

4. LOCAL GOVERNMENT ACT 2002 CODE OF CONDUCT

Officer responsible General Manager Regulation & Democracy Services	Author Peter Mitchell, DDI 941-8549
--	---

PURPOSE

The purpose of this report is to set out the background to the recently adopted Code of Conduct by Council and to advise the Community Boards that the Council has recommended that Community Boards adopt a code of conduct adapted for Community Boards.

BACKGROUND

Under the Local Government Act 2002, the Council was required to adopt a code of conduct. A copy of the Council's Code of Conduct is attached.

Clause 15 of Schedule 7 of the 2002 Act, provided in part:

- (2) *The code of conduct must set out—*
- (a) *understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—*
 - (i) *behaviour toward one another, staff, and the public; and*
 - (ii) *disclosure of information, including (but not limited to) the provision of any document, to elected members that—*
 - (A) *is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and*
 - (B) *relates to the ability of the local authority to give effect to any provision of this Act; and*
 - (b) *a general explanation of—*
 - (i) *the Local Government Official Information and Meetings Act 1987; and*
 - (ii) *any other enactment or rule of law applicable to members.*

In its KnowHow programme on the 2002 Act, Local Government New Zealand stated:

“Codes of conduct promote effective working relationships within the local authority and between the local authority and its community. A code of conduct should promote free and frank debate, which should in turn promote good decision-making. Codes of conduct should not be used in a way that stifles debate.

*Provided elected members do not try to present personal views as anything other than that, then they have the right to express their views. Codes of conduct should provide rules of conduct that promote debate and make it clear that personal views, and the rights of **all** members to express personal views, must be respected.*

A code of conduct sets boundaries on standards of behaviour in expressing and promoting views, and provides means of resolving situations when elected members breach those standards.”

While the Local Government Act 2002, obliges the Council to adopt such a code of conduct, the Act does **not** oblige Community Boards to adopt a code of conduct. Legally, it is a matter of choice for each Board as to whether or not it wishes to adopt a code of conduct.

RELATIONSHIP OF CODE TO STANDING ORDERS

The code of conduct is not the same as a set of standing orders. Standing orders are a set of procedures and other rules for the conduct of meetings. A code of conduct covers every aspect of an elected member's duties. There are links between the two documents in that standing orders contain provisions for conduct at meetings. The code is intended primarily for situations outside the formal meeting process.

The code is wider than standing orders and sets out relationships not only between elected members, but also between members and staff and members and the public.

Content of the Code

It can be seen from that part of Clause 15 of Schedule 7 of the Local Government Act 2002 quoted above, the Act is not specific on the contents of a code of conduct. The only requirement is the general statement that the code of conduct must—

“Set out understandings and expectations agreed among members about the manner in which they may conduct themselves or act in their capacities as members, including behaviour towards one another, staff and the public.”

One requirement that the Council had to specifically consider was whether or not to require in its code of conduct that Councillors who are undischarged bankrupts declare that fact.

“As a general rule, bankruptcy is a legal state that does raise valid questions about a person’s financial management skills and/or judgement, which is information that the council should know when considering whether for example, someone should serve on a Finance Committee or act as a director of a council-controlled organisation. For this reason, requiring members who are declared bankrupt to declare that fact to the council is strongly recommended. (This does not mean that undischarged bankrupts are ineligible to serve as elected members. They are. It may however be that the local authority may wish to limit their duties).”

Breaches of the Code

One issue that arose in the consideration of a code of conduct is what happens if an elected member breaches the Code. The Local Government Act 2002 requires Councillors to comply with the Code but does not provide any power for the Council to impose a sanction on a Councillor who breached the Code. The Council’s Code provides for a sanctions system where alleged breaches can be dealt with.

The Council’s system for dealing with breaches is an Ethics Subcommittee and a system which provides for:

- Specific allegations of a breach as to when and where a particular provision of the code was breached and that information being available to the person complained of;
- All parties having a right to be heard on reasonable notice;
- Parties having the right to be represented by a lawyer;
- An opportunity for a person to make submissions before an adverse finding is made.

A feature of the Ethics Subcommittee is that the Convenor would act as a filter for matters to be referred to the Subcommittee in a similar manner as the Speaker in Parliament. The Convenor, Mr John Gray, is a non-Councillor, and would have voting rights.

It was also agreed that reference of matters to the Subcommittee should only be considered after there had been informal efforts to resolve the particular matter, and that these informal efforts should be assisted by the Convenor of the Subcommittee.

Only if informal efforts to resolve the matter have not been successful, is a Councillor then able to refer a matter to the Convenor of the Subcommittee. Even then, the Convenor of the Subcommittee has the ability to decide that a particular matter should not be referred to the Subcommittee on the grounds that the matter is technical or trivial, and does not warrant the fuller attention of the Subcommittee.

The actions that the Board may take, upon receipt of a report, could be to require an apology to be made, for the Board to censure a Board member, and/or removal from a Board committee or an outside appointment made by the Board. The law does not give any specific power to the Board to take any steps other than these matters.

One issue that will arise for consideration by Community Boards is whether to utilise the Council's Ethics Subcommittee, perhaps with the addition of one or more Board representatives on a particular occasion involving a Community Board, with the recommendation of that Subcommittee to be made to the particular Board from which the matter arose. This issue can be discussed with the proposed Joint Community Board Code of Conduct Working Party referred to in the recommendation below.

Code for Community Boards

As noted above it is not compulsory for Community Boards to adopt a code of conduct. This is a matter for each Board to make a decision on, although as I have noted above, the Council is recommending to Boards that they adopt the Council's Code of Conduct.

It could be preferable that if Boards do decide to adopt a code of conduct, that they all adopt the same code for consistency across the city.

It is suggested that as a means of progressing this issue, and rather than having six Boards individually working on six different codes of conduct, each Board appoint two representatives to, in effect, form a Joint Community Board Working Party on this matter so that the concept of a code and the terms of such a code can be developed with Council officers and then reported back to each Board.

The Burwood/Pegasus Community Board has already agreed to this course of action.

Staff

Recommendation: That each Community Board appoint two representatives to a Joint Community Board Code of Conduct Working Party.