



ATTACHMENTS

**Audit and Risk Committee Meeting
Under Separate Cover
Tuesday, 5 October 2021**

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Timaru District Council Conflicts of Interest Policy

Purpose:

The purpose of this policy is to:

- Outline a framework for employees and representatives to identify, disclose and manager conflicts of interest
- Establish the Timaru District Council's obligations and expectations in relation to conflicts of interest
- Foster public confidence in the integrity of decision making by the Timaru District Council by promoting a culture where conflicts of interest are properly identified in a fair, transparent, accountable and impartial manner.

The policy deals with situations in which employees may have an actual, perceived or potential conflict of interest between their public role and their personal interests.

Scope:

The scope of this policy applies to the Council representatives:

- Employees
- Contractors
- Consultants
- Seconded personnel and,
- Volunteers.

Councillors and Community Board Members are not subject to this policy. Conflict of interest guidance for elected representatives is contained within the Elected Members Code of Conduct.

Principles and Values:

The Council's Conflict of Interest Policy is based on the following principles:

- Integrity
- Honesty
- Transparency
- Openness
- Independence
- Good faith and
- Service to customers and the public.

This policy provides guidance to deal with conflicts of interest as they arise but is not exhaustive. The Timaru District Council expects a high standard of ethical behaviour from employees and representatives and recognises that some conflicts of interest

cannot be avoided because people have a number of professional and personal interests. It is not wrong or unethical to have a conflict of interest, it is however important that it is appropriately disclosed and managed.

As a Council we are committed to ensuring public decision making and actions of the Council are procedurally fair and free from bias or predetermined outcomes.

Definitions:

A conflict of interest arises when the personal interest of an employee of the Council conflicts with their responsibilities as a public employee. Put simply, a conflict occurs where a member serves or attempts to serve two or more interests that are not compatible.

Personal interests may be pecuniary or non-pecuniary.

- **Pecuniary:**

A pecuniary interest refers to an actual or potential financial gain or loss for the person, their family, friends or close associates.

- **Non-Pecuniary:**

A non-pecuniary interest refers to an interest that is not financial or monetary but arises from such things as personal relationships, beliefs or involvement in social, cultural, religious or sporting activities.

A conflict of interest may be actual, perceived or potential.

- **Actual:**

An actual conflict of interest occurs when there is a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest.

- **Perceived:**

A perceived conflict of interest occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case. A perceived conflict is just as important as an actual conflict.

- **Potential:**

A potential conflict of interest occurs where a person has a personal interest that could conflict with their official duties in the future.

A conflict of interest extends to family members and close associates.

- **Family member:**

Spouse/partner, parents, siblings and children

- **Close associates**

Questions of judgement and degree arise when considering friends and other associates. Simply being acquainted with someone, or having worked with them, or having had official dealings with them, will not usually create any problem. However, a

longstanding, close, or very recent association or dealing might. The key test is to consider how a reasonably informed third party would view the situation.

The Council employees and representatives must be alert to possible situations where they have or could be perceived to have an opportunity to gain or benefit.

Other requirements:

Employees must be aware of and follow Council policies:

Council employees and representatives are required to complete an annual declaration that they are aware of and will abide by the Timaru District Council policies.

Each conflict must be disclosed and managed:

Having regards to ethical and legal dimensions employees must disclose and mitigate any actual, potential or perceived conflict of interest.

Training and support:

Group Managers will be the key point of contact if an employee requires further information or clarification on a conflict of interest.

Breaches and complaints:

Group Managers will be the key point of contact if an employee identifies a potential breach or complaint. Any breaches or complaints will be handled in accordance with the Fraud, Corruption and Serious Wrongdoing policy and full confidentiality will be maintained. Employees may also contact either of the Fraud Limitation Officers (FLOs). The FLOs are Steve Caswell and Lisa McLeod.

Consequence of non-compliance:

Any breach of this policy will be dealt with as follows:

- In the case of employees, a breach may constitute serious misconduct and will be dealt with in accordance with the Council's Code of Conduct Policy, and
- In case of representatives, as a serious issue which may result in termination of their agreement/contract with the Council.

Local Authorities (Members Interest) Act 1968 (LAMIA):

Finance staff need to be aware of the requirements of the Act. The Act provides that an elected member is disqualified from office, or from election to office, if that member (including spouse/partner) 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. For further information on the Act refer to the Code of Conduct of Elected Members.

Personal or political views:

Because of the scope of the activities of local government, employees will invariably have personal opinions on matters which involve the Council.

The Council has decision-making, regulatory and advocacy roles and employees must provide robust and unbiased advice and remain impartial in fulfilling their duties. If employees intend to become members of political or lobby groups, publicly advocate their views on matters which involve the Council or make statements in the media, this should be disclosed in advance to a Group Manager. The Group Manager and the employee will work together to decide on any actions necessary to minimise risk or limit actual or perceived bias.

Restricted and Prohibited activities:

Although some conflicts of interest can be managed, some activities are prohibited by the Timaru District Council. Other activities are considered as 'restricted' and employees may not be involved in them unless they have the written consent of the appropriate Group Manager. Page 19 gives examples of restricted and prohibited activities. This list provides guidance but does not intend to capture all possible activities that maybe restricted or prohibited. A Group Manager will always assess identified conflicts of interest using his/her own discretion.

Roles and Responsibilities:**Chief Executive (CE):**

Will review the interest register, notably the mitigating actions annually. The CE will promote the principals of the policy.

Group Manager Corporate Services will be the key point of contact that is responsible for:

- Maintaining the interests register
- Ensuring all personnel have completed the interests register
- Review the mitigating actions
- Training and support, and
- Handling breaches and complaints.

Group Managers

Will work with employees to identify, disclose and manage conflicts of interest. Group Managers required to complete the interests register annually.

Employees:

Are required to follow this policy and identify a potential conflict to management as soon as they are aware of an actual, potential or perceived conflict of interest.

Finance Manager:

Is to monitor the monthly expenditure of the Council members who have identified a pecuniary interest as defined by the LAMIA.

Procurement:

It is essential that all staff involved in procurement related activity are aware of any conflicts of interest and disclose any interest. This includes:

- All members of the procurement team (staff, contractors and consultants)
- All members of the evaluation panel
- Anyone making a recommendation, and
- Anyone making a financial approval for the procurement.

Additional Information:**Guidelines: Managing Conflict of Interest**

A conflict of interest may affect a person's judgement as to what is in the public interest, or may lead to a bias in their decision making. It is not always possible to avoid a conflict of interest. It is important that any actual, perceived or potential conflict of interest is identified, disclosed and effectively managed (including avoided if possible).

Identifying a Conflict of Interest

A conflict can arise in a number of situations and is often not clear, If you are unsure whether a situation gives rise to a conflict please seek advice from your Group Manager. If you are in doubt to the existence of a conflict, it is better to err on the side of openness when deciding and declare the interest anyway.

Written disclosure of conflict of interest should be made at the earliest possible opportunity after the conflict arises and must be made within seven days. Conflicts of interest should be recorded in the Timaru District Council's Interest Register. If a Group Manager decides that a conflict is sensitive or serious enough to warrant further action the Group Manager must involve the Chief Executive.

Disclosing a Conflict of Interest

- Conflicts of interest can arise at any time. Management and employees need to remain ever alert to this possibility. In the event a conflict is identified employees are required to disclose a conflict to their manager immediately. This enables management to ensure appropriate mitigating actions are in place at the earliest possible stage.
- Employees are to notify and obtain authority of their Unit Manager before proceeding with the proposed activity.
- Management, working with their Group Managers, have a responsibility to work with the employee or representative to determine the significance of a conflict exists, if it can be managed and/or what mitigating action should be applied. Such decisions will be made in conjunction with employees.

- Senior Leadership Team is to inform the Group Manager Corporate Services immediately when a conflict arises and update the interests register. Senior Leadership Team will work with the Group Manager Corporate Services to decide an appropriate action.
- Conflict of interest will be a standing agenda item on the agenda for meetings when decisions are made.

Managing a Conflict of Interest

Once an actual, potential or perceived conflict of interest has been identified and declared, the employee and Senior Leadership Team have a collective responsibility to determine what course of action should be taken.

Assessment of any conflict will consider a number of factors such as:

- The nature and extent of the interest
- Identification of affected persons
- The significance of the decision or activity being carried out by the Council
- The involvement of the employee in the activity or decision
- Public perception
- Likely outcomes arising from the conflict of interest.

Speaking broadly, there are five main actions that can be taken:

Remove: Remove the employee from all involvement with the conflict;

Restrict: Restrict an employee's involvement to certain tasks or responsibilities; and

Relinquish: Relinquish the private interest that is creating the conflict

Review: Review of task completed by third party

Retain: Retain the conflict (ie simply being aware the conflict exists but not action required) by recording in the interests register

Some situations will need to be the subject of discretionary judgements as and when they arise. Conflicts of interest sometimes cannot be avoided, and can arise without anyone at fault. But they need to be managed carefully. When a conflict arises you should contact your Group Manager immediately to discuss further action.

When exercising judgement the Council needs to consider the significance of the conflict (likelihood and consequence of the conflict occurring) and the range of mitigating options available.

The mitigating action needs to be discussed with the appropriate personnel (CE, Legal and HR).

Interests Register

If you believe that you have a conflict of interest or wish to make a general disclosure, please discuss this matter with your Group Manager. Senior Leadership Team must complete this form annually.

Your interest of declaration will be added to the Council’s central interest register, which is a confidential register maintained by the Group Manager Corporate Services and used to assist determinants for mitigating conflict of interest risks, and for this reason will be viewable by the Senior Leadership Team.

We remind employees that a conflict of interest relates to employees, family members and close associates.

Example of the Interests Register

Date of Entry	Conflict	Nature of conflict	Type of conflict	Mitigation
18 May 2015	Griffs Plumbing	Husband’s company sub-contracts to Hawks Construction	Actual	I will not be taking any part in the tendering or contracting process with the Hawks Construction.
Name of person making disclosure			Signature	Date
Name of reviewing Group Manager			Signature	Date

Examples of Conflicts of Interest

The following list is illustrative only and is not exhaustive, it may be added to at any time. Conflicts can arise from:

- The employee’s own financial or business affairs
- A relationship (family or otherwise)
- An opinion or view held by the employee.

The following provides some examples of common conflicts of interest:

- Being actively involved in external interest groups with an interest in the Council activity. This includes political, economic or environmental interest or lobby groups
- Expressing strong or biased personal opinions in the media about activities affecting the Council
- Influencing a re-zoning decision that may affect the value of land owned, whether directly or beneficially, by the employee, a personal associate or organisations to which they belong
- Selecting a supplier in which an employee has a direct or beneficial ownership interest
- Owning shares in (or working for) particular types of organisations that have dealings with (or that are in competition with) the public entity
- Conducting business on behalf of the entity with a relative’s company
- Influencing or participating in a decision to award grants or contracts where the member of

official is connected to a person or organisation that submitted an application or tender.

- Using the Timaru District Council information for the business venture of an employee
- Accepting a gift or gratuity from a person with whom they conduct official business, during the procurement process
- Using the Council facilities or equipment for private purposes
- Hiring a family member or personal associate for employment with the Timaru District Council
- Functionally reporting to a family member or close associate in the same department
- Soliciting a personal benefit in return for granting preferential treatment to a person or organisation with which there is a professional relationship

Deliberating on a public consultation process where the member or official has made a personal submission (or from making submissions at all, in areas that directly relate to the entity's work).

Restricted and Prohibited Areas

The following outlines some activities which the Timaru District Council has identified as being prohibited. A second category of activities is also identified. These activities require discussion with management and maybe permitted on a case by case basis. This is not an exhaustive list and a Group Manager will always assess identified conflicts of interest using their own discretion.

Prohibited Activities

Employees of the Timaru District Council cannot influence or be involved in:

- Accepting any gift of cash or cash equivalents of any value in relation to the performance of their duties. Any offer of such a gift must be reported immediately to the Group Manager of the relevant business area
- Directly managing a personal associate or family member except with the approval of the Chief Executive or being involved in the process of recruiting a personal associate or family member
- A decision to conduct business with a personal associate or family member
- Awarding grants or contracts to applicants with whom they have personal association
- Any decision where they have a personal or external business association with an interested party
- Investigating a complaint where the employee has a personal or external business association with the complainant or the person or entity complained about
- Directing the Timaru District Council resources to influence an external entity's development where they, their personal associates or family members are directors or shareholders of that entity.

Senior Leadership Team Notification Requested

The Senior Leadership Team requests notification if staff:

- Have an interest in or work for organisations that deal directly with the Council or have a

significant influence on the Council's activities

- Make public submissions to the Council in a private capacity. Anyone can make a submission to the Timaru District Council during public consultation. Submitter names are generally publicised. This may give rise to a conflict of interest depending on:
 - The functional position held by the submitter
 - The nature of the submission, and
 - The submitter's involvement in making decision in respect of the content of their submission.

It is requested that staff notify their Group Manager if they intend to make submissions. This allows proactive management of perceived or actual conflicts of interest.

Staff should also use their judgement to determine whether they need to disclose submissions made to other organisations. For example, if a policy analyst made a submission to central government opposing development contributions and was responsible for reviewing the Development and Financial Contributions Policy, Senior Leadership Team notification should occur.

Staff should exercise similar judgement when deciding whether to notify their Group Manager of any involvement in lobby groups or other political activity.

Draft Conflict of Interest Policy



Approved by: Timaru District Council

Date approved:

Introduction

1. Purpose

1.1. The purpose of this policy is to:

- Affirm Council's commitment to the principles which guide the management of conflicts of interest, and the public business conducted by Council;
- Provide guidance to employees of Council regarding conflicts of interest and to establish a clear framework for disclosing actual, potential and perceived conflicts and accepting gifts, discounts and hospitality;
- Encourage organisational transparency and preserve the reputation of Council and its employees through the appropriate management, reporting and review of conflicts of interest.

2. Scope

2.1. This Policy applies to all employees of Timaru District Council, including:

- Permanent and fixed term employees;
- Contractors;
- Consultants; and
- Volunteers

2.2. Elected Members are not covered by this Policy.

2.3. Elected Members' interests, and the management of any conflicts are governed by the Code of Conduct and the [Local Authorities \(Members' Interests\) Act 1968](#), and guided by the [advice of the Office of the Auditor General](#).

3. Principles

3.1. Council recognises that, as a public organisation, our business should be conducted with a spirit of:

- Integrity;
- Impartiality;

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- Accountability;
- Respect; and
- Responsiveness.

3.2. These principles will guide any decisions about conflicts of interest made by Council.

4. Definitions

Conflict of Interest:

- 4.1. If an employee's official duties or responsibilities to Council could be affected or compromised or perceived to be, by some other interest or duty that the employee may have.
- 4.2. The other interest or duty might be:
 - **A financial conflict** – ie. the employee's own financial or business affairs;
 - **A non-financial conflict** – ie. a relationship (family or otherwise);
 - **A conflict of roles** – ie. another role held by the employee (paid or otherwise); or
 - **Predetermination** – ie. an opinion or view held by the employee.

Personal Connection

- 4.3. Includes a partner, parent, child, sibling, or any other close relatives; a close friend; a current or previous business associate; an organisation or group the employee is a member of.

