
CONFLICT OF INTEREST UPDATE

1. Purpose of Report

To update Board Members on recent developments relating to conflict of interest issues.

2. Recommendations

It is recommended that the Board:

- 1. Receive the information.*

3. Background

Members will recall that as part of their Induction they received a copy of Council's booklet "Conflicts of Interest – Guidelines for Wellington City Councillors and members of Wellington City Council committees, subcommittees and community boards". The booklet provides general advice in relation to pecuniary and non-pecuniary conflicts of interest. Community Board members have also been asked to complete a declaration of interests for the register of members' interests.

Another resource available to elected members to assist them in assessing their position in relation to conflicts of interest is the Office of the Controller and Auditor-General's booklet on the Local Authorities (Members' Interests) Act 1968 and it has recently updated it to include information on assessing non-pecuniary interests.

This is particularly helpful as non-pecuniary interests can be difficult to decide. A copy of the new booklet will be provided to Members at the meeting, and this Report provides additional guidance in pecuniary and non-pecuniary issues. Council's own booklet is soon to be updated in line with Auditor-General's (OAG) advice.

4. Discussion

Elected members are aware that they must maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived).

There are broadly two types of bias, pecuniary and non-pecuniary.

- A **pecuniary** interest is one which has a direct financial impact on the Member. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss.

- A **non-pecuniary** interest is one in which one in which a Member may be (or perceived to be) subject to bias (i.e. not having an open mind) in relation to decision affecting the Members' other interests. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations, or could arise from a strong point of view that the Member has expressed on a certain issue.

4.1 Pecuniary Interests

The Local Authorities (Members' Interests) Act 1968 ("the Act") deals with pecuniary interests, and provides that:

- an elected member is disqualified from office (or from election to office) if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year, unless prior approval from the OAG has been obtained, and
- elected members are prohibited from participating 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.

The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at meetings where matters in which they have a pecuniary interest arise.

4.2 Non-pecuniary Interests

Issues arising from non-pecuniary interests are dealt with under the common law rules against bias and pre-determination. If a Member is active in some capacity in an organisation and that organisation has dealings with Council, for example;

- is affected by a decision of Council, or
- applies to Council for a consent of some kind, or
- makes a submission on an issue,

then the Member could be perceived to have non-pecuniary conflict. This situation is usefully posed as a question – *would a reasonable, informed observer think that your impartiality might have been affected?*

If a Member has such other real or perceived conflicts, he or she should stand aside from any discussion, deliberation or voting on the issue before the decision-making body they are a member of.

5. Conclusions

Members must take a precautionary approach to all conflicts of interest. The issue of conflicts of interest is a difficult one for members. Commonly issues may arise on short notice. Matters which seem straightforward at the outset can also commonly become less clear as a matter progresses. Vigilance by members is required. Members must ensure that where an Audit Office ruling is sought under the Act (e.g. for an exemption

from the \$25,000 rule), the application for exemption is made on a timely basis. Where a conflict of interest is established members must take no part in the discussion of the matter, nor the decision. In a case of doubt a member should withdraw. Members withdrawing should (in protection of their own and the Council's interests) ensure that their actions are appropriately minuted.

Failure to observe the requirements of the Act has consequences for both the Member and the Council. It could potentially invalidate the particular decision made, or the action taken, by Council. It could also leave the elected member open to prosecution under the Act. Members are encouraged to read the OAG's Guide and seek advice as and when required.

While the decision to withdraw from debate and voting is ultimately a matter for the member alone, members are encouraged to seek guidance and assistance from Democratic Services or the Chief Executive.

Contact Officer: *Leoni Winch, Senior Committee Advisor, Democratic Services.*

Supporting Information

1) Strategic Fit / Strategic Outcome

*This project supports objective 9.2 City decision-making:
People are encouraged to participate in the decision making of the city*

2) LTCCP/Annual Plan reference and long term financial impact

Relates to C534: Committee and Council process

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications

4) Decision-Making

This is not a significant decision

5) Consultation

a) General Consultation

b) Consultation with Maori

Not required

6) Legal Implications

The advice contained in this report has been discussed with the Council's legal advisors

7) Consistency with existing policy

This report is consistent with existing Wellington City Council policy