

RURAL CITY LIVING



CODE OF CONDUCT

PART ONE: INTRODUCTION

Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code while acting in their capacity as members.

This code of conduct provides guidance on the standards of behaviour that are expected from the Mayor and elected members of the Gore District Council. The code applies to elected members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the council
- the media
- the general public.

This code does not apply to members of the Mataura Community Board.

The objective of the code is to enhance:

- the effectiveness of the council as the autonomous local authority with statutory responsibilities
- the good local government of the Gore District
- the credibility and accountability of the council within its community
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

This code of conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities (recorded in Part Two of the code)
- agreed general principles of conduct (recorded in Part Three of the code)
- specific codes of conduct applying to particular circumstances or matters (also recorded in Part Three of the code).

Elected members are primarily accountable to the electors of the district through the democratic process. However, members should note the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

The code of conduct that follows is based on the following general principles of good governance:

- **Public interest.** Members should serve only the interests of the district as a whole and should never improperly confer an advantage or disadvantage on any one person.

- **Honesty and integrity.** Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity.** Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire district, not the ward that elected them.
- **Accountability.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness.** **Subject to the provisions of this code regarding contact with the media** , members should be as open as possible about their actions and those of the Council, and should be prepared to justify their actions.
- **Personal judgment.** Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
- **Respect for others.** Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of the Council staff.
- **Duty to uphold the law.** Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.
- **Stewardship.** Members must ensure the council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.
- **Leadership.** Members should promote and support these principles by example, and should always endeavour to act in the best interests of the community.

PART TWO: ROLES AND RESPONSIBILITIES

This part of the code describes the roles and responsibilities of elected members, the additional roles of the Mayor and Deputy Mayor, and the role of the Chief Executive.

Elected Members

Elected members, acting as the council, are responsible for:

- the development and adoption of council policy
- monitoring the performance of the council against its stated objectives and policies
- prudent stewardship of council resources
- employment of the Chief Executive

- representing the interests of the residents and ratepayers of the Gore District Council. (On election, the members' first responsibility is to the district as a whole.)

Unless otherwise provided in the Local Government Act 2002 or in standing orders, the Council can only act by majority decisions at meetings. Each member has one vote. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

Mayor

The Mayor is elected by the district as a whole and as one of the elected members shares the same responsibilities as other members of Council. The Mayor also has the following roles as a:

- presiding member at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (as determined in standing orders);
- advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- ceremonial head of the Council;
- leader providing guidance and feedback to other elected members on teamwork and chairmanship of committees; and
- Justice of the Peace (while the Mayor holds office).

The Mayor must follow the same rules as other elected members about making public statements and committing the Council to a particular course of action, unless acting in accordance with the rules for media contact on behalf of the Council under a delegation of authority from the Council.

Deputy Mayor

The Deputy Mayor must be elected by the members of the Council, at the first meeting of the Council. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of the Council.

Committee Chairpersons

The Council may create one or more committees of Council. A Committee chairperson presides over all meetings of the committee, ensuring the committee acts within the powers delegated by the Council, and as set out in the Council's *Delegations Manual*. Committee chairpersons may be called on to act as an official spokesperson on a particular issue. They may be removed from office by resolution of the Council.

Chief Executive

The Chief Executive is appointed by the Council in accordance with Section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of Section 42 of the Act, the responsibilities of the Chief Executive are:

- implementing the decisions of the Council
- providing advice to the Council and community boards
- ensuring all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- managing the activities of the local authority effectively and efficiently maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- providing leadership for the staff of the local authority
- employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

Under Section 42 of the Local Government Act 2002 the Chief Executive employs all other staff on behalf of the local authority.

PART THREE: RELATIONSHIPS AND BEHAVIOURS

This part of the code sets out the Council's agreed standards of behaviour. Some of the matters described in this part of the code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968. The majority of the code is material the Council has decided to include of its own initiative.

Relationships with Other Members

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. With this in mind, elected members will conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct.

Relationships with Staff

The effective performance of the Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- recognise the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss or instruct or censure an employee;
- make themselves aware of the obligations the Council and the Chief Executive have as employers and observe those requirements at all times;
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees);
- observe any guidelines the Chief Executive puts in place regarding contact with employees;
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee;
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive's Appraisal Committee.

Elected members should be aware that failure to observe this portion of the code of conduct may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure individual citizens are accorded respect in their dealings with the Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Act.

Members should act in a manner that encourages and values community involvement in local democracy.

Contact with the Media

The media plays an important part in local democracy. In order to fulfil this role, the media needs access to accurate, timely information about the affairs of Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. This part of the code deals with the rights and duties of Councillors when speaking to the media on behalf of council, or in their own right.

The following rules apply for media contact *on behalf of the Council*:

- the Mayor is the first point of contact for the official view on any issue. Where the Mayor is absent, any matters will be referred to the Deputy Mayor or relevant Committee Chairperson;
- the Mayor may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment;
- the Mayor may make public statements relevant to the role as community leader, only where it is clearly stated the views expressed are the Mayor's own and are not made on behalf of the Council;
- no other member may comment *on behalf of the Council* without having first obtained the approval of the Mayor.

Elected members are free to express a *personal view* in the media, at any time, provided the following rules are observed:

- media comments must not state or imply they represent the views of the Council
- Once a matter has been lawfully determined at a meeting of the Council, it determines the Council position on that matter until it is lawfully changed by a subsequent decision of the Council. All elected members and management must respect this position.
- media comments must observe the other requirements of the code of conduct, eg not disclose confidential information, or compromise the impartiality or integrity of staff.

Involvement in Negotiations

The Council has a specific policy outlining when it may be permissible for a Councillor to participate in negotiations on behalf of the Council.

This policy recognizes that undertaking negotiations on behalf of the Council is the prime responsibility of the Chief Executive while the outcome of negotiations may ultimately require the approval of the Council.

In the absence of a Council resolution specifically sanctioning a Councillor's involvement on a particular issue, the policy prohibits Councillors having any involvement in undertaking negotiations on behalf of the Council.

Adherence to the Policy on Councillor Involvement in Negotiations forms part of the Gore District Council Code of Conduct.

Confidential Information

In the course of their duties, members will occasionally receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Elected members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the elected member.

Elected members should be aware that failure to observe these provisions will impede the performance of the Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Conflicts of Interest

The phrase "Conflicts of Interest" is used to describe three distinct and separate circumstances where there is or may be a conflict between personal interests, or the conduct of a member, and that members' duties as an elected member. The statutory and common law rules relating to conflicts of interest are part of the rules of procedural fairness. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision.

Members performing their duties will on occasion be making political decisions (for example, when making policy or adopting planning documents) and on other occasions, be acting in a judicial or semi-judicial capacity (for example when considering resource consent applications or matters relating to exemptions from statutory requirements or bylaws.) There is some limited scope for flexibility in

respect of political decisions, but absolutely no scope for flexibility in respect of judicial or semi-judicial decisions.

The three classes of conflict of interest are:

- a pecuniary interest in the matter before the Council, which gives rise to a presumption there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss. These matters are regulated, in part, by the Local Authorities (Members' Interests) Act 1968.
- Non pecuniary interest which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.
- Demonstrated bias, that is the circumstances where a member by words or action has indicated a commitment to a particular view in respect of an issue such it is unlikely the member may approach the consideration of a decision on that issue with an open mind.

Members must take a precautionary approach to all conflicts of interest. Members must ensure that where an Audit Office ruling is sought, under the Local Authorities (Members' Interests) Act 1968, 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 neither the matter nor the decision. In a case of doubt, a member should withdraw. Members withdrawing:

- must leave the Council table and, as a minimum, sit in the public gallery; and
- should (in protection of their own and the Council's interests) ensure their actions are appropriately minuted.

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. While the decision to disqualify is ultimately a matter for the member alone, members are encouraged to seek guidance and assistance from their colleagues or the Chief Executive.

Standing Orders

Members must abide by the standing orders adopted by the Council.

Ethics

The Gore District Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests;
- not use Council resources for personal business (including campaigning);
- not solicit, demand, or request any gift, reward or benefit by virtue of their position;
- notify the Chief Executive if any gifts are accepted; and
- where a gift to the value of \$500 or more is offered to a member, immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

Disqualification of Members from Office

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more year's imprisonment, or if they cease to be or lose their status as an elector or in the event of certain breaches of the Local Authorities (Members' Interests) Act 1968.

Under the Local Government Act 2002, local authorities, when adopting a code of conduct, must consider whether or not they will require members to declare whether they are an undischarged bankrupt. This Council believes bankruptcy does raise questions about the soundness of a person's financial management skills and their judgment in general. The Council therefore requires elected members, who are declared bankrupt, to notify the Chief Executive as soon as practicable after being declared bankrupt.

PART FOUR COMPLAINTS PROCEDURE

This part deals with ensuring elected members adhere to the code of conduct and sets out an enforcement procedure whereby complaints regarding an alleged breach of the Code are to be processed

Conduct Review Board

An allegation the Code has been breached must be made by way of a formal written complaint.

Only members have standing to make a complaint.

On receipt of a complaint, a Conduct Review Board ("the Board") will be established to consider the complaint. Unless the complaint is a complaint made by or against the Mayor, the Board will consist of the Mayor and two independent members appointed by the Council. The two independent members must reside outside the

boundaries of the Gore District. The Mayor will propose the names of suggested appointees for approval by the Council.

In the event the Mayor has submitted an allegation against another elected member about an alleged breach of the code, or is the subject of an allegation him or her self, the Deputy Mayor shall assume the functions of the Mayor as detailed above. In the event the complaint has been made by or against both the Mayor and the Deputy Mayor, then the complaint will be referred to the Chief Executive. The Chief Executive will take one place on the Board and refer the matter to the Council for the appointment of the other two members.

The Board is an ad hoc body and once its functions are completed in respect of a complaint, the Board shall be disestablished.

For the avoidance of doubt, the Board is not a Committee or a Sub-Committee of the Council to which the requirements of LGOIMA apply. The Board shall carry out all its functions in private.

All alleged breaches of the code must be reported to the Board in writing, make a specific allegation of a breach of the code, and provide corroborating evidence.

On receipt of a complaint, the Board shall undertake a preliminary assessment to decide whether the complaint is sufficiently serious to warrant a full investigation.

Should the Board determine the complaint does not warrant a full investigation, it shall so advise the complainant and the Council. The Board's decision shall be final and binding.

Should the Board determine the complaint warrants a full investigation, then it will undertake a full investigation at the conclusion of which it will submit a written report to the Council detailing its findings. Those findings shall include a finding as to whether or not the Board considers a breach of the Code has occurred.

At the outset of its investigation, the Board must provide written notice of the complaint to the member against whom the complaint has been made and must invite that the member to provide the Board with a detailed written response.

The member must provide his or her response to the Board within one calendar month of being notified of the complaint. In the event the member fails to provide a response within the specified time frame, then the Board in its discretion may either grant a further extension of time or proceed without further ado to make its findings.

On receipt of the Board's report, the Council will meet to consider the Board's report, to decide whether to accept the Board's findings and, in the event those findings include a finding there has been a breach of the Code, what sanction (if any) should be imposed.

The Council will consider the report in open meeting of the Council, except where the alleged breach concerns the misuse of confidential information, or a matter which would otherwise be exempt from public disclosure under LGOIMA in which case the meeting will be a closed meeting

At its meeting and before making any decisions in respect of the Board's report, the Council will give the member against whom the complaint has been made, an opportunity to appear before the Council. The member may present submissions to Council about the complaint and the report.

Consequences of a Breach

Where an alleged breach of the code is reported to the Council by the Conduct Review Board and the Council confirms, by a majority that the member has breached the code, then the Council may apply such sanctions as are lawfully within its power.

The form of any penalty that the Council may apply will depend on the nature of the breach, and may include the following:

- Censure of the member, by letter and/or in open meeting.
- Removal of the member from representation on Council Committees or other bodies as representative of the Council.
- Removal of any special status of the member, such as the position of Deputy Mayor or Chair of a Committee.
- If it appears that a breach of the code also constitutes a statutory offence then the Council may refer the circumstances of that breach to the relevant body for further action.

Amendment of Code

Once adopted, this code of conduct 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. Once adopted, amendments to the code require a resolution supported by 75 per cent or more of the members of the Council present.

PROTOCOL FOR MANAGING COUNCILLOR CONFLICTS OF INTEREST SOLID ENERGY LIGNITE DEVELOPMENT

This protocol was adopted by the Gore District Council at its meeting held on
Tuesday 23 November 2010

Introduction

1. The Gore District Council is considering how to prepare its District for the growth, development and other issues that will arise from the inevitable development of the lignite resources in its District (probably by Solid Energy). That process could involve the formulation of an urban growth strategy, a review of the District Plan, development of infrastructure, and re-assessment of the Council's funding mechanisms. Because of the size and nature of the lignite development, and the likelihood of intense third party scrutiny, it is important to identify any potential conflicts of interests for councillors at the outset of the process.
2. A "conflict of interest" occurs where there is a conflict between personal interest and public duty. The law generally requires that a decision maker should not be making decisions about a subject in circumstances where they have a conflict of interest. Elected members must be careful to maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that councillors carry out their duties free from bias (whether real or perceived), and that the risk of subsequent judicial challenge to any Council decisions is minimised. Examples of potential conflicts of interest include:
 - (a) Owning land within the lignite deposits - a councillor who owns land within the identified areas of lignite deposits would be expected to withdraw from any discussions relating to the:
 - (i) zoning of any land in the District which contains lignite deposits;
 - (ii) District Plan rules relating specifically to any land in the District which contains lignite deposits; and
 - (iii) rating of any land in the District which contains lignite deposits.
 - (b) A councillor who has a significant interest in, or directorship of, any of the companies partnering with Solid Energy in its developments - a councillor with such an interest should withdraw from any matter directly or indirectly relating to the Solid Energy development.
 - (c) Being in a senior management role with a company that enters into significant contracts with Solid Energy, where there might be a perception that that the councillor would be somehow beholden to

Solid Energy. (For a similar reason, any gratuities from Solid Energy to any councillor should also be disclosed.)

3. This protocol sets out processes for:
 - (a) declaring and recording existing interests by councillors or gratuities received in an Interests Register, and ensuring that the Register is kept up to date;
 - (b) identifying and addressing any potential conflicts of interests at the outset of any meeting;
 - (c) entering into a separate agreement with any councillor detailing any specific obligations of that councillor, if it is apparent that, due to the nature of that councillor's other roles, a conflict of interests is almost inevitable.

Maintenance of the interests register

4. The Council maintains an interests register which records relevant councillor interests. All new and re-elected councillors are requested to provide the following information to the Chief Executive of the Council by 14 December 2010 and shall be updated by all councillors at six monthly intervals:
 - (a) Any employment, trade or profession carried on by the member or the member's spouse for profit or gain.
 - (b) Substantial minority or controlling interest in a business enterprise or professional practice (with a description of the business activity unless the business concerned is listed as a public company).
 - (c) Minority ownership of company shares or beneficial interest in a trust (excluding any interest in a registered superannuation scheme that is structured as a trust) (with a description of the business activity unless the business concerned is listed as a public company).
 - (d) Any company, trust, partnership etc for which the member or their spouse is a director, partner, trustee or beneficiary.
 - (e) The address of any land in which the member has a beneficial interest and which is in the Gore District.
 - (f) The address of any land where the landlord is Gore District Council and the member or their spouse is a tenant.
 - (g) The address of any land where the landlord is Gore District Council and the land is tenanted by a firm in which the member or spouse is a partner, or a company of which the member or spouse is a

director, or a trust of which the member or spouse is a trustee or beneficiary.

- (h) Holding of mortgage or debt instruments.
 - (i) Gifts received as a member of Council during the year that have an estimated value of over NZ\$500 (type of gift, and its source).
 - (j) 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.
5. This information shall be kept confidential by the Chief Executive and unless agreed with the relevant councillor shall only be shared by the Chief Executive with the Council's legal advisors for the purpose of obtaining advice on the nature of any conflict and how that might be best managed. Any legal advice received by the Council relating to that councillor's conflict or potential conflict shall be made available to, and shall be discussed with, him or her. Every effort shall be made to agree a way forward. The councillor shall, of course, also be entitled to take his or her own legal advice on the issues.

Conflict procedures

- 6. Every councillor shall, in advance of every Council meeting carefully review the agenda to identify potential conflicts. If the 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.
- 7. Councillors shall, in advance of the meeting, inform the Chief Executive of the Council about any items for discussion which may result in a potential conflict of interest.
- 8. The first item on each agenda shall be a declaration of any conflicts of interest.
- 9. Councillors shall advise those present at the meeting of any items for discussion which may result in a conflict of interest.
- 10. Any councillor with a conflict of interest shall withdraw from (and leave the Council Chambers during) the part of any Council meeting dealing with matters which result in the conflict of interest.
- 11. Any councillor with an identified conflict of interest shall not receive copies of any staff reports, Council minutes or other information pertaining to discussions held about such matters which are not available to the public. (If the conflict of interest only becomes apparent after receiving and

reviewing any such information, then all the information pertaining to that issue of conflict shall be immediately returned to the Chief Executive.)

12. Any councillor with an identified conflict of interest shall not take part in any discussion or debate relating to the matter which has resulted in the conflict of interest provided that if the relevant Council meeting is a public one, the councillor shall be entitled to sit in the public gallery and observe the relevant part of the meeting.

Specific conflict undertakings

13. Any perceived or actual breach of this protocol puts at risk the integrity of Council decision-making, and could result in third parties taking High Court action to challenge those decisions. Not only would such legal proceedings be a significant drain on Council's resources, they would also significantly damage the Council's local, regional and national reputation.
14. Accordingly, if it becomes apparent from the register that any councillor is almost certainly going to face conflicts of interest about the Solid Energy proposals, the Chief Executive may determine that it would be in the Council's best interests to agree and record a specific conflict procedure for that councillor. That agreement may include a specific undertaking from that councillor to strictly follow the protocol.

Complaints procedure

15. In the event of an allegation that the requirements of this protocol have been breached, the complaints procedure contained in the Council's Code of Conduct shall apply.

COMMUNICATIONS PROTOCOL AND PROCEDURES TO PRESERVE PRIVILEGE

This protocol was adopted by the Gore District Council at its meeting held on
Tuesday 22 February 2011

A. PURPOSE

1. The purpose of this communications protocol is to:
 - (a) explain the meaning of the term "legal privilege" and provide guidance on what type of information might constitute "commercial information";
 - (b) raise awareness of the need to take care when creating documents - particularly when using informal methods of communication (eg email) where people are generally less guarded in their remarks and can record incomplete or inaccurate statements of the Council's position on issues;
 - (c) identify areas/topics which will require legal advice and implement procedures to preserve legal professional privilege where appropriate;
 - (d) ensure that project information and documents are handled appropriately in terms of confidentiality, commercial sensitivity and legal professional privilege; and
 - (e) set out procedures for communicating with, and responding to, questions from the media.
2. These procedures are intended to assist Gore District Council to preserve legal privilege (where relevant) and respond appropriately to any request for information under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

B. WHAT IS LEGAL PRIVILEGE?

3. There are two types of legal privilege:
 - (a) "Solicitor/client privilege" which attaches to all communications between a solicitor and the client for the purpose of giving legal advice (irrespective of whether the advice related to litigation); and
 - (b) "Litigation privilege" which extends solicitor / client privilege to third parties where the purpose of that communication is to enable the solicitor to advise the client on the conduct of litigation (including anticipated litigation which has not yet commenced).

4. The purpose behind privilege is to protect a person's ability to access the justice system to encourage complete disclosure to legal advisors, or from legal advisors to their clients (or from third parties such as experts to their clients) without fear that the communications could prejudice the client in the future.
5. Privilege is "held" by the client, and so can be waived by the client - sometimes inadvertently. For example, a privileged document will usually lose its privilege if it is sent to third parties (ie other than within the client organisation or to or from the lawyer or expert who produced it). In certain circumstances, a limited waiver can be given but there is always a risk that sending privileged material to others will constitute waiver of that privilege.
6. Importantly too, referring to the detail of any privileged communications or even the existence of privileged communications can constitute a waiver. For example, if the Council or a Councillor were to announce "we have taken legal advice on the issue and are acting on it", then that could constitute a waiver and that legal advice could not then be withheld on the basis of privilege.
7. While the communication may fall within solicitor/client or litigation privilege, when faced with a request to release that information, the Council must consider the following factors:
 - (a) Is withholding the information necessary to maintain legal privilege?
 - (b) Are there other factors which make it desirable in the public interest to make the information available?

C. WHEN DOES LEGAL PRIVILEGE APPLY?

8. This protocol applies to documents of all types, including reports, emails, video or audio recordings, letters, technical notes, file notes and correspondence.
9. As a general rule of thumb, **sensitive issues should always be discussed verbally in the first instance**. Legal advice can then be sought **before** a document is created about the best way to protect confidentiality and/or preserve privilege. Once a document is created, the mere fact it is subsequently sent to a lawyer will not make it privileged.
10. Broadly, legal privilege will attach to a communication where:
 - (a) the information is intended to be confidential and the communication is made by either a solicitor or a client in the course of and for the purpose of providing or obtaining legal advice; or

- (b) the information is prepared for the dominant purpose of preparing a proceeding or an apprehended proceeding (in which case the legal privilege can extend to communications with a third party).

- 11. **Note:** To enhance the prospect of privilege attaching to particular work streams it is important that a relevant legal file is established and documented for each stream of work.

D. WHAT ABOUT COMMERCIAL INFORMATION, WHICH IS NOT PRIVILEGED?

- 12. The Council may hold commercial information for the following reasons:
 - (a) the Council in its regulatory role holds or generates third party information about public or private sector commercial enterprises; or
 - (b) the Council is involved in a commercial enterprise of its own.
- 13. The Council may withhold that information if it is satisfied that releasing the information would:
 - (a) disclose a trade secret;
 - (b) unreasonably prejudice the commercial position of the person who supplied the information or is the subject of the information;
 - (c) prejudice the supply of similar information from the same source and it is in the public interest that such information should continue to be supplied;
 - (d) otherwise damage the public interest; or
 - (e) prejudice the Council's ability to carry out without prejudice, or disadvantage, commercial activities or negotiations.

E. CONFIDENTIAL INFORMATION

- 14. *In the course of their duties Council members will receive information that may need to be treated as confidential. This will generally be Council information that is either commercially sensitive or is personal to a particular individual or organisation.*
- 15. *Elected members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.*
- 16. For the purpose of this Protocol “disclose confidential information” includes:

- (a) information disclosed to the member in his or her capacity as an elected member on a confidential basis by a person outside the Council; and
 - (b) information disclosed to the member in a public excluded meeting of the Council or a committee.
17. Any release of confidential information may affect the Council's performance by inhibiting information flows and/or undermining public confidence in the Council. The release of confidential information may also expose the Council/Council members to:
- (a) prosecution under the Privacy Act 1993;
 - (b) civil litigation; or
 - (c) responsibility for loss under section 46 of the Local Government Act 2002.

F. CONTACT WITH THE MEDIA

18. *The media plays an important part in local democracy. In order to fulfil this role, the media needs access to accurate, timely information about the affairs of Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. This part of the Protocol deals with the rights and duties of Councillors when speaking to the media on behalf of Council, or in their own right. These duties also apply to any information put on the internet or disseminated in any way to the public.*
19. *The following rules apply for media contact **on behalf of Council**:*
- (a) *No member may speak to the media on behalf of Council unless first approved to do so by resolution of the Council, or of a Committee of the Council, or by the Mayor as set out below.*
 - (b) *The Mayor is the first point of contact for the Council view on any issue. If the Mayor is absent, or unable to act, a matter may be referred to the Deputy Mayor or to the relevant committee chairperson (in that order) for a response.*
 - (c) *The Mayor may refer any matter to the relevant committee chairperson, a member or to the Chief Executive for comment.*
20. *Council members remain free to express a personal view in the media at any time provided that the following rules are observed:*
- (a) The member must make it clear that the comments represent a personal view only and are not the views of the Council.

- (b) If the comment is contrary to a Council decision or Council policy, the member must make it clear that his/her view is a minority view.
- 21. In making public statements about their personal views, Council members must keep in mind their role as elected representatives:
 - (a) in making political decisions (for example when making policy or adopting planning documents); and
 - (b) acting in a judicial or semi judicial capacity (for example when considering resource consent applications or matters relating to exemptions from statutory requirements or bylaws).
- 22. Members must be careful to avoid an allegation of bias in respect of their decision making. An allegation of bias may arise where a member by words or action has indicated a commitment to a particular view to the extent that it is unlikely that the member can approach the consideration of a decision on that issue with an open mind.
- 23. Public statements made by Council members must not indicate that a Councillor has made up his/her mind about the matter before it is heard and deliberated upon. The decision-maker must not have a “closed” mind and must be prepared to listen fairly to all of the arguments.
- 24. While Councillors must be free to express their individual views about various issues, they must be careful to qualify their views by making it clear that:
 - (a) they do not have a closed mind on the relevant issue; and
 - (b) they are not in a position reach a conclusion on any particular issue until all the facts and relevant information are before them.
- 25. Council members must not, however, voice a personal opinion on an issue which is currently before a hearing committee or on which a decision is pending where they are directly involved in that decision making process.
- 26. Remember, if you need time to research or think about how to answer a question, tell the reporter that you need time. Ask what his or her deadline is, and then call back with an answer before the agreed time.

G. PROCEDURE

- 27. All parties sending, receiving or compiling written information in relation to any project must ensure that:
 - (a) Appropriate systems are in place to protect confidentiality:

- (i) Consideration should be given to each communication or document as to whether it is confidential or commercially sensitive.
 - (ii) All such communications and documents should be clearly marked "*strictly confidential*" and/or "*commercially sensitive*".
 - (iii) Such documents should only be circulated (and accessible) to the relevant members, officers, etc - and not be made available more widely.
- (b) If a particular communication is likely to be privileged as well as confidential, the following additional steps shall be taken with all applicable documents:
 - (i) If prepared by the Council, they should be clearly marked "*Prepared for [name of external law firm]*".
 - (ii) Emails should include "legally privileged and confidential" in the subject line.
 - (iii) Correspondence should be addressed to *[name of external law firm]*, and should not be copied to anyone outside of the Council, its lawyers and pre-approved agents. If privileged information is sent to a third party, the privilege could well be lost.
 - (iv) If privileged communications or documents need to be provided to third parties please refer to *[name of external law firm]* first who can set up a common interest privilege or limited waiver arrangement.
 - (v) Unprivileged communications must not refer to the detail of any content of privileged communications (or the existence of legal advice on any subject).
- (c) Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.
- (d) In communicating with the media, all Council members shall comply with the following requirements:
 - (i) Members shall not make statements on behalf of the Council unless approval to do so has been given by resolution of the Council, or of a Committee of the Council, or by the Mayor.

- (ii) In making a personal statement about any issue, Council members must:
 - (aa) Make it clear that their views do not represent the views of the Council; and
 - (bb) Be careful not to indicate a commitment to any particular view. Councillors should acknowledge "both sides of the argument" and indicate that they are not able to reach a conclusion on any particular issue until all the facts and relevant information are before them.
- (iii) Members must not make statements in the media relating to any issue currently before a hearing committee or on which a decision is pending where the member has been part of that hearing committee.

REMEMBER: If in doubt about any of the issues addressed in this protocol seek advice from the Chief Executive.

APPENDIX TO THE CODE: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

This is a summary of the legislative requirements that bear on the duties and conduct of elected members. Copies of these statutes are available from the Chief Executive's office.

Local Authority (Members' Interests) Act 1968

This Act regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from 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.

Additionally, elected members are prohibited from participating in any Council discussion or voting 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 may also contact the Audit Office for guidance as to whether that member has 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. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authority (Members' Interests) Act 1968. In the event of a conviction, elected members can be ousted from office.

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members 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 Councillor is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the Council, other Councillors, any employee of the Council or any member of the public.

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 the Council.

If convicted of any offence under this Act, a person can be imprisoned for up to two years, or fined up to \$1,000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 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 the Council
- use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

Securities Act 1978

The Securities Act 1978 essentially places elected members in the same position as company directors whenever the 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.

Code adopted by the Gore District Council at its meeting held on 26 March 2008