Prohibited Activities:

- 4.4. Employees may not be involved in:
 - A decision to appoint or employ a person with whom the employee has a personal connection;
 - The decision to conduct business with a person or organisation with whom the employee has a personal connection;
 - Influencing or participating in a decision to award grants or contracts where the employee is personally connected to a person or organisation that submitted an application or tender.
 - Influencing or participating in regulatory decisions (such as to grant a consent, certificate or permit) where the employee is connected to the applicant or a person who opposes the application.
 - Investigating a complaint were the employee has a personal connection with either the complainant or the person or entity complained about.

Limited Activities:

- 4.5. Activities which employees must have the approval of their Manager, Director, Group Manager, or the Chief Executive to be involved in:
- Owning shares in organisations that have dealings with Council;
 - Working for any organisations that have dealings with Council.
 - Making a submission to Council, or another organisation where a conflict of roles may arise.

One-Up Principle:

- 4.6. Where approval or a decision is required in relation to a conflict of interest, this must be made by a more senior officer.
- 4.7. With regards to a conflict involving the Chief Executive, approval or decision-making will be undertaken by the Mayor, or the Chair of the Audit and Risk Committee.

5. Background

- 5.1. Having a personal interest, on its own, is not what causes a conflict. Everyone has multiple roles and interests at work, at home, in their extended families, or in the community. A potential conflict of interest only arises where duties or responsibilities as an employee of Council overlap with another role or interest.
- 5.2. Some conflicts are serious, some less so. Some conflicts are unavoidable, especially in a small country like New Zealand. However, in any situation where activities are paid for out of public funds, or carried out in the public interest, the public needs to be confident that decisions:
- Are made for the right reasons; and
 - Are not influenced by personal interests or ulterior motives.
- 5.3. The risk with having a conflict of interest – at least one that is not properly managed – is that an employee could be seen to be advancing their own interests or the interests of others they feel a sense of loyalty or obligation to, rather than the interests of their role as an officer of Council.
- 5.4. Even if an employee has no intention of acting improperly, and is confident they can act impartially, if it looks like an officer might be influenced by personal interest or an ulterior motives when making a decision, the officer risks undermining public confidence in the integrity of that decision. This may also expose Council to legal, commercial, political, or reputational risk.
- 5.5. There is a higher expectation about conflicts of interest in the public sector because it is public money that is being spent, and public powers that are being exercised.
- 5.6. Where activities are paid for out of public funds, or decisions are made exercising public powers, members of the public rightly expect that the people making those decisions will act impartially, without any possibility that they could be influenced by favouritism or improper personal motives or that public resources could be misused for private benefit.

Policy Statements

6. General

- 6.1. This policy is breached if an employee:
- Has a conflict of interest and knowingly becomes involved in prohibited activities; or
 - Has a conflict of interest and knowingly becomes involved, or continues to be involved, in a limited activity without the consent of their Manager, Director, Group Manager, or the Chief Executive; or
 - Accepts a gift, discount, or hospitality without following the process set out in this policy (section 12).
- 6.2. A breach of this policy may be considered misconduct and give rise to disciplinary action under the Disciplinary Policy as set out in the Corporate Management Policy Manual.
- 6.3. Any complaints regarding conflicts of interest, non-disclosure of conflicts of interest, or the management of conflicts of interest should be directed to a Group Manager, Director, or the Chief Executive.

7. Disclosing a conflict

- 7.1. All employees are expected to disclose all actual, potential or perceived conflicts of interest they have.
- 7.2. Employees should err on the side of caution in deciding whether to make a disclosure. If they are unsure whether there is a conflict, they should discuss the matter with their manager, Group Manager, or the Chief Executive.
- 7.3. Disclosures must be made at the earliest possible opportunity to a direct manager, Group Manager or the Chief Executive. A Conflict of Interest Declaration must be made in writing. See Appendix 1 for the Declaration.
- 7.4. All conflicts requiring a declaration must be entered into the Employee Interests Register, which is managed by the Risk and Assurance Manager.

8. Managing a conflict

- 8.1. All conflicts will be assessed for risk to Council and appropriate treatments will be put in place, relative to the level of the assessed risk. These risk and treatments for all declared conflicts will be entered into the Employee Interests Register.
- 8.2. The risk assessment will take into account factors such as the following:
- The type and size of the employee's interest;
 - The nature or significance of the particular decision or activity being carried out by Council;

- The extent to which the employee's interest could specifically affect, or be affected by, Council's decision or activity, or be perceived to do so; and
 - The nature or extent of the employee's current or intended involvement in Council's decision or activity.
- 8.3. The type of changes or other treatments that may be appropriate for managing a conflict could involve:
- Seeking consent of all other affected parties for the involvement of the employee;
 - Ensuring additional oversight or review of the employee's duties relevant to the conflict;
 - Withdrawing the employee from discussion or decision-making on any issue relating to the conflict;
 - Excluding the employee from a committee or working group dealing with the issue;
 - Withholding certain confidential information or placing restrictions on access to information;
 - The employee relinquishing the private interest;
 - Resignation or dismissal from one or other position or entity.
- 8.4. The Group Manager, Director, or Chief Executive will decide whether any change to the employee's role is required to manage the conflict. This decision will be reported, in writing, to the employee and their manager, in conjunction with the Director Engagement and Culture.
- 8.5. Where a medium to high risk is identified in the Conflict of Interest Declaration, the Risk and Assurance Manager will undertake an assessment of the proposed management of the conflict and refer the issue either back to the appropriate manager, or to Senior Leadership Team for approval, based on the assessed level of risk.
- 8.6. If the conflict is deemed to be particularly sensitive or high risk by the Risk and Assurance Manager or Senior Leadership Team, a written assessment of the conflict and management plan will be undertaken.
- 8.7. In all cases of conflicts of interest the one-up principle will be applied to the approval and management processes. Where the Chief Executive is involved in a conflict of interest, the Mayor, or the Chair of the Audit and Risk Committee will undertake the approval and management requirements of this policy.

9. Employee Interests Register

- 9.1. The Employee Interests Register will be held and maintained by the Risk and Assurance Manager. All disclosed conflicts, their risk assessment and treatments will be entered onto this register.

- 9.2. The Employee Interests Register will be reviewed quarterly by the Senior Leadership Team.

10. Responsibilities

Employees

- 10.1. All employees, including contractors, are expected to disclose all actual, potential or perceived conflicts of interest at the earliest possible opportunity. Employees are also expected to notify their manager of any changes regarding any disclosed interests.
- 10.2. All employees are expected to comply with any changes or treatments required to manage the conflict.

Managers (including Group Managers)

- 10.3. All managers must ensure that, where required, employee Conflict of Interest Declarations are completed, including the risk assessment and the management or treatment of that conflict, and provided to the Risk and Assurance Manager.
- 10.4. All managers must directly advise the Risk and Assurance Manager of any actual or perceived conflict of interest assessed to be of medium to high risk that employees disclosed to them as soon as possible.
- 10.5. All managers must advise their Group Manager or the Chief Executive of any high risk actual or perceived conflicts of interest that employees disclose to them.
- 10.6. All managers must apply, review and report on any treatments established to manage conflicts of interest as set out in the Reporting and Review Requirements (section 11).
- 10.7. All managers must ensure that known conflicts of interest are considered in the undertaking of any new work and raised with the Risk and Assurance Manager, Group Manager, or Chief Executive if necessary.

Risk and Assurance Manager

- 10.8. The Risk and Assurance Manager will maintain the Employee Interest Register, the Elected Members Interest Register, and the Gifts Register (detailed below).
- 10.9. Where a conflict has been identified by a manager as being of medium to high risk, the Risk and Assurance Manager will undertake an assessment to either confirm or amend the proposed management of the conflict. The Risk and Assurance manager will then refer the issue either back to the appropriate manager, or to Senior Leadership Team for approval, based on the assessed level of risk.
- 10.10. The Risk and Assurance Manager will report all high risk conflicts to Senior Leadership Team for approval of the treatments to manage the conflict and undertake a written risk assessment of high risk conflicts on request of the Senior Leadership Team.
- 10.11. The Risk and Assurance Manager is responsible for reporting on the management of conflicts for employees and Elected Member to the Senior Leadership Team quarterly and the Audit and Risk Committee annually.

Senior Leadership Team

- 10.12. Will undertake quarterly reviews of the Employee Interest Register including a review of all high risk conflicts and risk assessments referred by the Risk and Assurance Manager and approve the treatments to manage the conflict.
- 10.13. Will undertake an annual review of the Gifts Register (detailed below).
- 10.14. Will ensure employees and elected members have access to appropriate training and guidance on the management of conflicts, including, where appropriate, seeking advice from the Office of the Auditor General.

11. Reporting and Review Requirements

- 11.1. Managers will report, in writing, on the management and review of conflicts of interest disclosed by employees to their Group Manager and the Risk and Assurance Manager according to the nature of the conflict, the risk, and its treatment.
- 11.2. Senior Leadership Team will review the Employee Interest Register quarterly to ensure consistent and high quality management of actual and perceived conflicts of interest across the organisation.
- 11.3. An annual report will be prepared for the Audit and Risk Committee regarding the management of actual and perceived conflicts of interest for employees and elected members. Note – this report should focus on conflicts assessed to be of medium to high risk to Council.
- 11.4. If a declared conflict does not justify taking any action or reporting because it is too indirect or insignificant, this will be noted in the Conflict of Interest Declaration and the Employee Interests Register.

12. Gifts, Discounts and Hospitality**Gifts of Cash**

- 12.1. Gifts of cash are prohibited. No employee may accept any gift of cash of any value in relation to the performance of their duties.
- 12.2. Any offer of a cash gift, whether accepted or not, must be immediately reported to the employee's manager, a Group Manager, or the Chief Executive.

Accepting and disclosing gifts, discounts and hospitality

- 12.3. Employees must disclose to their manager, within seven days of the offer or receipt of:
- All gifts over the value of \$50;
 - All discounts offered to employees (other than those offered via any employee purchasing scheme or those offered to all customers of a business); and
 - All hospitality offered by a person or organisation that the employee has dealings within the performance of their duties. Note: incidental coffee purchases are not considered to be of a level requiring

disclosure, however employees should consider the frequency and expense of such purchases.

12.4. Where an employee has disclosed an offer, or receipt a gift of over \$50, a discount, or hospitality, the manager (in consultation with a Group Manager, Director, the Risk and Assurance Manager, or the Chief Executive as appropriate) may decide whether it is appropriate for the employee to accept or keep the gift, discount or hospitality. If it is decided that a gift cannot be accepted, the gift will be returned to the donor or, with approval of the donor, given to charity.

12.5. In making this decision, the following factors are relevant:

- The value and nature of the gift, discount or hospitality;
- The extent of the personal benefit to the employee from the gift, discount or hospitality;
- The context, reason or occasion for the gift, discount or hospitality; and
- Any imminent decisions to be made by Council that could be seen to be affected by the acceptance of the gift, discount or hospitality.

12.6. Employees must not accept a gift with a value of than \$150 for an individual, or \$300 for a group without written approval from the Chief Executive.

12.7. All gifts over then value of \$50 are to be recorded in the Gifts Register, which will be maintained by the Risk and Assurance Manager.

12.8. The Senior Leadership Team will review the Gifts Register annually

13. Policy Review

13.1. This Policy will be reviewed at least every three years by the Audit and Risk Committee. Any amendments will be adopted by Council.

13.2. This Policy does not cease to have effect because it is due for review, or being reviewed.

13.3. This Policy takes effect from the date it is formally adopted by Council.

Delegations, References and Revision History					
Delegations					
Identify here any delegations related to the policy for it to be operative or required as a result of the policy					
Delegation	Delegations Register Reference				
References					
Include here reference to any documents related to the policy (e.g. operating guidelines, procedures)					
Document Reference	Title				
#1447278	Conflict of Interest Declaration				
####	Employee Interest Register				
####	Elected Member Interest Register				
Office of the Auditor General Advice	Managing conflicts of interest: A guide for the public sector https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf				
Revision History					
Summary of the development and review of the policy					
Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
1	Group Manager Commercial and Strategy	TBC	Council	TBC	#1444244

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1. Employee Name:

First Name

Last Name

2. Position:

Manager:

3. Risk Assessment:

(Low Risk, Medium Risk, High Risk)

Risk assessment must consider:

- *The type and size of the employee's interest;*
- *The nature or significance of the particular decision or activity being carried out by Council;*
- *The extent to which the employee's interest could specifically affect, or be affected by, Council's decision or activity, or be perceived to do so; and*
- *The nature or extent of the employee's current or intended involvement in Council's decision or activity.*

4. How the conflict will be managed:

Below are some treatment options for managing or resolving a conflict of interest:

- *Seeking consent of all other affected parties for the involvement of the employee;*
- *Ensuring additional oversight or review of the employee's duties relevant to the conflict;*
- *Withdrawing the employee from discussion or decision-making on any issue relating to the conflict;*
- *Excluding the employee from a committee or working group dealing with the issue;*
- *Withholding certain confidential information or placing restrictions on access to information;*
- *The employee relinquishing the private interest;*
- *Resignation or dismissal from one or other position or entity.*

Signed Employee

Date

MM

DD

YY



Managing
conflicts of
interest: A
guide for the
public sector



Managing conflicts of interest: A guide for the public sector

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Auditor-General's overview

E ngā mana, e ngā reo, e ngā karangarangatanga maha o te motu, tēnā koutou.

If you work in the public sector, it does not matter what your role is or how senior you are. In a small country like ours, there is a good chance you will have a conflict of interest at some point in your working life.

A conflict of interest is where the responsibilities you have as an employee or office holder in a public organisation are affected by some other interest you have in your private life. That other interest could be a relationship, a role in another organisation, or a business interest.

Having a conflict of interest does not necessarily mean you have done anything wrong. If the conflict is handled well, it does not have to be a problem. Conflicts can arise in many situations. Some are serious, some less so, and some are unavoidable. But, in any situation where activities are carried out in the public interest or paid for out of public funds, the public needs to be confident that decisions:

- are made impartially and for the right reasons; and
- are not influenced by personal interests or ulterior motives.

That means, if you are working in the public sector, you need to be able to:

- identify the different interests you have;
- recognise if you might have a conflict;
- understand how serious it is and what risks it gives rise to, for both you and the organisation you work for; and
- understand what to do about it.

That is what this guide is about – identifying interests and managing conflicts, so the public can be confident that people making decisions and spending public funds on their behalf are doing so in the public interest, not to benefit their family, friends, business associates, or themselves.

To manage conflicts of interest, there are usually both legal and ethical questions that need to be taken into account. Some public organisations are subject to specific legal requirements governing how conflicts are managed. Most will have policies or processes that people are required to comply with. This guide is not intended to replace any of these sector or organisation-specific legal or policy requirements.

Instead, this guide takes a principles-based approach, intended to complement those requirements. It outlines the basic rules that apply to different types of conflicts, points you in the direction of the rules that are likely to apply to you, and provides some principles and guidance on best practice to help you judge

Auditor-General's overview

how best to manage a conflict, when the rules, by themselves, do not provide an obvious answer. It also includes several scenarios to help show how these principles might be applied in practice.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'JMR Ryan', with a stylized flourish at the end.

John Ryan
Controller and Auditor-General

24 June 2020

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Introduction

- 1.1 Every employee or office holder has several professional and personal interests and roles. Conflicts of interest sometimes cannot be avoided and can arise without anyone being at fault. They need not cause problems as long as they are promptly disclosed and well managed.
- 1.2 In this guide, we describe conflicts of interest in the public sector, and how to identify, disclose, and manage them. We do not lay down rules but instead suggest an approach for dealing with issues when they arise.¹ This guide represents our view of what constitutes good practice in the public sector.
- 1.3 This guide will be useful for everyone who works in the public sector. We also publish a separate good practice guide about the legal requirements under the Local Authorities (Members' Interests) Act 1968.²
- 1.4 There are several aspects to managing conflicts of interest effectively:
- Public organisations and employees and office holders need to understand what a "conflict of interest" is, and be aware of the different ways in which one can arise (see Parts 2 and 3).
 - Employees and office holders should identify and disclose a conflict of interest as soon as it arises (see Part 4).
 - In every instance, the public organisation (or, sometimes, the employee or office holder concerned) needs to consider what action (if any) is necessary to manage the conflict of interest. This might include publicly disclosing significant conflicts of interest in the interests of public transparency (see Part 4).
 - Public organisations should establish policies and procedures to help them and their employees to identify and deal with conflicts of interest (see Part 5).
 - Public organisations need to understand the main legal and ethical considerations that are likely to apply to managing conflicts of interest and the possible consequences of breaching the applicable rules (see Part 6).

Guiding principles

- 1.5 Public business should be conducted with a spirit of:
- integrity;
 - impartiality;
 - accountability;
 - trustworthiness;

1 For organisations in the State services, please also see the State Services Commission's *Model Standards on Conflicts of Interest*. They outline the State Services Commissioner's minimum expectations for staff and organisations in the State services to support effective reporting and management of conflicts of interest.

2 The Local Authorities (Members' Interests) Act 1968 applies to members of city councils, district councils, regional councils, community boards, and a range of other public bodies.

Part 1
Introduction

- respect; and
- responsiveness.

1.6 In our view, these principles should guide any decisions about conflicts of interest.

Our role with conflicts of interest

1.7 The Auditor-General does not have an explicit statutory role with regard to conflicts of interest.³

1.8 The Auditor-General cannot “rule” on whether someone has a conflict or whether it was lawful for them to participate in a particular matter. Nor can we take enforcement action against someone who might have acted unlawfully or inappropriately because of a conflict of interest. These are matters for the courts.

1.9 However, under the Public Audit Act 2001, the Auditor-General is the auditor of all public organisations and, as such, has an interest in supporting them to carry out their activities lawfully and in a way that inspires public confidence. The proper management of conflicts of interest is a fundamental part of maintaining public confidence in the public sector. Therefore, the Auditor-General has a strong interest in supporting good practice.

1.10 This guide is one of the ways we aim to support good practice in managing conflicts of interest in the public sector. Other ways we might look at conflicts of interest are:

- **As part of our annual audit work:** The Auditor-General appoints auditors to carry out annual audits of public organisations. Under section 15 of the Public Audit Act, auditors can look at an organisation’s systems and processes for managing conflicts of interest as part of the annual audit. Auditors also monitor some types of disclosures about conflicts of interest as part of the annual audit.
- **When carrying out an inquiry:** The Auditor-General has the power to examine concerns about conflicts of interest as part of an inquiry into a public organisation’s use of its resources under section 18 of the Public Audit Act.
- **When carrying out a performance audit:** The Auditor-General can examine a public organisation’s compliance with any statutory or internal policy requirements about conflicts of interest, in the course of carrying out a performance audit under section 16 of the Public Audit Act.

³ Except in the case of the Local Authorities (Members’ Interest) Act 1968, where the Auditor-General has statutory functions under the Act.

The nature of conflicts of interest 2

What is a conflict of interest?

- 2.1 A conflict of interest is any situation where your duties or responsibilities as an employee or office holder in a public organisation conflict, or could be seen to conflict, with some other interest you might have outside of work.
- 2.2 The other interest or duty might be:
- holding another public office;
 - being a current or (recent) former advisor, director, or partner of another business or organisation;
 - being a member of a club, society, or association;
 - having a professional or legal obligation to someone else (such as being a trustee);
 - having a beneficial interest in a trust;
 - owning or occupying a piece of land;
 - owning shares or some other investment or asset;
 - having received a gift, hospitality, or other benefit from someone;⁴
 - owing a debt to someone; or
 - being a 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 organisation.

Having an interest does not necessarily mean you have a conflict of interest

- 2.3 Having a personal interest, on its own, is not what causes a conflict. Everyone has multiple roles and interests at work, at home, in their extended families, or in the community. A potential conflict of interest arises only where your duties or responsibilities as an employee or office holder in a public organisation overlap with one of your other roles or interests.
- 2.4 For example, you are an elected member of a local council and also involved in running a business, on the committee of a local sports club, and a member of a voluntary organisation. Your involvement in the business, role on the committee, and membership of the voluntary organisation are all interests that you have as well as your role as an elected member of the council.

⁴ Here, issues about conflicts of interest overlap with the management of sensitive expenditure. See our good practice guide, *Controlling sensitive expenditure: Guidelines for public entities*.

Part 2

The nature of conflicts of interest

- 2.5 These other interests do not necessarily mean you have any conflicts of interest. An interest becomes a potential conflict of interest only if it overlaps in some way with your role as an elected member. For example, your interest might result in a potential conflict of interest if:
- your business puts in a bid to provide goods or services to the council;
 - the sports club is located on land leased from the council; or
 - the voluntary organisation seeks funding from the council to help fund its activities.

Why might having a conflict of interest be a problem?

- 2.6 Having a conflict of interest does not mean you have done anything wrong, and it is not necessarily a problem if it is managed properly. Conflicts can arise in all sorts of situations, as the list above shows. Some conflicts are serious, some less so. Some are unavoidable, especially in a small country like ours.
- 2.7 However, in any situation where activities are paid for out of public funds or carried out in the public interest, the public needs to be confident that decisions:
- are made for the right reasons; and
 - are not influenced by personal interests or ulterior motives.
- 2.8 The risk with having a conflict of interest – at least, one that is not properly managed – is that you will be seen to be advancing your own interests or the interests of others you feel a sense of loyalty or obligation to, rather than the interests of your role as a public servant.
- 2.9 Even if you have no intention of acting improperly, and are confident that you can think and act impartially, **if it looks like** you might be influenced by personal interests or ulterior motives when making a decision, you risk undermining public confidence in the integrity of that decision. You can also potentially expose the organisation you work for to legal, commercial, political, or reputational risk.

Why managing conflicts is particularly important in the public sector

- 2.10 Conflicts of interest can arise in all walks of life, including the private sector. However, there are higher expectations about conflicts of interest in the public sector because it is public money that is being spent, and public powers that are being exercised.

- 2.11 Where activities are paid for out of public funds, or decisions are made exercising public powers, members of the public rightly expect the people making those decisions to act impartially, without any possibility that they could be influenced by favouritism or improper personal motives, or that public resources could be misused for private benefit.
- 2.12 Also, unlike private organisations, public organisations are subject to specific legal rules that require their decision-making processes to be procedurally fair. Any decision of a public organisation that is tainted by bias, or the appearance of bias, is potentially subject to legal challenge.
- 2.13 This means that conduct that might be allowed in the private sector is not necessarily acceptable in the public sector. For example, under the Companies Act 1993, company directors are required to disclose when they have a personal interest in a transaction, but might then be permitted to discuss and vote on that transaction, despite having an interest in it. Similarly, small businesses in the private sector often employ and contract with family members as a matter of course. Such practices might be unacceptable – or, at the very least, require more careful management – in a public organisation.

Conflicts of interest and corrupt conduct

- 2.14 Corrupt conduct can arise when a conflict of interest is intentionally concealed, understated, mismanaged, or abused.
- 2.15 Experience shows that many, if not most, forms of corrupt conduct involve a conflict of interest. It is also possible to engage in corrupt conduct to do with another person's conflict of interest.
- 2.16 Examples of conduct that could be corrupt include:
- concealing or failing to disclose a conflict of interest;
 - making false or understated declarations about a conflict of interest;
 - favouring another interest over public duty;
 - improperly influencing others to favour a personal interest;
 - misusing resources to favour a personal interest;
 - improperly accessing, using, or disclosing information about a conflict of interest;
 - acting improperly to favour another person's personal interests; and
 - improperly allowing others to conceal a conflict of interest.

3

Different types of conflicts of interest

- 3.1 The seriousness of a conflict, and the type of risks it gives rise to, for you personally and the organisation you work for, will vary depending on the nature of the conflict and the context in which it arises. Conflicts of interest can arise in a wide variety of ways. In all cases, the underlying concern is the same – that is, ensuring that decisions are made impartially, and managing the risk of bias, or the appearance of bias.
- 3.2 To work out how to manage a conflict, it can be helpful to categorise it as a:
- financial conflict;
 - non-financial conflict;
 - conflict of roles; or
 - predetermination.
- 3.3 The situation you are facing might not fall neatly into one category. There are also situations where you might have more than one type of conflict. But, if you are trying to figure out whether you have a conflict and, if so, what to do about it, analysing your situation by putting it in one of these four categories can be a useful starting point.
- 3.4 In addition to these four categories, you also need to consider potential conflicts created by the possession of official information. The Serious Fraud Office often sees among public sector employees a failure to appreciate that it can be an offence to use information acquired in an official capacity for the personal benefit of that official or another.⁵ As we noted earlier, public sector officials are often held to a higher standard than in the private sector and it is important that officials do not take advantage of information acquired in their official role to make a gain either for themselves or others.
- 3.5 In all situations, your conflict might be actual or perceived – that is, you might have an actual conflict, or there could be no conflict, but to an outside observer it looks like there is.
- 3.6 Members of the public do not often have access to all the relevant facts, and cannot know what is in your mind or what your motivations are. They can judge only by appearances and information in the public domain. That means perceived conflicts are often as risky as actual conflicts, and you need to take just as much care to identify and manage them.

Financial conflicts of interest

- 3.7 A financial conflict of interest is any situation where you stand to gain or lose financially from a decision you are asked to make.

- 3.8 Financial interests might be direct or indirect. There are also situations where you might be deemed to share the same financial interests as another person or organisation. For example, you might be deemed to share any financial interests your spouse or partner has, or those of any business you are involved in.
- 3.9 A financial interest need not involve cash changing hands directly. It could, for example, be an effect on the value of land or shares that you own, or the turnover of a business you are involved in.
- 3.10 Financial conflicts of interest are often treated more strictly than non-financial conflicts of interest. For example:
- Under the common law, any financial conflict of interest (except one that is trivial) automatically disqualifies a public official from participating in a decision.
 - The Local Authorities (Members' Interests) Act prohibits members of local authorities and office holders in other specified public organisations⁶ from discussing or voting on any matter in which they have a financial interest, unless their interest is "in common with the public".
- 3.11 If you have a financial conflict of interest:
- you should treat it seriously, even if it seems trivial to you; and
 - you need to make sure you are familiar with any specific rules that apply to the management of financial conflicts of interest in the organisation you work in.

Non-financial conflicts of interest

- 3.12 A non-financial conflict of interest is any situation where you are not affected financially by a decision but are affected in some other way that might make you biased or appear to be biased.
- 3.13 A non-financial conflict of interest might arise, for example, from a family relationship, friendship, or any other sort of personal relationship.
- 3.14 Non-financial conflicts can also arise if you are a member of, or involved with, an organisation outside of your work.
- 3.15 Under the common law, a non-financial conflict of interest does not automatically exclude you from participating in a decision. It will depend how serious the conflict is. That does not mean non-financial interests are always less serious than financial conflicts. However, because there is not an automatic assumption of bias, there is generally more room for judgement about how serious the conflict is and how it should be managed.

⁶ For a list of organisations, see our good practice guide, *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*.

Part 3

Different types of conflicts of interest

Interests of relatives and friends

- 3.16 Considering the interests of relatives and friends requires careful judgement. If they have an interest that overlaps with the duties of an employee or office holder, then there might be a conflict of interest.
- 3.17 Specific statutory rules might also apply. For example:
- for members of local authorities covered by the Local Authorities (Members' Interests) Act, the financial interests of a spouse, civil union partner, or de facto partner are regulated; and
 - for matters covered by the Crown Entities Act 2004, the interests of a spouse, civil union partner, de facto partner, child, or parent are regulated.
- 3.18 In general, for situations not covered by specific statutory rules, we consider that, at least, the interests of any dependants or relatives who live with the employee or office holder must be treated as effectively the same as if the interest was held by the employee or office holder. In other words, if interests held by these relatives overlap with an employee or office holder's official duties, there will be a conflict of interest.
- 3.19 For other relatives, it will depend on the closeness of the relationship and the degree to which the public organisation's decision or activity could directly or significantly affect them. (Part 4 covers assessing the seriousness of a conflict of interest.)
- 3.20 Close relationships can vary. A relationship could be close because of the directness of the blood or marriage link, or because of the amount of association. There are no clear rules but it will usually be wise not to participate if relatives are significantly affected.
- 3.21 Some cultures, including Māori culture, have a broad concept of family. In our view, a conflict of interest will not often arise where the connection is a common ancestor, such as another iwi or hapū member. Sometimes an iwi connection could create a conflict of interest in and of itself. For example, if the person is working for a public organisation on a Treaty settlement where they are likely to end up as a beneficiary, this might create a conflict of interest. In this situation, the interest is personal.
- 3.22 Questions of judgement and degree also arise when considering friends and other associates. However, in our view, it is unrealistic to expect the employee or office holder to have absolutely no connection with or knowledge of the person concerned. New Zealand is a small and interconnected society. Simply being acquainted with someone, having worked with them, or having had official dealings with them is not something we would consider to cause a problem. However, a longstanding, close, or recent association or dealing might do.

- 3.23 Care should also be taken with interests held by people who have funded the election campaigns of elected members.
- 3.24 Where the public organisation's decision or activity affects an organisation that a relative or friend works for, it could be reasonable to take into account the nature of their position. For example, it might be material whether they are a senior executive or owner, on the one hand, or whether they are a junior staff member who is not personally involved in the matter and who would not be personally affected by the decision, on the other.

Conflict of roles

- 3.25 A conflict of roles can arise in any situation where you are a decision-maker for two different organisations about the same matter.
- 3.26 In some ways, a conflict of roles is just another type of non-financial conflict. We have given it its own category because a conflict of roles is likely to prompt different issues than other types of conflicts. The question you need to consider is not so much whether your interests conflict, but whether the interests of the two organisations you work for do.
- 3.27 A conflict of roles is also more likely to prompt questions about conflicting duties. For example:
- If both organisations are involved in the same project or transaction, and you owe a duty of confidentiality to both, can you be effectively involved in making decisions for both organisations about that project or transaction?
 - Can you fulfil a fiduciary duty to one organisation (for example, as a company director or trustee) when deciding something if you owe a fiduciary duty, or some other sort of duty of loyalty, to the other organisation?
- 3.28 Sometimes you might be involved in a second organisation quite deliberately. You might have been appointed specifically to represent the first organisation or hold office in another organisation because of your position in the first organisation. For example, if you are an employee of a Crown entity, you might have been appointed as its representative on a community trust that the Crown entity funds.
- 3.29 In those situations, it might be consistent with your role to participate at meetings of the first organisation in some matters that concern the second organisation, especially if that second role gives you specialised knowledge that it would be useful to contribute. This might be legitimate – and mutually beneficial – because for many matters there will be no risk that you could advance any private interest, show partiality, or otherwise act in a way that was not in the first organisation's best interests.

Part 3

Different types of conflicts of interest

- 3.30 However, you must be careful not to assume that this is always so. Conflicts of interest could still arise with some decisions. This is especially likely where you might be under a legal duty (for example, as a director or trustee) to act in the best interests of one organisation. For example, a conflict of interest might arise when one organisation is making a decision about funding the other, its continued existence, or on a formal submission it has made.
- 3.31 The main points to consider with a conflict of roles are that:
- you need to be clear in your own mind what your obligations are to each role or organisation;
 - you need to be confident that both organisations are clear about what your obligations are to each of them and, if necessary, have a protocol that explains this; and
 - you need to always be alert for situations where the interests of the two organisations might conflict, even if they generally do not.

Predetermination

- 3.32 Predetermination is any situation where you are making a decision about something and there is a risk that people will think you made up your mind before you considered all of the evidence. Suggestions of predetermination usually arise because of something you have previously said or done.
- 3.33 Technically, predetermination is not a form of conflict of interest. However, the concept of predetermination is derived from the common law on bias, so we have covered it in this guide. The underlying risk with predetermination is the same as for conflicts of interest – that is, the risk that you will “taint” a decision you are involved in making because you are biased or appear to be biased.
- 3.34 As a public sector employee or officeholder, you are entitled to have your own personal views. Indeed, you might often be expected to use your opinions or ideas in carrying out your work.
- 3.35 However, sometimes having strong views about a matter can create a risk of prejudice or predetermination. You might be treated as biased if your behaviour, beliefs, or what you say indicates that you made up your mind about a matter before it came to be heard or deliberated on – in other words, if you have a “closed mind” or fixed position and are not willing to fairly consider all relevant information and arguments.
- 3.36 The seriousness of the risk will depend on the context, such as what your role is and what sort of decision you are being asked to make.

- 3.37 For quasi-judicial decisions, decision-makers are held to an exacting standard of impartiality and objectivity. Quasi-judicial decisions are those that directly affect the legal rights, interests, and obligations of an individual or small group of individuals. Quasi-judicial decisions can be, for example, a decision to grant a permit, confer a specific benefit, or impose a punishment.
- 3.38 In other situations, it might nevertheless be acceptable for employees or officeholders to bring personal or previously formed views to decision-making – for example, when:
- discussing issues and exchanging ideas with members of the public;
 - developing a preliminary position, especially where a proposal is being consulted on or where the public organisation is expected to perform an advocacy role;
 - already holding – and perhaps having expressed – strong personal views about the matter, for decisions that are made by an elected or representative body and are political in nature or involve high-level policy-making;
 - promoting a particular view during debate in public hearings on a matter; and
 - drawing on your own knowledge or experience, especially for decisions that are entrusted to particular people because of their special expertise in the subject.
- 3.39 General personal factors, such as an employee's or officer holder's ethnicity, religion, national origin, age, political, or philosophical leanings, wealth, or professional background, will not usually constitute predetermination, unless they give rise to a strongly held personal belief that directly relates to the matter being considered.
- 3.40 When dealing with predetermination:
- You are expected to have an open mind, but that does not mean an empty mind.
 - Pay particular attention to the type of decision you are being asked to make. You need to be particularly careful about predetermination in situations where you are making decisions that will affect the legal rights, interests, and obligations of an individual or small group of individuals, as opposed to broad policy decisions that do not have an immediate effect on individuals.
 - Unlike many types of conflicts, the risks associated with predetermination are nearly always under your control. It is generally about managing what you do or say, so you do not later put yourself in a situation where your participation in a decision will put that decision at risk.

4

Dealing with conflicts of interest when they arise

- 4.1 There are two important aspects to dealing with conflicts of interest when they arise:
- identifying and disclosing the conflict of interest (primarily the responsibility of the employee or office holder concerned); and
 - deciding what action, if any, is necessary to best avoid or mitigate any effects of the conflict of interest (primarily the responsibility of the public organisation).

Identifying and disclosing a conflict of interest

- 4.2 Conflicts of interest can arise at any time. You might know from the outset, when you start in a role with a public organisation, that you have an outside interest that could result in a conflict of interest. Or you might take on a new role or appointment outside of work that could lead to a conflict at work. Or something might crop up, or your role at work might change, so that something that was not a conflict before becomes a potential conflict.
- 4.3 In short, everyone in the public sector needs to remain alert to the possibility of conflicts at all times.

Responsibility to identify and disclose conflicts of interest

- 4.4 The primary responsibility for identifying and disclosing conflicts of interest to the relevant people in a timely and effective manner rests with the person concerned.
- 4.5 This is because it is the individual person who will always have the fullest knowledge of their own affairs. They will be in the best position to realise whether and when something at work has a connection with another interest of theirs.
- 4.6 Managers and other senior personnel should remain generally alert for issues affecting other people that might create a problem. All public organisations need to be aware of any separate obligation they might have to disclose certain types of interests and potential conflicts (for example, under financial reporting standards).

Identifying conflicts of interest

- 4.7 In Parts 2 and 3, we discuss in detail the nature of conflicts of interest and the types of other interest that can give rise to a conflict of interest. The main question that must always be addressed is:

Whether an employee's or office holder's duties or responsibilities to a public organisation could be affected, or could be perceived to be affected, by some other interest or duty that the employee or office holder may have.

- 4.8 It is important to focus on the overlap between the two interests: that is, whether the person's other interest has something to do with the particular matter that is being considered or carried out by the public organisation.
- 4.9 It is better to err on the side of openness when deciding whether something should be disclosed. Many situations are not clear-cut. If you are not sure whether something constitutes a conflict of interest, it is safer and more transparent to disclose the interest anyway. The matter is then out in the open. Others with more expertise can judge whether the situation constitutes a conflict of interest, and whether the situation is serious enough to warrant any further action.
- 4.10 Disclosure promotes transparency and is always better than trying to manage the situation yourself.

Disclosing conflicts of interest internally

- 4.11 If a matter where a person has an interest arises at a formal meeting, the person should declare to the meeting that they have an interest in the matter before the matter is discussed. The declaration should be recorded in the minutes of the meeting.
- 4.12 In other situations, the matter should be raised and discussed with a relevant person as soon as the potential for a conflict of interest is identified. For most staff, the relevant person will be their manager (or another designated person in the public organisation). For a chief executive, the relevant person might be the board chairperson, responsible Minister, or another senior person in the public organisation. Board members should make a disclosure to the chairperson or deputy chairperson.
- 4.13 There might be an applicable law or internal policy that requires a disclosure to be lodged in a register. It is always wise to record any disclosure in writing anyway.
- 4.14 If something significant changes about the official role or the other interest, or the nature of the connection between them, the person should make a further disclosure, in case it is necessary to reconsider any decisions about how to deal with the conflict of interest.

Disclosing conflicts of interest externally

- 4.15 A public organisation might be under an obligation to disclose some types of interests and potential conflicts of interest publicly.
- 4.16 For example, an organisation might be required to disclose some matters in its financial statements, to comply with relevant accounting and auditing standards:

Part 4

Dealing with conflicts of interest when they arise

PBE IPSAS 20 *Related Party Disclosures* (Public sector Standards), NZ IAS 24 *Related Party Disclosures* (For-profit Standards), and ISA (NZ) 550 *Related Parties*. Those standards require the disclosure of transactions with related parties. In short, a “related party” is someone who has the ability, directly or indirectly, to control or exercise significant influence over the other party.

- 4.17 Even if there is no legal requirement to publicly disclose an employee or officeholder’s interest or conflict of interest, we recommend that public organisations consider the benefits of doing so. We recognise it is unrealistic for a public organisation to publicly disclose all conflicts of interest it is required to manage, and obviously any public disclosure would need to be balanced against the individual’s right to privacy.
- 4.18 However, the value of public transparency should not be underestimated – particularly for those public organisations that spend substantial sums of public money through procurement or grant allocation processes, or in any situation where public trust and confidence is fundamental to that public organisation’s ability to continue functioning successfully.
- 4.19 Many of the complaints made to us about a conflict of interest could have been avoided if the organisation had been more open about the conflict that had arisen and been willing to explain publicly what it was doing about it.
- 4.20 Options public organisations might want to consider include establishing their own threshold for public disclosure of significant conflicts of interest or disclosing conflicts in the context of significant or high-profile projects or transactions. Also, or alternatively, it might choose to make its policies on dealing with conflicts of interest publicly available.

Deciding on further action

- 4.21 Simply declaring a conflict of interest is not usually enough. Once the conflict of interest has been identified and disclosed, the public organisation might need to take further steps to remove any possibility – or perception – of public funds or an official role being used for private benefit.
- 4.22 In our view, responsibility rests with those “at the top” of the organisation. Leaders and senior managers need to model behaviour to the highest standard. It is not enough to have clear policies and processes. These must be seen to be strictly observed and enforced by those in senior positions.
- 4.23 The public organisation should carefully consider what, if anything, needs to be done to adequately avoid or mitigate the effects of the conflict of interest.

Responsibility to decide next steps

- 4.24 Usually, it is the public organisation's responsibility to determine the appropriate next steps (and to direct the affected employee or office holder accordingly). It is a matter of risk management. The decision-maker will usually be the person's manager (or other relevant person in relation to disclosure), acting on behalf of the public organisation. The public organisation's chairperson, chief executive, legal advisors, human resources staff, and other managers might need to help make decisions or offer advice to decision-makers. For convenience, we refer to the decision being made by "the public organisation".
- 4.25 Sometimes the decision about what the person needs to do will be straightforward, because there might be a clear legal requirement or other written rule covering the situation. An example is where there are statutory rules about participating in meetings that apply to members of a governing body. The onus to be aware of the rule, and to comply with it, lies with the person concerned. The judgement is theirs to make.

Action that should be taken to avoid or mitigate

- 4.26 For each potential conflict, it is important for the public organisation to consider whether something more ought to be done after disclosure. In doing so, the organisation should have regard to the principles (see paragraph 1.5) and the risk of how outside observers might reasonably perceive the situation. It is not safe to assume that a disclosure, and no further action, is always adequate.
- 4.27 First, if any legal requirement applies, then compliance with that is critical and overriding. For example, where the situation involves a legal requirement about a board member participating in a meeting, the law will usually require the member to refrain from participating in discussions and voting on the matter. There is usually no scope to decide on some lesser mitigation option.
- 4.28 Secondly, the public organisation should consider whether any relevant policy of the organisation contains a clear rule covering the situation.
- 4.29 Thirdly, if no relevant legal requirement or policy applies (or after any such rule has been complied with), then the public organisation should also consider whether anything more needs to be done. This is where there might be scope for a range of options. This assessment is a matter of judgement. In especially difficult situations, it might be necessary to seek professional advice and/or consult other published sources of guidance.

Part 4

Dealing with conflicts of interest when they arise

- 4.30 In exercising judgement, the public organisation needs to assess carefully:
- the seriousness of the conflict of interest;
 - the level of risk the conflict gives rise to; and
 - the range of possible mitigation options.

Assess the seriousness of a conflict of interest

- 4.31 Several factors might need to be considered in assessing the seriousness of the conflict of interest. They include:
- the type or size of the person's other interest;
 - the nature or significance of the particular decision or activity being carried out by the public organisation;
 - the extent to which the person's other interest could specifically affect, or be affected by, the public organisation's decision or activity; and
 - the nature or extent of the person's current or intended involvement in the public organisation's decision or activity.
- 4.32 Seriousness is a question of degree. It involves a spectrum of directness and significance – how close and how big. Directness (and its opposite, remoteness) is about how closely or specifically the two interests concern each other. Significance is about the magnitude of the potential effect of one on the other.
- 4.33 The public organisation might judge that the overlap of the two interests is so slight that it does not really constitute a conflict of interest. In other words, there is no realistic connection between the two interests, or any potential connection is so remote or insignificant that it could not reasonably be regarded as a conflict of interest.
- 4.34 However, it must be remembered that this judgement is not primarily about the risk that misconduct will occur. It is about the seriousness of the connection between the two interests.
- 4.35 Similarly, an interest might not be seen as serious if it is a generic interest held in common with the public. That is, the interest is substantially the same kind and size as the interest held by all members – or a large segment – of the public.⁷

Determining appropriate mitigation options

- 4.36 Judgements made about the seriousness of any conflict of interest will inform the suitable mitigation option. It might also be necessary to take into account the practicability of any options for avoiding or mitigating the conflict.

⁷ See our good practice guide, *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*, for a discussion of the concept of "interest in common with the public" in the context of members of local authorities.

- 4.37 There is a broad range of options for avoiding or mitigating a conflict of interest. The options (listed roughly in order of lowest to highest severity) include:
- taking no action;
 - asking whether all affected parties will agree to the person's involvement;
 - seeking a formal exemption to allow participation (if such a legal power applies);
 - imposing additional oversight or review over the person;
 - withdrawing from discussing or voting on a particular item of business at a meeting, or taking some other steps to limit influence or decision-making powers (for example, they might not take part in decisions but could still provide advice);
 - exclusion from a committee or working group dealing with the issue;
 - re-assigning certain tasks or duties to another person;
 - agreement or direction not to do something;
 - withholding certain confidential information;
 - placing restrictions on access to information (including, if applicable, post-employment restrictions, such as restrictions under a restraint of trade agreement);
 - transferring the person (temporarily or permanently) to another position or project;
 - relinquishing the private interest;
 - refraining from having further dealings with a person or organisation; and
 - resignation or dismissal from one or other position or organisation.
- 4.38 If the public organisation determines that a situation does not really amount to a conflict of interest after all, or is too indirect or insignificant, it might formally record or declare the disclosure and assessment in some form but take no further action. However, it should not be assumed that this will always be enough. The risk to be assessed is not just the risk of actual misconduct by the person involved but the risk that the public organisation's capacity to make decisions lawfully and fairly might be compromised or its reputation damaged. In making this assessment, the public organisation needs to consider how the situation could reasonably appear to an outside observer.
- 4.39 It might sometimes be necessary for a person to stay involved in a matter despite having recognised a conflict of interest if the conflict is inevitable and unavoidable and the matter cannot reasonably be dealt with without the person's involvement. That should be rare (and other mitigation options might need to be considered, too). One example is where all the people involved have a conflict of interest.

Part 4

Dealing with conflicts of interest when they arise

- 4.40 Ensuring that the conflicted person is no longer involved in the public organisation's work on the particular matter, through withdrawal, removal, or reassignment, is the most typical mitigation option. Taking one of those steps will usually be enough to adequately manage a conflict of interest.
- 4.41 Occasionally a conflict of interest might be so significant or pervasive that the person will need to consider giving up one or other interest or role. However, these cases are likely to be uncommon. The other interest needs to be considered in relation to a particular matter coming before the public organisation, so it will not often be necessary to ask, in a general sense, whether a conflict of interest is so great that the person should not remain working for the public organisation at all.
- 4.42 However, giving up an interest or role might not always deal with a conflict of interest if it happens at a very late stage.⁸ In other words, sometimes it might be too late for the person to choose to withdraw from one role or interest in order to be able to carry on with the other one.
- 4.43 If circumstances change, a decision about whether there is a conflict of interest or how to manage it should be reviewed and might need to change.
- 4.44 Many situations are not clear-cut and a range of possible judgements could be reasonable. The decision about what to do in any particular case is an internal matter. It is for the public organisation to determine (except if there is a legal obligation on the affected person to determine). But, in the interests of openness and fairness (and to minimise the risk of the public organisation having to defend itself against an allegation of impropriety), it is always safer to be cautious. Once a conflict of interest is recognised, the most common response should be withdrawal or exclusion from considering the matter.
- 4.45 It is wise to make a written record about any decision.⁹ This might include details of the facts, who undertook the assessment, and how and what action was taken as a result. Sometimes risk management might be helped by also considering whether to make an announcement to certain other people, or even publicly, about the conflict of interest and how it has been dealt with.

⁸ See for example *Collinge v Kyd* [2005] 1 NZLR 847 and *Auckland Casino v Casino Control Authority* [1995] 1 NZLR 142.

⁹ The State Services Commission's *Model Standards on Conflicts of Interest* require State service agencies to keep formal documentation of mitigation plans, see page 4.

Policies and procedures for managing conflicts of interest

5

Policies and procedures

- 5.1 All public organisations should establish policies and procedures as a tool for helping them and their employees and office holders identify and deal with conflicts of interest.
- 5.2 Managing conflicts of interest can never be as simple as creating and enforcing a set of rules. Nevertheless, robust policies and procedures are a useful starting point. They are where people should look first when they are working out whether they have a conflict of interest and what they need to do to about it.
- 5.3 Policies and procedures can provide clear rules for simple and predictable situations, and establish a process for dealing with the more difficult ones. They help reaffirm the public organisation's commitment to the principles associated with managing conflicts of interest, and encourage organisational transparency.

Focus on the public organisation's particular circumstances

- 5.4 In preparing its policies and procedures, a public organisation needs to take into account the nature of its own particular structure, functions and activities, and any applicable statutory requirements. It needs to consider what its operations are, what fields it operates in, and what sorts of problems or risks might typically arise. For example, does the public organisation do a lot of:
 - procurement and contracting;
 - allocating grants;
 - public consultation; or
 - quasi-judicial or regulatory decision-making?
- 5.5 A blanket policy or process will not necessarily work well for all these functions.
- 5.6 The public organisation might need to think carefully about who a policy should apply to. Some parts of the policy might be relevant only for board members or certain employees, such as those involved in any of the functions listed above. Some parts might not need to apply to all staff. It might also be prudent to require certain types of contractors or consultants to comply with the policy, even though they are not employees.

Part 5

Policies and procedures for managing conflicts of interest

- 5.7 Some situations will be foreseeable and the answer straightforward. For those situations, clear rules could be established in a policy. For example, a public organisation might, depending on the nature of its operations, prohibit employees and office holders from:
- being involved in a decision to appoint or employ a relative;
 - conducting business on behalf of the organisation with a relative's company;
 - owning shares in or working for particular types of organisation that have dealings with or are in competition with the public organisation;
 - making submissions in a public consultation process (on matters that directly relate to the organisation's work);
 - deliberating on a public consultation process where the employee or office holder has made a personal submission;
 - accepting gifts in connection with their official role; or
 - influencing or participating in a decision to award grants or contracts where the employee or office holder is connected to a person or organisation that submitted an application or tender.

Periodic declarations of interests

- 5.8 One method many public organisations use is to require employees or office holders to regularly (for example, yearly) complete and submit a declaration listing specified personal interests. This is sometimes called an "interests register".¹⁰
- 5.9 A declaration in an interests register is not, in itself, a declaration of a conflict of interest. In most cases, it is simply a declaration that someone has an interest that could give rise to a conflict.
- 5.10 However, an interests register enables relevant managers to be aware of most relevant ongoing interests, and acts as a reminder to people of the need to be alert for conflicts of interest. The register, if reviewed and updated regularly, helps people to monitor situations that could give rise to a conflict of interest, and to identify conflicts of interest at an early stage.
- 5.11 Placing interests on record is also consistent with the principle of transparency. An interests register can be used to document any agreed mitigations, especially for predictable situations, so that there is a record, if needed later, that both the individual and the organisation have thought about the risks and taken appropriate steps to manage them.

¹⁰ See, for example, the interests registers required for Ministers and members of Parliament by the *Cabinet Manual* and the *Standing Orders of the House of Representatives* respectively.

What to cover in policies and procedures

- 5.12 Policies and procedures should:¹¹
- state principles or values that emphasise the organisation's commitment to addressing conflicts of interest and the importance of people in the organisation being alert for such situations;
 - establish rules for the most important and obvious actions that people must or must not take;
 - establish a mechanism (such as an interests register) for recording those types of ongoing interests that can commonly give rise to a conflict of interest and a procedure for putting this into effect and updating it regularly;
 - set out a process for identifying and disclosing instances of conflicts of interest as and when they arise, including a clear explanation of how someone should disclose a conflict of interest and to whom;
 - set out a process for managing conflicts of interest that arise, including who makes decisions and perhaps detailing the principles, criteria, or options that will be considered;
 - provide avenues for training and advice;
 - provide a mechanism for handling complaints or breaches of the policy; and
 - specify the potential consequences of non-compliance.
- 5.13 However, policies and procedures are not enough and cannot anticipate every situation. Also, the seriousness of some situations will be a question of degree and not amenable to a rule. Policies and procedures might need to allow for some flexibility for judgement in individual cases. A policy should not state or suggest that the specific situations it covers are an exhaustive list. Some situations will need to be the subject of discretionary judgements as and when they arise.

¹¹ Some of the publications listed in Appendix 1 contain more detailed guidance on preparing and implementing policies and procedures. See, in particular, the State Services Commission's *Model Standards on Conflicts of Interest*, the Independent Commission Against Corruption's *Managing Conflicts of Interest in the Public Sector in NSW*; and the Organisation for Economic Co-operation and Development's *Managing Conflict of Interest in the Public Service: A Toolkit*.

6

What are the rules?

- 6.1 Rules and expectations about conflicts of interest might be derived from any or all of:
- legislation;
 - common (judge-made) law; and
 - general standards and expectations.
- 6.2 In this Part, we outline some of the main legal and ethical considerations that are likely to apply to managing conflicts of interest and the possible consequences of breaching the applicable rules.

Statutory rules

- 6.3 Some public organisations are subject to statutory rules that apply to managing conflicts of interest.
- 6.4 Statutory rules generally regulate conflicts of interest of members of an organisation's governing body, rather than the organisation's employees. If you are on the governing body of an organisation that is subject to one of these Acts, you need to be familiar with the rules that apply to conflicts under that Act.
- 6.5 Statutory rules commonly do one or more of the following:
- prohibit members from discussing and voting at meetings on matters in which they have an interest;
 - require members to disclose interests before appointment, in a register of interests and/or at relevant meetings;
 - prohibit members from having an interest in certain contracts with their organisation;
 - prohibit members from signing documents relating to matters in which they have an interest; and
 - provide mechanisms for seeking exemptions from the general rules.
- 6.6 Some important statutory rules can be found in the:
- Crown Entities Act 2004;
 - New Zealand Public Health and Disability Act 2000;
 - Companies Act 1993;
 - Local Authorities (Members' Interests) Act 1968; and
 - Education Act 1989.
- 6.7 Appendix 2 sets out summaries of the relevant statutory provisions.

Common law rules

- 6.8 Conflicts of interest are also regulated under the common law, as part of the general requirement that all public decision-making must be procedurally fair, including being free from the taint of bias and predetermination.
- 6.9 The common law's rule against bias has two main goals:
- First, it ensures that the best decision is made based on relevant information and arguments, not ulterior motives or prejudices.
 - Secondly, it ensures that people affected by, or interested in, a decision have trust and confidence in the process – meaning they are more likely to accept a decision once it is made.
- 6.10 The rule against bias operates both to avoid actual bias and to avoid any appearance of bias. The principle is that justice should not only be done but it should also be seen to be done.
- 6.11 The courts usually approach bias by asking the following question:
*Would a fair-minded observer reasonably think that the decision-maker or member of the decision-making body might not bring an impartial mind to the decision, in the sense that they might unfairly treat someone's case with favour or disfavour?*¹²
- 6.12 Also, under the common law, a person who has a fiduciary obligation towards someone else (such as a trustee of a trust or director of a company) is not allowed to put themselves in a position where their official role conflicts with their personal interests.
- 6.13 The principles that have been developed through the common law are relevant to managing conflicts of interest, even where there is a statutory rule in place, because the common law is likely to influence how the statutory rule is interpreted.
- 6.14 Appendix 3 sets out a list of some New Zealand court cases that consider conflicts of interest.

General standards and expectations

- 6.15 As stated in Part 1, public business should be conducted with a spirit of:
- integrity;
 - impartiality;
 - accountability;
 - trustworthiness;
 - respect; and
 - responsiveness.

¹² *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2010] 1 NZLR 35; [2010] 1 NZLR 76.

Part 6**What are the rules?**

- 6.16 As well as legal requirements, all decisions about conflicts of interest need to be guided by ethical principles. A lack of integrity in relation to conflicts can impact the culture of an entire team. At an extreme end, the normalising and acceptance of conflicts can permeate throughout a team and facilitate criminal corruption.¹³
- 6.17 There is no single source of rules or expectations specifying what constitutes ethical behaviour for all situations or all public organisations. Any rules or expectations applying to a particular situation might come from a variety of sources, including:
- the organisation's founding or constituting document;
 - the organisation's code of conduct or relevant internal policies and procedures, such as those about procurement decisions;
 - other sets of mandatory requirements that apply to the public sector or a particular part of it (such as the *Code of Conduct for the State Services*, the *Cabinet Manual*, the State Services Commission's *Board Appointment and Induction Guidelines*, or the *Government Procurement Rules*);
 - relevant clauses in an employment agreement or contract for services;
 - rules of conduct or codes of practice applying to members of a profession or industry;
 - general guidance or good practice guides (such as this one);
 - customary practice and behaviour in the public sector or a particular part of it;
 - commonplace understandings of the concepts of integrity, impartiality, accountability, trustworthiness, respect, and responsiveness; and
 - analogies drawn from legal rules that apply to similar situations.
- 6.18 Appendix 1 sets out a list of other useful sources of guidance.

Consequences if the rules or expectations are breached

- 6.19 A poorly managed conflict of interest can have consequences for both you and the organisation you work for.
- 6.20 If you are a member of a governing body, breaching a statutory rule might constitute grounds for your removal from office. It might constitute an offence. Sometimes, the law provides that a transaction of the public organisation might be able to be cancelled. Some matters might adversely affect the public organisation's audit report.

¹³ *R v Borlase & Noone* [2016] NZHC 2970. In this case, the court found that there were adequate conflicts of interest policies, but they were not appropriately observed. This led to "the insidious corruption of officials" noted by Fitzgerald J at [131].

Part 6

What are the rules?

- 6.21 If an organisation's decision is tainted by bias, the courts may declare the decision invalid or may prevent a person from exercising a power. The risk, delay, and expense in defending a decision against a legal challenge can be significant.
- 6.22 More often, if a conflict of interest is not handled well, there is a risk that you, your managers, and the organisation you work for might become the subject of public criticism by politicians, the media, or members of the public. A regulatory agency may conduct a formal inquiry into the public organisation. If you are an employee, the organisation might have grounds for taking disciplinary action against you.
- 6.23 A public scandal could be severely damaging to the public organisation's reputation and could lead to people losing their jobs.

7

Conflicts of interest in everyday life

- 7.1 In this Part, we show how conflicts of interest can arise in our everyday lives and provide guidance about the matters that should be considered:
- Scenario 1: Funding for a club
 - Scenario 2: Family connection to a tenderer for a contract
 - Scenario 3: Employment of a relative
 - Scenario 4: Public statements suggesting predetermination
 - Scenario 5: Decision affecting land
 - Scenario 6: Gifts and hospitality
 - Scenario 7: Making a public submission in a private capacity
 - Scenario 8: Mixing public and private roles
 - Scenario 9: Personal dealings with a tenderer for a contract
 - Scenario 10: Duties to two different organisations
 - Scenario 11: Professional connection to a tenderer.
- 7.2 The scenarios are intended to show the range of situations that can occur and the issues that might need to be considered in assessing their seriousness and deciding how to manage them. They are examples, not rules. In reality, sometimes a small difference in context or detail can make a critical difference. People will have to use their own judgement.
- Scenario 1: Funding for a club**
- 7.3 Sam is a grants officer for a Crown entity that funds environmental projects in the community. In her role, she does the initial assessment of applications and writes reports for the committee that will consider and decide on each funding round. She also monitors the use of the funding.
- 7.4 Sam is also a member of a small local residents' association. The association has applied for funding to clean up a local stream and plant native shrubs.
- 7.5 Normally, this application would be one that Sam would deal with in her work.
- 7.6 There is a conflict of interest here. Someone could reasonably allege that Sam's likely desire for her association to be successful in its bid might mean that she will not be completely impartial in the way she analyses this application (and the other applications that are competing for the same pool of money). The decision to be made is specifically about the residents' association, and probably affects its funding in a significant way.
- 7.7 Sam should tell her manager about her personal connection to this application. Sam's manager should consider the nature of Sam's role in processing these sorts

of applications, whether her position has a significant influence on decision-making, and whether someone else in the organisation could work on the particular application.

- 7.8 It might be prudent for Sam's manager to ensure that all of the applications for this particular set of funding (including the applications from others) are processed by someone else. If the manager takes this view, it might also be preferable that the other person is not someone Sam manages. If the application from Sam's association is successful, Sam might also need to be excluded from administering that grant.
- 7.9 Alternatively, it could be that no steps are warranted because Sam's role is a low-level administrative one and all the substantive analysis is done by others. Another possibility is that the above steps are impracticable, because Sam is the only person in the organisation who can do the work. In that case, some other option (such as carrying out an additional peer review of her work on the matter) might have to be used.
- 7.10 In this scenario, there is a conflict of interest even though Sam is not one of the leaders of the residents' association, did not prepare the application, does not personally have a financial interest in the matter, and believes she could still consider all applications fairly and professionally. The association is small, so Sam is likely to know its leaders well and work closely with them. However, the situation might be different if the association was a large nationwide organisation like Rotary, and the application was from a different branch of that organisation.

Scenario 2: Family connection to a tenderer for a contract

- 7.11 Hoani is a project manager for a district health board (DHB). The DHB contracts out some functions to private providers. As part of his role, Hoani is running a tender process to find a new provider of certain health services.
- 7.12 Hoani's brother-in-law, who he knows well, is the managing director and a significant shareholder of one of the private companies that is tendering for the contract.
- 7.13 There is a conflict of interest here. It is not a financial conflict of interest, because Hoani is not involved in the tendering company and is not financially dependent on his brother-in-law. But the family connection to the company is a reasonably close one, and the decision to be made by the DHB directly relates to the company. Hoani is likely to have feelings of loyalty to his brother-in-law (or at least this would be a likely perception).
- 7.14 Hoani should tell his manager about his personal connection to the tendering company, and the manager should get someone else to manage this tender

Part 7

Conflicts of interest in everyday life

process. It might also be prudent to take steps to ensure that Hoani does not have access to information about the other tenders or any confidential information about this tender process.

- 7.15 It matters that Hoani's relative has an important role at the tendering company. The approach might be different if the relative was in a much more junior position and was not personally involved in the company's tender, especially if the company was a large one. The approach might also be different if the person involved was a distant relative whom Hoani had met only a few times in his life. Assessing the closeness of a personal connection to someone (or the appearance of such closeness) requires careful judgement.

Scenario 3: Employment of a relative

- 7.16 Stephanie is the principal of a secondary school in a small town. She takes a leading role in hiring staff.
- 7.17 A vacancy has arisen for the position of finance manager and Stephanie's husband is interested in applying for the position.
- 7.18 Stephanie has a conflict of interest here. The school needs to employ staff on merit, and must avoid perceptions of undue influence or preferential treatment in appointment decisions.
- 7.19 Stephanie needs to tell the chairperson of the school's board of trustees about the situation. The board should ensure that this appointment process is handled entirely by others, and that Stephanie has no involvement in the process. Because of Stephanie's own position, the board needs to take extra care to ensure that the process is truly transparent and competitive, so that all suitably qualified people are able to apply and be fairly considered, and that there can be no reasonable suggestion that Stephanie might have influenced the decision from behind the scenes.
- 7.20 But managing the appointment is not the only type of conflict of interest that needs to be considered carefully by the school. Issues are also likely to arise in the ongoing working relationship, where there are matters that directly affect or involve both Stephanie and her husband.
- 7.21 It is a fact of life that there will be times when two people who are related – or who are in a personal relationship – will work for the same organisation. That is not usually improper in itself. Indeed, it would often be wrong for someone to be disadvantaged simply because of who they are related to, especially in a large organisation where the two people do not work closely together each day.

- 7.22 However, sometimes – and depending on the nature of the position – appointing someone who is a relative could cause difficulties, even where a fair process has been followed. This is because it can create a risk of a lack of independence, rigour, and professionalism in ongoing decision-making. In a public organisation, it would usually be unwise for relatives to hold two of the most senior positions, or to hold positions that are in a direct reporting relationship.
- 7.23 In Stephanie’s husband’s situation, the school’s board should consider whether it would be able to manage the frequent and significant conflicts of interest that would be likely to arise if Stephanie’s husband were to be appointed. The two roles are senior ones and likely to involve a direct reporting relationship (or at least a lot of working closely together on managing the school’s finances).
- 7.24 It can be difficult to decide the fairest course of action in these situations. Here, the board might well decide not to appoint the husband because it would be too difficult and complicated to manage the likely ongoing conflicts of interest.

Scenario 4: Public statements suggesting predetermination

- 7.25 Ruth is an elected member of a district council. She sits on the council’s planning hearings committee, which considers and decides on resource consent applications.
- 7.26 During the last election campaign, Ruth pledged to oppose an ice-skating rink that a developer hoped to build in town. One of her published campaign pledges was “Ruth will sink the rink”. Later, she declared in the local newspaper that the proposal would succeed “over my dead body”. The developer has now applied to the council for resource consent to build the rink, and the application is about to be considered by the planning hearings committee.
- 7.27 Ruth’s previous comments are likely to mean that she is biased. Even if she is not biased, there will certainly be a strong public perception that she is. If she takes part in decisions about the resource consent application, the developer could argue that it has not had a fair and impartial hearing, because one of the decision-makers had a predetermined view. The council’s decision could be open to legal challenge on the grounds of bias.
- 7.28 Ruth should stand down from the planning hearings committee when it considers this application. (If she refused to do so, and the council was concerned about the legal risk to its decision that her involvement would cause, the council might be able to resolve to remove her from the committee.)
- 7.29 Although local body politicians can be expected to take office with pre-existing views and policies on a wide range of matters, their role sometimes requires them

Part 7

Conflicts of interest in everyday life

to act judicially. When acting in that capacity, they should take extra care not to express views in a way that suggests their mind is firmly made up about such a matter before having heard all views, or that their position is so fixed that they are unwilling to fairly consider the views of others, or that they are not prepared to be persuaded by further evidence or argument.

- 7.30 The type of function being exercised is relevant to whether the line has been crossed. In Ruth's case, a strict standard needs to be applied because the council is acting in a regulatory capacity, and because a resource consent grants the holder a legal right. The council needs to follow a fair process and make its decision on lawful grounds that comply with the Resource Management Act 1991, because it is making a decision that could be appealed to the Environment Court or be subject to judicial review by the High Court.

Scenario 5: Decision affecting land

- 7.31 Tom is a civil engineer and works for a State-owned enterprise (SOE) that is responsible for a national infrastructure network of gas pipes. The SOE is planning to build a major pipeline to increase supply capacity from a refinery to a large city.
- 7.32 The pipeline has to cross a distance of 300 kilometres, and the SOE has come up with several different options for the route of the pipeline, which the SOE will now consider in more detail. The SOE has to acquire land – compulsorily if necessary – along its chosen route. The project is opposed by many people who live along the possible routes, who fear the pipeline will adversely affect the natural environment and devalue their remaining land. Tom has worked on a number of areas of the project, and has now been appointed to the Route Options Working Group that will assess the route options and make a recommendation to the board.
- 7.33 Tom is also part-owner of a farm that lies directly in the path of one of the route options.
- 7.34 Tom has a conflict of interest here. He has a personal stake in the decision about which route to choose, because his land could be affected. Although the working group does not make the final decision, it has an important role in analysing the route options and making a recommendation.
- 7.35 Tom needs to tell his manager that he has an interest in a property affected by one of the options. Tom's role will have to be considered carefully. It might be that Tom does not mind whether the pipeline ends up crossing his land – he might not share any of the concerns of the project's opponents. He might believe that he could contribute conscientiously to the working group to help it arrive at the

best technical answer. But his manager should bear in mind the risk that, if Tom's personal connection becomes publicly known, others might easily think that it could affect his views or actions.

- 7.36 His manager might have to remove him from the working group and assign him to other tasks. (There might be other aspects of the project that Tom could work on, which have no connection to the question of which route to choose.) It might also be wise to ensure that Tom does not have access to confidential information about the decision before it is made public, in case he is considering selling his land.
- 7.37 Alternatively, Tom's expertise might be indispensable to the project, or he might have a small part in the overall process. Some other options might therefore need to be considered (such as only partly limiting his role, or imposing extra supervision).

Scenario 6: Gifts and hospitality

- 7.38 Rawiri works in the corporate services division of a government department. As part of his role, he manages the department's contractual relationship with its rental car provider. The arrangement with this supplier has been in place for several years, so the department has decided to re-tender the contract. Rawiri has told the current provider that he will soon be inviting expressions of interest for a new contract.
- 7.39 Rawiri has regular relationship management meetings with the current provider. At a recent meeting, the provider offered to fly him to another city to inspect a new fleet of cars that will shortly be available, and said that Rawiri could have complimentary corporate box tickets to a rugby test match that happened to be on that night, and stay on for the weekend in a downtown hotel.
- 7.40 This situation creates risks at any time, but especially given the imminent tender process. Rawiri might not be seen as impartial if he is involved in choosing the new supplier. A competitor could allege that Rawiri is being given an inducement or reward in the implicit expectation that he will look more favourably on the current provider in the coming tender round (or that he will receive further gifts if the current provider is successful).
- 7.41 Rawiri should discuss the offer with his manager, and carefully consider the department's policy on gifts and hospitality.¹⁴ Given the circumstances, it would not be appropriate to accept the offer of the sports tickets and hotel accommodation. With the offer to be flown to another city to inspect the new fleet of cars, careful consideration should be given to whether business reasons

¹⁴ Most organisations will have an internal policy that sets out in detail what is or is not acceptable in this area. See also our publication *Controlling sensitive expenditure: Guidelines for public entities* (available at oag.parliament.nz), and the State Services Commission's 2018 publication *Chief Executive Gifts, Benefits and Expenses* (available at ssc.govt.nz).

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can justify the visit. (If it goes ahead, the public organisation might decide to offer to pay the cost of it.) If other forms of gift or hospitality have already been accepted, the appropriateness of Rawiri having a role in the coming tender process might need to be reconsidered, too.

- 7.42 This does not mean that gifts must always be refused. It is reasonable to consider the value or nature of the gift and extent of personal benefit (for example, it might be acceptable to accept a gift that is inexpensive and widely distributed). The context and reason or occasion for the gift is relevant, too. For an organisation that operates in a more commercial environment, some types of gift or hospitality might be seen as a necessary element in maintaining relationships with stakeholders and clients. However, in Rawiri's case, the risk is higher because of the proximity to the coming tender round where a strict and fair process will need to be followed and be seen to be followed (and because the justification for at least some elements of the offer appears dubious).

Scenario 7: Making a public submission in a private capacity

- 7.43 Ken is an elected member of a city council. The council is proposing to adopt a new bylaw on the location of brothels. As it is required to carry out a formal public consultation process on its draft bylaw, the council has invited written submissions and will hold a public hearing where submitters can make an oral presentation to a council committee. The adoption of the bylaw will be decided by a vote of the full council.
- 7.44 Ken feels strongly about the draft bylaw, and wishes to lodge a submission.
- 7.45 This situation might create a conflict of interest for Ken.
- 7.46 Some public organisations will have a code of conduct or policy that prohibits their members or officials from making public submissions to the organisation in a private capacity.¹⁵
- 7.47 Assuming that Ken will not be breaching the council's code of conduct, he will be entitled to exercise his democratic right to make a submission, like any other private citizen. But, if he does so, he should not participate in the council's decision on whether to adopt the draft bylaw; nor should he sit on the committee that hears and considers the submissions. Otherwise, his behaviour could indicate predetermination.
- 7.48 Ken would create the perception that he is attempting to act as both an interested party and a decision-maker on the same matter or, in other words, acting as a

¹⁵ In particular, senior officials – or officials who work in policy roles – in the public service need to take extra care to maintain their political neutrality.

judge in his own cause. The council's decision could be open to legal challenge on the ground of bias.

Scenario 8: Mixing public and private roles

- 7.49 Antonia is a senior scientist working for a Crown research institute (CRI). The CRI has developed a new product that has significant revenue-earning potential, and Antonia has worked on the product as part of her role in the CRI. However, the CRI needs help in manufacturing and marketing the product on a large scale, so plans to enter into a joint venture with a private company. The CRI is considering appointing Antonia as one of its representatives on the governing body of the joint venture.
- 7.50 Coincidentally, Antonia is also a shareholder in the private company that will be the CRI's joint venture partner (although she had no role in the CRI's selection of it).
- 7.51 The situation creates a conflict of interest for Antonia. She stands to benefit from the financial success of the private company. The fact that there might be no direct disadvantage to the CRI (because the joint venture partners are working together, hopefully for their mutual benefit) does not remove the conflict of interest. Her interests in both the CRI and the private company could create confusion about her role and primary loyalty. She could be accused of using her official position in a way that advances her own private interests.
- 7.52 Antonia needs to tell her manager. It will probably be necessary for Antonia not to be given any major role in governing or managing the joint venture while she has an interest in the private company.
- 7.53 Antonia's manager might also need to think carefully about what other work, if any, it is appropriate for Antonia to do on the project in her capacity as a CRI employee. This decision might not be clear-cut. Antonia might be the best person in the CRI to carry out certain tasks, but the risk is that she could be regarded as spending a large part of her time as an employee of a public organisation, and using the CRI's resources, to carry out work that has a significant element of private benefit for her.
- 7.54 Antonia's manager might judge that some involvement in the project is acceptable (or even necessary), but it might also be desirable to confine this. For example, Antonia's role could be changed so that she does not have the ability to influence decisions about how the joint venture and project are run. Alternatively, Antonia might be asked to give up one of her roles – that of employee or that of shareholder.

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- 7.55 If circumstances changed to a point where the CRI and the private company became direct competitors with each other, then Antonia's situation might become even more difficult (especially if she remains in a senior position at the CRI, or is still involved in this particular area of work). In that case, it might become necessary for Antonia's manager to insist on divestment of one or other role – either that she relinquish her private interest or leave her job.¹⁶

Scenario 9: Personal dealings with a tenderer for a contract

- 7.56 Sandra is a consultant who specialises in project management. Her services have been engaged by a government department to help it carry out a new building project. As part of this role, Sandra has been asked to analyse the tenders for the construction contract and provide advice to the department's tender evaluation panel.
- 7.57 Sandra has a lot of personal knowledge about one of the tenderers for the construction contract. She used that firm to build her own house last year, and she is currently using it to carry out structural alterations on several investment properties that she owns. Because of this, she knows the directors of the company very well, and has a high regard for their work.
- 7.58 This situation might create a conflict of interest for Sandra. She is expected to impartially and professionally assess each of the tenders, yet she could be regarded as being too close to one of the tenderers.
- 7.59 In Sandra's case, it is probably unwise for her to play a role in selecting the tenderer. (This might or might not require ending the consultancy arrangement altogether, depending on what else Sandra has been engaged to do.) Her dealings with the firm are recent and significant. The risk is that, if this firm wins the contract, Sandra's personal connections with it might allow someone to allege that the department's decision is tainted by favouritism.
- 7.60 These sorts of situations are not always clear-cut. Particularly in small or specialised industries, people often have had some degree of personal knowledge of, or previous dealings with, other people or organisations that they have to make decisions about. That is not necessarily wrong. Indeed, they will often be chosen for this role precisely because of their experience or expert knowledge, and that might include general impressions about the reputation or competence of others. So, sometimes, these sorts of connections might be judged to be too remote or insignificant. For instance, in this case, the response would probably be different if the firm's private work for Sandra had been a single, smaller job carried out several years ago.

¹⁶ If the private company regularly carries on business in the same general industry as the CRI, the CRI might have an internal policy prohibiting Antonia from being involved in such a company anyway.

- 7.61 To take another similar example, careful judgement would also be necessary if the connection was instead that the tendering firm was run by a friend or acquaintance of Sandra. For example, it might be improper for Sandra to be involved in assessing the tenders if the firm was run by a friend she had known for many years and who had attended her wedding. By contrast, there might not be any problem if Sandra simply knew the person in a casual way through membership of the same sports club.
- 7.62 Further careful judgements might be necessary if Sandra had worked for the firm. For instance, the situation might be problematic if she had been a full-time employee in the last year, or was also currently providing significant consultancy advice to the firm on another matter. On the other hand, it might not be problematic if she had worked for the firm several years ago, or if she had provided only occasional pieces of consultancy advice in the past.
- 7.63 This scenario also shows that public organisations need to think about whether and how to manage conflicts of interest that arise for someone who is not a member or employee, but is instead a consultant or contractor. Sandra's role is important to the department and affects an important decision it has to make, and so can expose the department to legal and political risk. She should be required to agree to abide by the relevant conflict of interest policy for staff. The departmental manager who oversees her work should ensure that she understands the policy, and should monitor her in the same way as an employee.

Scenario 10: Duties to two different organisations

- 7.64 Jean-Paul is a member of the council of a tertiary education institution (TEI). The TEI has some contracting arrangements with private organisations to help to deliver some educational courses. One of those arrangements is with a charitable trust, under which the trust is funded by the TEI to prepare, administer, and teach the course on behalf of the TEI. However, the TEI is now about to decide whether to discontinue this arrangement.
- 7.65 Jean-Paul also happens to be one of the trustees of the charitable trust.
- 7.66 Jean-Paul has a conflict of interest in this decision. He might not be affected personally by the decision, but the trust will be, and he is closely associated with the trust. (The conflict of interest might be particularly acute if the course is a significant source of the trust's funding and ongoing viability.)
- 7.67 Also, as a member of the governing body of the TEI, Jean-Paul has a duty to act in the best interests of the TEI, but, as a trustee, he also has a duty to act in the best interests of the trust. In this scenario, the best outcome for one organisation might not be the best outcome for the other, and so it might be impossible for Jean-Paul to faithfully give effect to his obligations to both organisations.

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- 7.68 Jean-Paul should declare a conflict of interest at relevant meetings of the TEI's council, and refrain from discussing or voting on the TEI's decision. It might be wise for him not to be provided with confidential information about the matter. Jean-Paul might also need to consider whether he has a conflict of interest in the matter at meetings of the trust.

Scenario 11: Professional connection to a tenderer

- 7.69 Viliami works for a large multi-disciplinary professional services firm. Viliami, through his firm, has been engaged by an SOE to help it choose a contractor to manage a major land development project. Viliami is the person who will provide expert advice to the panel that considers tenders.
- 7.70 Another division of Viliami's firm wishes to submit a tender for the project.
- 7.71 There is a conflict of interest here. Viliami will be providing advice about a matter that affects his own firm. Viliami does not personally have two conflicting roles, but his firm does, and that creates a problem for him.
- 7.72 In some situations involving organisational connections, different individuals in the organisation can be managed by insisting on a separation of roles and information. Because this process is not always entirely satisfactory, it is best reserved for situations when the connection is almost inevitable or the risk is very low. In this scenario, the connection is fairly direct, even though Viliami will not be one of the individuals managing the project. Another tenderer might object that he is unlikely to be impartial. The risk of challenge could be high, especially if the project is worth a lot of money.
- 7.73 Viliami should discuss the matter with the relevant manager in the SOE. If his firm's tender is to be considered, it is likely that Viliami will not be able to continue with his role. Alternatively, when it first engaged Viliami's services, the SOE could have insisted on a condition that his firm would not be permitted to tender for the project.

Appendix 1

Other sources of guidance

Some of the material listed here comes from other countries. Although it is useful, the overseas material has been written for an environment that might have different legal rules or public expectations.

New Zealand

- State Services Commission (2007), *Code of Conduct for the State Services*, Wellington (available at www.ssc.govt.nz).
- State Services Commission (2019), *Conflicts of Interest*, Wellington (available at www.ssc.govt.nz).
- State Services Commission (2015), *Board Appointment and Induction Guidelines*, Wellington (available at www.ssc.govt.nz).
- Cabinet Office (2017), *Cabinet Manual*, Wellington, paragraphs 2.53-2.81 (available at www.dpmc.govt.nz).
- Controller and Auditor-General (2020), *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*, Wellington (available at www.oag.parliament.nz).
- House of Representatives (2017), *Standing Orders of the House of Representatives*, Wellington, Standing Orders 163-166 and Appendix B (available at www.parliament.nz).

Australia

- Australian Public Service Commission (2017), *Values and Code of Conduct in Practice*, Canberra (available at www.apsc.gov.au).
- Independent Commission Against Corruption (2019), *Managing Conflicts of Interest in the Public Sector in NSW*, Sydney/Brisbane (available at www.icac.nsw.gov.au).
- Independent Commission Against Corruption/Crime and Misconduct Commission (2004), *Managing Conflicts of Interest in the Public Sector: Guidelines*, Sydney/Brisbane (available at www.integrity.qld.gov.au).
- Independent Commission Against Corruption/Crime and Misconduct Commission (2004), *Managing Conflicts of Interest in the Public Sector: Toolkit*, Sydney/Brisbane (available at www.integrity.qld.gov.au).
- Integrity Coordinating Group (2011), *Conflict of interest guidelines*, Perth (available at www.opssc.wa.gov.au).
- New South Wales Ombudsman (2017), *Recognising and managing conflict of interests*, Sydney (available at www.ombo.nsw.gov.au).

Appendix 1
Other sources of guidance

Canada

- Government of Canada (2011), *Values and Ethics Code for the Public Service*, Ottawa (available at www.tbs-sct.gc.ca).
- Government of Canada (2015), *Apparent Conflicts of Interest*, Ottawa (available at www.tbs-sct.gc.ca).

OECD

- Organisation for Economic Co-operation and Development (2003), *OECD Guidelines for Managing Conflict of Interest in the Public Service*, Paris (available at www.oecd.org).
- Organisation for Economic Co-operation and Development (2005), *Managing Conflict of Interest in the Public Service: A Toolkit*, Paris (available at www.oecd.org).

Appendix 2

Some important statutory rules about conflicts of interest

The descriptions that follow provide a summary of some important statutory provisions, and enable a comparison between them. They are necessarily brief and general in nature, and involve some paraphrasing. They are not a comprehensive statement of the relevant law. Readers wanting to apply the rules to a particular situation should refer to the wording of the relevant statute or seek legal advice.

The Acts discussed in this Appendix are the:

- Crown Entities Act 2004;
- New Zealand Public Health and Disability Act 2000;
- Companies Act 1993;
- Local Authorities (Members' Interests) Act 1968; and
- Education Act 1989.

Crown Entities Act 2004

The relevant provisions in this Act apply to members of boards of statutory entities (as that term is defined in the Act), except for district health boards.¹⁷

Before appointment, a prospective member must disclose to the Minister the nature and extent of all interests that they have, or are likely to have, in matters relating to the organisation.

A member who is "interested in a matter" relating to the organisation must disclose the nature and value (or extent) of the interest. The disclosure must be made in the interests register, and to the chairperson (or deputy or Minister, in some cases). Standing disclosures (disclosures with ongoing effect) may be made. The member must not vote or take part in any discussion or decision of the board or any committee relating to the matter, nor otherwise participate in an activity of the organisation that relates to the matter, nor sign related documents.

A member is "interested" in a matter if they (or their spouse, civil union partner, de facto partner, child or parent) might derive a financial benefit from it; or if they may have a financial interest in (or are a partner, director, officer, board member or trustee of) a person to whom the matter relates; or if they are otherwise directly or indirectly interested in the matter. Certain exceptions apply, including where the member is a member or officer of a subsidiary, or where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities.

¹⁷ See sections 7, 10, 31, 53, 59, and 62-72.

Appendix 2

Some important statutory rules about conflicts of interest

The board must notify the Minister of a failure to comply with these provisions, and the member might be removed from office. In some cases, the organisation may be able to cancel a transaction that was entered into in breach of the conflict of interest rules.

The chairperson (or deputy or Minister, in some cases) may grant written permission for one or more members to act despite their interest in a matter. Such permission must be disclosed in the organisation's annual report.

For more information about these provisions, see the State Services Commission's 2015 publication *Board Appointment and Induction Guidelines*.

New Zealand Public Health and Disability Act 2000

The relevant provisions in this Act apply to members of boards of district health boards (DHBs).¹⁸

Before appointment or election, a prospective member must disclose to the Minister or electoral officer, and in the interests register, all conflicts of interest that they have, or are likely to have, in matters relating to the DHB. A person who fails to disclose a material conflict of interest before accepting nomination as a candidate for election is disqualified from membership.

A member who is "interested" in a transaction of the DHB must disclose the nature of the interest to the board. The disclosure must be recorded in the minutes and in the interests register. The member must not vote or take part in any deliberation or decision of the board relating to the transaction, nor sign related documents. (The definition of being "interested in a transaction" is similar to the definition of being "interested in a matter" under the Crown Entities Act. One difference is that it excludes an interest in a party that is – or is owned by – a publicly owned health and disability organisation.)

A member who fails to comply with these provisions might be removed from office.

The other members of the board may decide to permit the member to participate in the board's deliberations (but not its decision) about the transaction. Certain matters about the permission must be recorded in the minutes.

The Minister may waive or modify the prohibition on participation for particular members or transactions or classes of transactions. A copy of any such waiver or modification must be presented to the House of Representatives.

¹⁸ See sections 6, 21, and 29, clauses 6 and 17 of Schedule 2, and clauses 36-37 of Schedule 3. In addition, section 31 of the Crown Entities Act 2004 applies to appointed members. Sections 53 and 59 of that Act also apply to members.

Companies Act 1993

This Act applies to company directors.¹⁹

A director who is interested in a transaction or proposed transaction with the company must disclose the nature and value (or extent) of the interest (unless the transaction is between the director and the company and is in the ordinary course of business on usual terms and conditions). The disclosure must be made in the interests register and to the board. Standing disclosures may be made.

A director is “interested” in a transaction if they:

- are party to it or may derive a material financial benefit from it;
- have a material financial interest in another party to it;
- are a director, officer, trustee, parent, child, spouse, or civil union partner or de facto partner of another party to it (or person who may derive a material financial benefit from it); or
- are otherwise directly or indirectly materially interested in the transaction.

Certain exceptions apply, including in relation to subsidiaries and remuneration.

It is an offence for a director to fail to comply with these provisions. In some cases, the company might be able to cancel a transaction in which a director was interested.

Subject to the constitution of the company, a director who is interested in a transaction may vote on a matter relating to it (and do other things relating to it in their capacity as a director).²⁰

Local Authorities (Members’ Interests) Act 1968

This Act applies to members of the governing bodies of city councils, district councils, regional councils, community boards, and a range of other public bodies. It also applies to members of their committees.

A person is disqualified from being a member of the local authority (or a committee) if they are concerned or interested in contracts with the authority under which the total payments made, or to be made, by or on behalf of the authority exceed \$25,000 in any financial year.

It is an offence for the person to act as a member of the local authority while disqualified.

¹⁹ See sections 139-144. In relation to Crown entity companies, see also section 90 of the Crown Entities Act 2004 about disclosures before appointment.

²⁰ However, this provision does not override the duty under section 131 to act in good faith and in the best interests of the company: see *Hedley v Albany Power Centre (No. 2)* (2006) 9 NZCLC 264,095.

Appendix 2

Some important statutory rules about conflicts of interest

The Auditor-General may grant prior approval and, in limited cases, retrospective approval, of a member's interest in contracts, which has the effect of suspending the contracting rule in relation to that case.

A member of the local authority (or a committee) must not vote on, or take part in the discussion of, a matter before the authority in which they have a financial interest, other than an interest in common with the public (the non-participation rule). Certain exceptions apply. When the matter is raised at a meeting, the member must declare that they have a financial interest in it and the minutes must record the fact of the disclosure and abstention.

It is an offence for a member to breach the non-participation rule and, if convicted, they automatically vacate office.

The Auditor-General may grant an exemption or declaration, in a limited range of situations, which allows a member to participate in a matter in which they have a financial interest.

In some cases, a member who is associated with a company is deemed to share any interests of that company. A member can also have a deemed interest through their spouse, civil union partner or de facto partner.

For more information about this Act, see our 2020 publication *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest* (available at oag.parliament.nz).

Education Act 1989

The relevant provisions in this Act apply to members of school boards of trustees,²¹ and TEI councils²².

Before appointment or election, a prospective school board trustee must confirm that they are eligible to be a trustee.

A person is disqualified from being a trustee of the board (or member of a committee) if they are concerned or interested in contracts with the board under which the total payments made, or to be made, by or on behalf of the board exceed a specified amount (currently \$25,000) in any financial year.

In some cases, a trustee who is associated with a company is deemed to share any interests of that company.

The Secretary for Education may grant approval of a contract, which has the effect of suspending the contracting rule in relation to that case.

²¹ See sections 103, 103A, and 103B, and clause 40 of Schedule 6.

²² See sections 174 and 175.

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Some important statutory rules about conflicts of interest

A trustee must be excluded from any meeting of the board while it discusses, considers, or decides on a matter in which they have a financial interest or any interest that might reasonably be regarded as likely to influence them in carrying out their duties and responsibilities. However, they may attend to give evidence, make submissions, or answer questions.

Members of TEI councils are required to disclose their financial interests in any matters being considered by the council, and cannot participate in discussions or decisions on the matter unless the council decides otherwise. The council may dismiss a member who, without reasonable excuse, breaches that provision.

Appendix 3

Leading New Zealand court cases that consider conflicts of interest

- *Auckland Casino v Casino Control Authority* [1995] 1 NZLR 142 (CA)
- *Back Country Helicopters v Minister of Conservation* [2013] NZHC 982; [2013] NZAR 1474
- *Calvert & Co v Dunedin City Council* [1993] 2 NZLR 460 (HC)
- *Collinge v Kyd* [2005] 1 NZLR 847 (HC)
- *Diagnostic Medlab v Auckland District Health Board* [2007] 2 NZLR 832 (CA)
- *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541; [2019] 2 NZLR 501
- *Erris Promotions v Commissioner of Inland Revenue* (2003) 16 PRNZ 1014 (CA)
- *Friends of Turitea Reserve Society Inc v Palmerston North City Council* [2008] 2 NZLR 661 (HC)
- *Howe v Keown* [2011] NZAR 764 (HC)
- *Man O'War Station v Auckland City Council (No 1)* [2002] 3 NZLR 577 (PC)
- *Meadowvale Stud Farm v Stratford County Council* [1979] 1 NZLR 342 (HC)
- *Muir v Commissioner of Inland Revenue* [2007] 3 NZLR 495 (CA)
- *NZI Financial Corporation v NZ Kiwifruit Authority* [1986] 1 NZLR 159 (HC)
- *Otago University Students Association v University of Otago* [2009] 2 NZLR 38 (HC)
- *Pratt Contractors v Transit New Zealand* [2005] 2 NZLR 433 (PC)
- *R v Borlase & Noone* [2016] NZHC 2970
- *Riverside Casino v Moxon* [2001] 2 NZLR 78 (CA)
- *Save Chamberlain Park Inc v Auckland Council* [2018] NZHC 1462
- *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2010] 1 NZLR 35; [2010] 1 NZLR 76 (SC).

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Getting it right

Managing conflicts of interest involving council employees

Introduction

Councils need the trust and confidence of the communities they serve to operate effectively. One way to maintain this trust and confidence is to effectively manage both perceived and actual conflicts of interest.¹

Conflicts of interest can occur in all walks of life. Having a conflict of interest is not in itself a problem – what matters is how it is managed. This is particularly important when dealing with public money. Councils are spending their communities’ money, so their communities deserve to have confidence that decisions are made impartially and for the right reasons.

In this article, we share our findings on how conflicts of interest of council employees, including the chief executive and staff, are managed across four councils. We did not look at how the conflicts of interest of councillors are managed.

Four councils of various size and location were selected as case studies to highlight good practice and areas for improvement. This work is part of a

wider programme, aiming to support public sector leaders and governors to actively promote and manage integrity in their organisations.²

We saw many examples of good practice. All four councils we looked at had a reasonably up-to-date and clear policy in place.

Most councils we looked at had processes in place for their employees to declare conflicts.

However, we saw situations where there were multiple, and sometimes conflicting, processes. It is important to consider how these processes work together as a system. We did not see evidence of policies and procedures being consistently applied to contractors, and we were concerned by a lack of guidance for assessing the seriousness of conflicts. Some councils tended to manage conflicts informally and without up-to-date or complete documentation.

