further their own interests or those of their partner, or spouse.
- 2.3 Where members make decisions about the allocation of public monies, ratepayers will expect them to exhibit a high degree of integrity and transparency in their official dealings. So it is also important that members avoid even the appearance of a conflict of interest, as far as is possible. In a small district, however, conflicts of interest are unavoidable to some degree and can arise without any one being at fault. It's a matter of ensuring transparency through prompt disclosure.

3. TYPES OF CONFLICTS OF INTEREST

- 3.1 A conflict of interest arises where two different interests overlap (or may overlap); where a person's duties or responsibilities to a public entity could be affected by some other (usually private) interest or duty. The other interest or duty may exist because of the person's financial affairs; a relationship role; or something they have said or done.
- 3.2 There are two types of interest: pecuniary and non-pecuniary. An interest whether pecuniary or non-pecuniary is one that exists which is greater than an interest in common with the public. Members must consider all types of interest when assessing whether their interests may conflict or be perceived to conflict

with their role as an Elected Member. A checklist for assessing whether a conflict of interest exists or may exist in future is at Appendix 1.

Pecuniary interests

- 3.3 A pecuniary interest is one that involves money.
- 3.4 The Local Authorities (Members' Interests) Act 1968 ('the Act') applies to the pecuniary interests of elected or appointed members, controlling the making of contracts (and subcontracts) worth more than \$25,000 (including GST) in a financial year between elected members and their local authority, and prohibiting elected members from participating in matters before the authority in which they have a pecuniary interest, other than an interest in common with the public. This includes a member's spouse or partner.
- 3.5 A member has a direct pecuniary interest if they are a party to the contract. They may have an indirect pecuniary interest if the contract is between the local authority and another person, and the member has a personal connection with that person, or could benefit from the contract.
- 3.6 A breach of the Act could result in a fine and/or disqualification from office.
- 3.7 If there is any doubt about whether the \$25,000 limit applies in a specific situation the advice of the Chief Executive or the Office of the Auditor-General (OAG) should be sought. After consideration of circumstances the OAG may issue an exemption.¹

Non-pecuniary interests

- 3.8 This type of interest can arise through a variety of circumstances (held other than in common with the public). The following list is not intended to be exhaustive – advice should be sought from the Chief Executive or Group Manager (or the OAG) on a case-by-case basis as required. Members are also free to obtain their own independent legal advice on any circumstance.
- 3.9 The member's interest could be:
 - Holding another public office
 - Being an employee, advisor, director or partner of another business, or organisation
 - Pursuing a business opportunity
 - Being a member of a club, society or association (especially as an office holder or where money is involved)
 - Having a professional or legal obligation to someone else (eg. as a trustee)
 - Being a spouse, relative or close friend of someone who has one of these interests (or who could otherwise be personally affected by a decision of the public entity).
- 3.10 In terms of the Act, not declaring a non-pecuniary interest is not an offence but creates a reputational risk for the Council.

¹ Also see the OAG publication 'Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968'.

4. MANAGING CONFLICTS OF INTEREST

- 4.1 It is up to each member to determine what interests or conflicts might be material in each case, and if doubt exists, further advice should be sought from the Chief Executive or the Office of the Auditor-General. In making their judgements, members should consider both the actual conflicts of interest that might arise, and the reputational risk to the member and to Council of a possible perception that there might be such a conflict.
- 4.2 In order to achieve transparency and consistency in the management of conflicts of interest an Interests Register shall be maintained. The register is designed to:
- increase public confidence in the democratic process; and
 - protect members in the event of public scrutiny and criticism
- 4.3 Members who believe that a conflict of interest exists should declare the details using the declaration proforma (see Appendix 2 as an example) and return it promptly to Democracy Services.
- 4.4 The initial return of interests should occur within 30 days of being elected and every six months thereafter until the end of the Triennium. In addition, it should be updated immediately a member becomes aware of a new actual or potential conflict.
- 4.5 The Register (in both electronic and hard copy) will be kept updated and monitored by Democracy Services staff and will be published on the Council website. The Register will be subject to scrutiny by auditors at least annually, or as requested.

5. DEFINITIONS

‘Council’ refers to the Elected Member body representing the Kāpiti Coast District (ie the Mayor, Councillors and Community Board members)

‘member’ means an elected member of Council, or a person appointed by Council to a Council decision-making body such as a Committee or Subcommittee

the Act’ means the Local Authorities’ (Members’ Interests) Act 1968

‘pecuniary interest’ is an interest that involves an actual or potential financial gain or loss. Money does not need to actually change hands for an interest to be pecuniary

‘non-pecuniary interest’ is one that does not have a financial component but which may arise from personal or family relationship or involvement in sporting, social, or cultural activities

‘local authority’ ie the Council

6. REFERENCES

Relevant legislation, codes, standards and/or external references (including other Council policies) associated with this policy 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
- ‘Managing Conflicts of Interest in the Public Sector’ – Office of the Auditor-General 2005

7. EXCLUSIONS

This policy does not cover declarations of expenses associated with local body elections (which are dealt with through a separate process and legislation), nor with issues of predetermination or bias associated with voting by members (which are dealt with through the Code of Conduct).

8. RELATED POLICIES

The Code of Conduct for Elected Members 2013-2016 Triennium, and any such Code of Conduct subsequently adopted by Council in the 2016-2019 Triennium.

9. REVIEW PROCESS

This policy will be reviewed every five years.

10. AVAILABILITY OF POLICY

This policy and the associated Register of Interests will be available on the Council website www.kapiticoast.govt.nz or on request.

11. POLICY HISTORY

Version	Date	Policy Owner	Brief Description of Change	Approved By
1	Xxx	Xxx	Xxx	xxx
2				

12. POLICY AUTHOR

Author name:	Vyvien Starbuck-Maffey
Author position:	Democracy Services Manager

13. SLT APPROVAL

Chief Executive name:	Pat Dougherty
Chief Executive signature:	
Date:	

Attachments

Appendix 1 Declaration of Interest pro-forma

APPENDIX 1

DECLARATION OF INTEREST PROFORMA

***This proforma should be completed and returned to Democracy Services:
(a) at the beginning of the Triennium (b) every 6 months thereafter AND (c) at
any time a member becomes aware of a potential or actual conflict of interest***

TO:	The Chief Executive
DATE:	
FROM:	

Pecuniary interests

I understand that a pecuniary interest in terms of Section 6 and Section 3(1) of the Local Authorities' (Members' Interests) Act 1968 means with a direct or indirect pecuniary interest, other than an interest held in common with the public, and includes where:

- (a) Either I or my spouse or partner have a direct pecuniary interest in the matter before Council; or
- (b) Either I or my spouse or partner is involved in a company or incorporated society that has a pecuniary interest in the matter before the Council, including where:
 - (i) either I or my spouse or partner, singly or together, own 10% or more of the shares in the company (or another company controlling that company); or
 - (ii) either I or my spouse or partner is a shareholder of the company (or another company controlling that company) and either of us is the managing director or general manager of the company or the controlling company; or
 - (iii) either I or my spouse or partner is the managing director or general manager of the company and either of us is a shareholder of another company controlling that company.

I declare under the terms of Section 6 and Section 3(1) of the Local Authorities' (Members' Interests) Act 1968, that I hold directly or indirectly a pecuniary interest, other than an interest in common with the public, in the following firms, companies, partnerships or incorporated societies:

Non-pecuniary interests

I declare that I hold the following non-pecuniary interests (eg membership of boards, trusts, clubs and/or committees):

OR, I have nothing to declare (tick if applicable)

Signature: