

**QLDC Council**  
**24 March 2015**

**Report for Agenda Item: 5**

**Department:**

**Legal and Regulatory**

**Elected Members' Pecuniary Interests**

**Purpose**

- 1 The purpose of this report is to recommend an amendment to the Queenstown Lakes District Council's code of conduct in respect of declaring and recording members' pecuniary interests.

**Recommendation**

**2 That Council:**

- a. **Note** the recommendation of the Audit and Risk Committee to amend the Council's Code of Conduct (minutes recording this recommendation are appended to the Mayor's Report);
- b. **Amend** Part 6 of the existing Code of Conduct to provide for the mandatory reporting of members' interests in the specified form of declaration (set out in Attachment A to this report);
- c. **Revoke** Part 8 of the existing Code of Conduct (existing code of conduct is available at <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Policies/Elected-Members/Elected-Members-Code-of-Conduct.pdf> );
- d. **Adopt** a new Part 8 to the Code of Conduct together with the specified Appendix (see Attachment A) for elected members, and a Requirements for Declaration (as described in Attachment B) to provide for:
  - i. Reporting of pecuniary interests to occur on at least a twice yearly basis (as well as at the commencement of any Council meeting);
  - ii. any new interests or changes to members' existing interests (including acceptance of gifts) to be completed no later than the last working day of the month in which the interest changed, or a new interest arose;
  - iii. the compilation of a register of elected members' pecuniary interests by a Registrar of the Members' Pecuniary Interests Register;
  - iv. making a summary of the register of elected members' pecuniary interests available to the public on request.

- e. **Appoint** the chief executive as the Registrar of the Members' Pecuniary Interests Register.
- f. **Authorise** the Registrar of the Members' Pecuniary Interests Register to make amendments to the declaration forms, and the requirements for declaration of pecuniary interests, and to delegate the functions of the Registrar.
- g. **Confirm** that members re-adopt the Code of Conduct for Elected Members in its entirety<sup>1</sup>.
- h. **Note** that no less than 75% of members present at the Council meeting that considers this item must vote for the amendment and re-adoption of the Code of Conduct for Elected Members.<sup>2</sup>

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9/03/2015

Reviewed and Authorised by:



Chief Executive

10/03/2015

## Background

- 3 Pecuniary interests exist where a matter would, if dealt with in a particular way, give rise to an expectation or a perception of a gain or loss of money to a person involved in the matter.<sup>3</sup> Pecuniary interests are therefore financial in nature.
- 4 Non-pecuniary interests exist where responsibilities as a member of the local authority could be affected by some other separate interest or duty that member may have in relation to a particular matter. Non-pecuniary interests typically arise from relationships, conduct (i.e. something that has been said or done) or the carrying out of responsibilities or duties.
- 5 The scope of this report is the administration of pecuniary interests. Non-pecuniary interests are therefore not considered directly.

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<sup>1</sup> Note: it is not a requirement of the Local Government Act 2002 for the code of conduct to be re-adopted each triennium, but it is a practice that is recommended by the Office of the Auditor General (see: paragraph 2.28, Local Authority Codes of Conduct (2006)). The Queenstown Lakes District Council has not re-adopted the Code of Conduct for this triennium.

<sup>2</sup> Clause 15(6), Schedule 7 Local Government Act 2002.

<sup>3</sup> [http://www.localcouncils.govt.nz/lqip.nsf/wpg\\_url/Resources-Glossary-Index#PecuniaryInterest](http://www.localcouncils.govt.nz/lqip.nsf/wpg_url/Resources-Glossary-Index#PecuniaryInterest) and see also: Office of the Auditor General, Guidance for members of local authorities about the local authorities (Members' Interests) Act 1968, 2010 available at: <http://www.oag.govt.nz/2010/lamia>

- 6 The Audit and Risk Committee has considered the management of elected members' pecuniary interests at its meetings of 10 October 2014 and 16 February 2015, and has recommended that Council amend its procedures and code of conduct to meet Audit New Zealand's recommendations for the disclosure of pecuniary interests.

### Comment

- 7 Professional and personal interests of elected members mean that conflicts of interest cannot be avoided and can arise without anyone being at fault.
- 8 A conflict of interest exists where the responsibilities of an elected member intersect with other interests (i.e. a non-pecuniary or pecuniary interest) and the performance (or perceived performance) of elected member responsibilities could be affected by those other interests.
- 9 Councils that have not adopted a code of conduct to make regular written returns of members' interests are now receiving recommendations from Audit New Zealand to adopt this procedure. The basis of Audit New Zealand's recommendation is to ensure that the Council creates an audit trail to confirm it is meeting its obligations under the applicable legislation.
- 10 Councils adopting the Audit New Zealand recommendation have amended their code of conduct to provide for:
- a mandatory requirement for members to make a declaration of pecuniary interests (including a requirement to state that no such interest exists i.e. a NIL return);
  - the compilation of a register of members' interests;
  - the publication of a summary of the register, or otherwise making the register available to the public.
  - Importantly, the amendments adopted to codes of conduct **do not require a disclosure as to the actual value, amount, or extent of any asset, payment, interest, gift or contribution or the identity of any co-owners** although elected members may include this information if they wish.

### How elected members' pecuniary interests are administered currently:

- 11 At its 10 June 2008 meeting the Council re-adopted<sup>4</sup> its Code of Conduct for Elected Members to set out a procedure for complying with the LAMIA68 rules and to deal with other non-pecuniary conflicts of interest.
- 12 The CCEM provisions for managing conflicts of interests, pecuniary interests (including gifts) have not been revised or amended since being adopted.
- 13 The CCEM requires that:
- a. the acceptance of gifts (including special occasion goodwill gifts) are reported to the Chief Executive when the value exceeds \$50<sup>5</sup>.
  - b. Members disclose pecuniary and non-pecuniary interests.

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<sup>4</sup> The code of conduct was first adopted on 19 September 2003, and was re-adopted with a minor amendment made to Part 5 by resolution dated 10 June 2008.

<sup>5</sup> Part 6, CCEM

Members are provided with a memorandum from the Chief Executive each year setting out a request to voluntarily disclose by a specified date the members' pecuniary interests. There is no requirement to provide a "nil" return if no such interests are held.

Additionally, the Mayor requests a declaration of any conflicts of interest at each full Council meeting.

#### Evaluation of the Current Administration of QLDC Members' Pecuniary Interests

13 The existing disclosure by return to the Chief Executive is effectively a voluntary process as it is not a requirement of the Code of Conduct for Elected Members to provide a written return to the Council's Chief Executive on a regular basis. It relies on members self-disclosing that an interest exists at some stage prior to participation in democratic processes. Public expectations are that disclosure of interests should occur earlier than immediately prior to a decision being taken.

14 There are several areas where the Code of Conduct could be made more specific to ensure that members are free from suspicion of impropriety. This includes:

- a. A requirement to complete a written return of pecuniary interests held at a specific date, and to submit it by a specified date;
- b. Providing more specific guidance on what interests do or do not require disclosure;
- c. Making available a reasonable summary of the interests disclosed to the public on request.

#### Proposal for Amendment of the Code of Conduct Provisions for the Administration of Members' Pecuniary Interests

15 A more directive and specific approach to dealing with pecuniary interests, and other conflicts of interest is proposed so that elected members may avoid accusations of impropriety and the Council can meet public expectations of transparency in the exercise of Council's democratic functions.

16 The proposed changes are set out in full in Attachment A, which proposes new wording to be inserted into the Code of Conduct for Elected Members. In summary these changes are:

- A requirement for members to make a regular written disclosure of pecuniary interests (including gifts received) and the record of those interests in a summary register available to the public on request;
- The existing requirement that members seek advice from the chair or chief executive has been expanded. Members are still advised to discuss matters with the chief executive where they are unsure about a possible conflict. However, now where a member and the chief executive cannot resolve a possible conflict situation between them, the issue will be put to the meeting concerned for discussion and voting. (See section headed 'Disclosure as matters arise' in Attachment A.)
- The Code now explains the consequences of failing to manage conflicts, being the creation of risks to the Council's decision-making and possible conviction under the Local Authorities (Members' Interests) Act 1968.

- A new section, headed 'Managing conflicts of interest', sets out the process that elected members should follow where conflicts are identified. It requires elected members to take no part in consideration of a matter where a conflict is declared. It remains largely self-policing, except to the extent that a concern about a conflict, once raised by the member, may be determined by the meeting.
- A requirement for Members to use a specific form for the returns to ensure that all relevant interests (or the absence of interests) are recorded. The form proposed is Attachment C. It includes the requirement to disclose gifts. This avoids the need to keep a separate register of gifts. The proposed disclosure form is designed as a series of independent sections so that members who are required to update an interest throughout the course of the year are not required to complete the form in its entirety. This will be particularly important with regard to the disclosure of gifts received.
- To require Members to refer to a practice note "requirements for making a declaration of interest". This is to direct members as to the minimum elements of the required disclosure.

17 It is not considered that a policy on pecuniary interests of members is necessary at this time, as (if amended as proposed) a failure to disclose pecuniary interests will amount to a breach of the Code of Conduct. Such a breach can support disciplinary action for elected members. Therefore a policy will not add any substantive benefit over and above the proposed amendments to the code of conduct.

18 The proposed register would not remove the need for members to declare a conflict of interest at the commencement of a meeting, or to update the register as interests arose.

19 The requirement that the register, or a fair and accurate summary of its contents, be available for public inspection was debated intensively amongst elected members of other Local Authorities that have amended the code of conduct to include the compilation of a register of interests.

20 While the public availability of the register or a summary might seem intrusive for elected members, Parliamentary MPs and elected members of other Local Authorities such as Auckland Council, Christchurch City Council and Tauranga City Council have set an even higher level of disclosure for their pecuniary interest registers by requiring that such registers are published.

32 **It should also be noted that the register will not record the actual value, amount, or extent of ownership of any asset, payment, interest, gift, contribution or debt, or the identity of the co-owner of any interest. Therefore such matters will not be in the public domain.**

33 Additionally, some information recorded in the register will already be in the public domain as a matter of public record. Examples include the companies register which discloses the identity of shareholders and directors.

34 Therefore the public availability of an interests register on request is recommended as it is strongly consistent with the local government principles of transparency and accountability and with the Council's obligations under the Local Government Official Information and Meetings Act 1987.

### Options

35 The proposed changes are a modification of the disclosures required of Members of Parliament (through standing orders), and on the amendments to Codes of Conduct for elected members in the Auckland Council and Christchurch City Council.

36 Not all Local Authorities use pecuniary interests registers, but the practice is growing. Of seven Local Authorities evaluated, all had adopted or amended codes of conduct within the previous 24 months that provided for pecuniary interest registers to be maintained.

37 The Council may also wish to consider the following alternative options for amendments to the code of conduct and the administration of the register:

- Inclusion of further information on the register (such as the extent of ownership of assets where they are already recorded on a public register). This is not recommended as it would require duplication of an existing public register which is considered unnecessary;
- Publication of the register (or a reasonable summary of the register). This would avoid the burden of staff time responding to requests for the register. It has not been recommended as it is anticipated that existing resourcing is sufficient to respond to requests for this information. Council may consider publication of the register if the demands on Officer time exceed current resourcing, or Council wishes to use Officer time more efficiently.
- Different disclosure thresholds could be specified in the prescribed form for disclosures (see attachment B). These thresholds are based on the existing threshold for the disclosure of gifts in the code of conduct, and the thresholds which are in place in Christchurch City Council. This could be explored further with Councillors in a workshop environment.
- Local Government New Zealand has recommended to Central Government that Councils adopt the process for the disclosure of pecuniary interests that applies to Members of Parliament.<sup>6</sup> Many Councils have adopted this approach to demonstrate that the members of the Local Authority are meeting their obligations under legislation such as the Local Authorities (Members' Interest) Act 1968.

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<sup>6</sup> Local Government New Zealand, Submission in the matter of the review of the Local Authority Members' Interest Act 1968

36 Retaining the existing process for voluntary written disclosures is not recommended as it is not consistent with the practice recommended by Audit New Zealand, and is inconsistent with the practices of other Local Authorities.

### **Financial Implications**

37 There may be costs associated with staff time in compiling and updating the proposed members' interests register, and in responding to requests from the public for its release. Publishing the MRIP would avoid the costs of responding to information requests.

38 Compliance with LAMIA68 does incur a cost as the preparation of applications for approval to the Auditor General is required. Such applications are expected to be infrequent and not cause any additional costs.

39 It is expected that this time and resourcing commitment can be met from existing resources.

### **Local Government Act 2002 and Other Relevant Legislative Provisions**

#### Overview of obligations to manage conflicts of interest and pecuniary interests:

- 40 The legislation which applies to the management of pecuniary interests includes:
- a. Local Authorities (Members' Interest) Act 1968 (particularly sections 3 and 6)
  - b. Secret Commissions Act 1910 (the Act deals with accepting gifts)
  - c. Crimes Act 1961 (section 105, bribery of an official)
  - d. Local Government Act 2002 (particularly sections 14, 39 and 40)

The wider body of Court made law applying this legislation has developed over a number of years and a full discussion of case law is not considered to be within the scope of this report.

#### *Local Authorities (Members' Interest) Act 1968*

41 The Local Authorities (Members' Interest) Act 1968 (LAMIA68) sets out two firm rules for the management of financial conflicts of interests for elected members. These rules are enforceable by criminal offence and penalty provisions. LAMIA68 also provides for elected members to be disqualified from holding office if a member is convicted of an offence under that Act.

- 42 The two broad rules set by LAMIA68 are<sup>7</sup>:
- a. The contracting rule<sup>8</sup>: no elected member of a Council may be elected, appointed or hold office where, they (or their spouse or partner) receive more than \$25,000 in aggregate from contracts with the Council, unless the Auditor General approves the contracts;
  - b. The discussing and voting rule<sup>9</sup>: no elected member of a Council may participate (i.e. discuss, debate or vote) in a decision in which they

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<sup>7</sup> There are a variety of exceptions and further rules about the precise scope of the application of these rules which can be found within LAMIA68

<sup>8</sup> Section 3, LAMIA68

<sup>9</sup> Section 6, LAMIA68

have a financial interest, other than an interest in common with the public, unless prior approval from the Auditor General has been obtained.

Importantly, LAMIA68 requires the disclosure of an interest, it **does not require that the disclosure of the actual value, amount, or extent of any asset, payment, interest, gift, contribution or debt** although members may do so if they wish. Also, where a member holds an interest which is shared there is no requirement to disclose the identity of the co-owner.

### Secret Commissions Act 1910 and Crimes Act 1961

This legislation sets out that elected members must not accept a reward (including a non-financial reward) or gift in exchange for undertaking official duties or in circumstances where that reward or gift is not disclosed.

### Local Government Act 2002 (LGA2002)

43 A local authority must act lawfully and transparently.<sup>10</sup>

44 A requirement of the LGA2002 is to adopt a Code of Conduct setting out a general explanation of the law applicable to members, (including the legislation referred to previously). The Code of Conduct is the instrument which requires that elected members meet the standard of behaviour expected – including the requirement to manage pecuniary interests. Elected members must comply with the Code of Conduct.<sup>11</sup>

45 The content of the Code of Conduct is left to the broad discretion of Council. The QLDC CCEM is both aspirational and regulatory. It contains principles and rules that are based on legal requirements, constitutional principles, conventions, moral principles and ethical values and standards. The broad purposes of the CCEM are to:

- a. encourage the behaviour expected of elected members;
- b. provide a standard by which conduct in an official capacity may be judged;
- c. highlight statutory obligations;
- d. provide for accountability in the event that the code is breached.

46 Making the requirement to complete members' interest returns mandatory, together with the compilation and availability of a Members' Interests Register will contribute to public confidence in the administration of Council affairs as such a register will enable members of the public to satisfy themselves that:

- a. elected members of public bodies receive no personal profit as a result of holding their public position; and

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<sup>10</sup> Section 39(b)

<sup>11</sup> Clause 15(4), Schedule 7, LGA 2002. (Note it is not an offence to breach a Local Authority's code of conduct).



- b. decisions are based on consideration of the interests and objectives that the Council has a mandate for and of information and values properly relevant to those interests; and
- c. decision-making processes are not distorted by personal interests or bias.

41 Increasing importance is being placed on early disclosure of interests. It is considered in the public interest for Councils to disclose and make publically available the pecuniary interests of elected members to achieve the purpose and objectives of sections 14 and 39 of the Local Government Act 2002 to conduct Council business in an open and transparent manner.

42 Additionally, the early and regular disclosure of interests means that elected members are protected from accusations of impropriety.

### **Council Policies**

43 The following Council Policies were considered:

- Sensitive Expenditure Policy
- Code of Conduct for Elected Members
- Conflict of Interest Policy (Elected Members)

### **Consultation**

44 There are no consultation implications for this recommendation as it concerns Council's administration of its own conduct.

### **Publicity**

45 A public statement of the recommendation to change the code of conduct is not required.

### **Attachments**

- A Proposed wording for Parts 6 and 8 of the Code of Conduct for Elected Members together with proposed Appendix;
- B Requirements for completing the form of return for Elected Members;
- C Form of return for Elected Members.