“It is important that organisations encourage behaviours and actions that put integrity at the core of how the organisation operates”

¹ Contoller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 8.

² Contoller and Auditor-General (2020), *Annual Plan 2020/21*, Wellington.



We saw some examples of councils considering how conflict of interest policies could be supported by a wider culture of integrity. There was also an acknowledgement that this culture needed to be led from the top, with senior leadership role modelling behaviour expected of employees.

Organisations need to have mechanisms to understand whether their systems for managing conflicts of interest are working effectively. We did not see enough evidence that councils were routinely monitoring and reviewing the effectiveness of their policies, processes, or procedures. Policies and procedures also need to be supported by training and ongoing internal communication.

In our view, governors have a role to play helping to ensure that there is appropriate assurance the systems supporting conflict of interest management are fit for purpose.

Our findings are arranged under three main components of effective conflict of interest management:

1. Having robust policies and procedures.
2. Promoting an ethical culture in an organisation.
3. Ensuring an understanding of how well conflicts of interest are being managed.

We hope that this information will be helpful to councils and other public organisations as they continue to build on their own work around conflict of interest management for their employees.

Our good practice guide looks at how to manage conflicts of interest in the wider public sector. This article is intended to build on that guidance.

Policies and procedures – establishing the foundation

Managing conflicts of interest can never be as simple as creating and enforcing a set of rules. Nevertheless, robust policies and procedures are a useful starting point.³

Councils carry out a wide range of activities, engaging with many organisations and people to support their local communities. There is always a risk that conflicts of interest could arise for their employees. Policies and procedures that cover the main areas of conflict of interest management provide the foundation for effectively managing any conflicts.

³ Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 23.

We looked at each of the councils' policies to assess their completeness, who they applied to, in what situations they apply, and whether they provide an effective basis for managing conflicts of interest.

Policies and procedures should cover the essential requirements

Our guidance on managing conflicts of interest emphasises that policies need to be clear about who they apply to and to clearly define what a conflict of interest is.⁴

Policies and procedures should:

- state principles or values that emphasise the organisation's commitment to manage conflicts of interest;
- establish rules for the most important and obvious actions that people must or must not take;
- establish a mechanism for recording those types of interest that might give rise to conflicts;
- set out a process to identify and disclose instances of conflicts of interest, including how and to whom;
- set out a process for managing conflicts of interest, including who makes decisions, detailing the principles, criteria, or options that will be considered;
- provide avenues for training and advice; and
- provide a mechanism for handling complaints or breaches of the policy and specify the consequences of non-compliance.

All four councils we spoke with had organisational policies to help manage conflicts of interest. These policies had all been put in place or reviewed in the last four years.

We were pleased to see that the councils' policies considered the conflicts of interest of employees at all levels from chief executives through to frontline staff, acknowledging that all employees could potentially have conflicts of interest that would need to be managed.

All four councils' policies provided helpful explanations about what constitutes a conflict of interest, including definitions of actual and perceived conflicts. All policies provided examples of different types of conflicts.

⁴ Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 25.

Three of the four councils had policies that made it clear how, and to whom, employees can disclose conflicts of interest and established rules for the most important and obvious actions that employees must or must not take.

Examples of rules include that employees must not:

- allow private interests to interfere with their employment duties or council business;
- use information that they obtain in the course of their duties to the advantage of themselves or any other person; and
- ask for or accept any benefit or advantage from persons who are in, or seek to be in, any contractual or other relationship with the council.

Each policy included a good level of detail about suggested mitigations to conflicts of interest. For example, one council provided the types of mitigation that might be appropriate in particular circumstances. These include:

- seeking consent of all other affected parties for the involvement of the employee;
- imposing additional oversight or review over the employee;
- withdrawing the employee from discussion or decision-making on a particular issue;
- excluding the employee from a committee or working group dealing with the issue;
- withholding certain confidential information or placing restrictions on access to information;
- transferring the employee (temporarily or permanently) to another position or project; and
- relinquishing the private interest.

In general, we were confident that the policies provided a firm foundation for managing conflicts of interest. However, there are opportunities for each of the councils to strengthen their policies. For example, only two of the policies we reviewed provided guidance on how to assess the seriousness of a conflict of interest declaration.

One council helpfully included the types of factors that should be included in a risk assessment for conflicts of interest. These included:

- the type or size of the employee's interest;
- the nature or significance of the particular decision or activity being carried out by the council;
- the extent to which the employee's interest could specifically affect, or be affected by, the council's decision or activity, or be perceived to do so; and
- the nature or extent of the employee's current or intended involvement in the council's decision or activity.

We also found that only one policy specifically referred to predetermination. Predetermination is the risk that as a decision-maker you have made up your mind about a matter before you considered all the evidence.

Although this is not technically a conflict of interest, it is a form of bias covered by our guidance and the underlying risk is the same – that people might perceive a decision-maker to be biased.⁵

We encourage councils to consider how our guidance on managing conflicts of interest could be applied to further strengthen their policies in the areas we have discussed.

Multiple processes create greater risks

The four councils we looked at all have policies and procedures that encompass all employees. These give varying levels of guidance to employees about how to manage a conflict of interest.

However, councils operate in a complex environment. Over time, councils have developed additional processes for dealing with conflicts of interest to meet the individual needs of their many and varied functions.

Some of these practices are driven by external professional guidance or statutory or contractual requirements.

⁵ Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 14.

For example:

- Procurement teams manage conflicts of interest informed by government procurement rules and guidelines.
- As building consent authorities, councils need to have a procedure for identifying and managing conflicts of interest in regulatory decision-making.
- Waka Kotahi NZ Transport Agency has specific forms to be completed that show consideration has been given to possible conflicts of interest before a transport project can be approved.

Adding to this complexity, we also saw evidence of larger project teams setting up their own unique conflicts of interest processes.

It is apparent that managing conflicts of interest can include a complex set of arrangements.

The different processes generally seem to be working well. Employees expressed confidence that the individual arrangements they have responsibility for, or are subject to, are generally fit for purpose and proportionate to the level of risk.

However, these assessments are carried out informally and in isolation from other functions. It was unclear to us how the councils knew whether conflicts of interest were managed consistently or how the different processes related to each other.

For example, some councils have multiple versions of declaration forms that essentially record the same information. There may be opportunities to consolidate this information.

We encourage councils to think about their whole conflicts of interest system to ensure that:

- the assumptions about risk are correct and that the controls reflect this;
- the different arrangements align with the organisational policy and procedures and do not impose conflicting or unenforceable requirements; and
- the different arrangements serve a distinct purpose, are not simply duplicate records, and are accessible to the right people at the right time.

Contractors should be considered

Employees and independent contractors have different legal rights and responsibilities. A contractor is not necessarily obliged to follow the council's policies and procedures unless the contract requires

this. In situations where people shift between being a council employee, a consultant, and/or a contractor with the council, there might be a greater risk of perceived and actual conflicts of interest.

Employees at one of the councils were concerned that contractors doing work for the council were not asked to declare their interests.

Excluding contractors from conflicts of interest policy or not taking them through conflict of interest processes presents two risks for councils. First, if processes were not followed, the council cannot assure the public that the decisions to contract people or organisations were free of any perceived or actual conflict of interest. Secondly, after people or organisations are contracted or engaged, the council might not be able to ensure that the contractors' conflicts of interest continue to be identified and managed appropriately.

We encourage all councils to consider requiring all contractors or consultants to comply with their conflict of interest policy even though they are not employees.

Building the right culture

As we stated earlier, having robust policies and procedures is not enough to support effective conflict of interest management. Organisations also need to consider how they provide the right culture to support employees to appropriately respond to conflicts of interest. We looked at how the four councils are working to encourage the right behaviour.

Conflicts of interest are an integrity issue

Thinking of conflicts of interest as an integrity issue helps employees understand why it is so important.

We were encouraged to see that each of the four councils we looked at identified conflicts of interest as an area they are actively considering as part of a wider range of integrity issues.

It was evident to us that the four councils understand how internal communications, ethical leadership, and training can all influence the behaviour of employees to follow their policies.

The benefits of aligning policy with values

We wanted to know whether the conflict of interest policies we examined were aligned with organisational values and principles.

Alignment between these values and conflicts of interest policies reinforces the organisation's commitment to a culture of integrity.

We were pleased that two conflict of interest policies we reviewed showed a clear link between the policy and the organisation's

values. For example, one council's policy clearly states that it is based on principles of integrity, honesty, transparency, openness, independence, good faith, and service to customers. This was aligned to the values of the organisation and indicated a proactive and intentional approach to foster integrity in the organisation more generally. Making connections between organisational policies and values is an important part of shaping expectations for behaviour.

“we encourage all councils to consider the benefits of aligning their conflicts of interest policy with their organisational values.”

We encourage all councils to consider the benefits of explicitly aligning their conflicts of interest policy with their organisational values.

Ethical leadership drives a culture of integrity and trust

Compliance procedures that appear impressive on their face are meaningless if... not fully endorsed and implemented by senior management. This remains true irrespective of whether the lack of support is a result of ignorance, complacency, turning a blind eye, or actively encouraging misconduct in the course of business. A consistent and comprehensive approach from those in charge will send a clear message that the organisation takes its corruption prevention procedures very seriously and encourage staff and customers to do the same.⁶

Compliance with conflict of interest policies is the responsibility of individuals at each level of an

⁶ Ministry of Justice, *Saying No to Bribery and Corruption – A Guide for New Zealand Businesses*, Wellington, page 8.

organisation. However, setting the “tone from the top” is critical to fostering a culture of integrity.

When we assessed how each council managed conflicts of interest, we considered the commitment of senior leadership and how this made a difference to how conflicts of interest were managed.

“where senior leaders did not set the tone or lead by example it was harder to identify a strong culture and commitment to integrity”

We saw examples of councils developing a strong culture of “doing the right thing” with conflicts of interest. This included leaders setting clear expectations and being role models for the behaviours they expected of their employees, such as senior managers being transparent with employees about their conflicts of interest or using their conflicts of interest as examples in meetings with employees.

We also saw examples of senior employees stepping away from decision-making or financial delegations where they have a conflict and leadership meetings beginning with declarations of interest.

In our view, where senior leaders did not set the tone or lead by example it was harder to identify a strong culture and commitment to integrity, including managing conflicts of interest.

In one council, we heard that the lack of participation by senior management in other integrity processes was seen by staff as a sign that these types of policies and procedures did not apply to everyone equally. This highlights the importance of the example set by the leadership team in matters of integrity.

A safe way to call out wrongdoing provides an early warning system

The culture of an organisation affects the day-to-day decisions people make as they go about their job.

Ensuring that employees feel safe and confident about calling out wrongdoing in an organisation is an important part of building an ethical culture. A culture of speaking up about integrity concerns, such as conflicts of interest, is helpful because it provides an early warning system for potential issues. Employees are often best placed to observe wrongdoing.

One of the councils we looked at had provided a way for employees to speak up anonymously. In our view, this is an important step.

It is important to set up multiple avenues to report concerns and to ensure that people know about them. It is also important to establish an organisational culture that encourages their use. Designing these mechanisms with employees could also help to ensure that the policies and procedures that support speaking up will be trusted and used by employees.

We are concerned that employees at one council were not confident that disclosures would be treated with the confidentiality and sensitivity required. In short, any mechanisms put in place for employees need to be backed by a culture that supports speaking up.

We encourage the leadership teams of councils to make sure adequate processes supported by a strong culture are in place to facilitate employees speaking up, including anonymity where appropriate.

Employment processes provide an opportunity to consider interests

Making sure that there are opportunities for new employees to declare their interests at the time of accepting or commencing employment is an effective means of introducing new employees to policy and practice. It is also an opportunity to demonstrate how policies and procedures relate to the culture of the organisation. All four councils we looked at are doing this.

We were also encouraged to see that all four councils had considered how education about conflicts of interest could be integrated into employment processes. This included, for example, information on the conflicts of interest policy being included in “on-boarding” packages for new employees. Other induction processes also included information on management of conflicts of interest.

One council has a two-week induction programme that incorporates management of conflicts of interest. This includes spending time with people managing conflicts of interest, training in the systems used to manage and document conflicts of interest, a policies session, a video, and a quiz.

Although these approaches are positive, there is potential for other councils to use the employment process to provide more in-depth information about managing conflicts of interest.

We encourage councils to ensure that the information provided to new employees is sufficiently detailed and understood. Councils would benefit from asking for employees to confirm their understanding of conflicts of interest policies and procedures.

Training is a critical tool

In our view, training is a critical tool in assisting employees to identify and disclose conflicts of interest. It also supports employees to understand what actions might be taken to avoid and resolve them. Regular refresher courses are important to maintain this awareness.

We saw examples of conflict of interest training being made available to certain areas of the councils we looked at where functions were seen to be at higher risk, had financial delegations, or decision-making authority. For example, we saw certain functions, such as Procurement and Planning, receiving role-specific training that included conflicts of interest training.

Some of the councils had taken advantage of broader training on fraud awareness through consultants, which they found helpful.

Cost can be a consideration, which limits who has access to the training. We were told about examples where the number of staff receiving the training was limited even though all staff would have benefited from it.

Overall, we found training was limited in the four councils. Outside of information provided at induction, training occurred intermittently, and it did not necessarily reach all employees. Employees were aware of what a conflict of interest is. However, we found variable understanding of what needs to be declared.

All four councils were aware that a strong training programme and regular refresher courses were needed so that conflicts of interest could be managed effectively. All four councils said that improved training would help improve how they managed conflicts of interest. We agree with this and suggest it be made a priority by all councils.

Regular internal communication keeps conflicts of interest top of mind

Messages about any integrity issue need to be clear and concise. Developing messages in conjunction

with employees is a means to ensure that the message connects with them.

The most effective messaging we saw about conflicts of interest included concepts that addressed employees' concerns. For example, we saw messaging that reassured employees that conflicts of interest are a regular part of life and the important thing is how they are managed.

In our view, effective messaging also included information about keeping employees and the organisation safe. This helps alleviate concerns that employees could be negatively affected by declaring a conflict of interest. This reflected that the council had taken time to seek the insight of employees, ensuring that messaging spoke to their concerns, and in this way encouraged them to take action.

Regular internal communications are also important in managing integrity issues well. This keeps the issue front of mind. Without constant visibility there is a risk that despite being informed about conflicts of interest, employees will not necessarily be alert to applying the policy day to day.

We heard and saw examples of different ways to share messages about conflicts of interest. This

included employees' meetings, intranet pages, and opportunities for smaller groups to come together voluntarily to discuss particular issues.

Although we saw some good work, more could be done by most of the councils we looked at to ensure that messaging includes the potential concerns of employees and is regular and accessible. Where messaging was not regular, employees felt conflicts of interest were not always top of mind. Some councils were also aware that their internal communications to employees required improvement.

Clearly defined roles are beneficial

In our view, having clearly defined roles in managing conflicts of interest is beneficial.

One of the councils we looked at had a member of the leadership team in an oversight role. The person in this role was able to co-ordinate the management of conflicts across different business units. Importantly, employees also knew they had someone to go to about any aspect of managing conflicts of interest.

One of the councils divided responsibilities for different aspects of conflicts of interest between different business units. For example, while the maintenance of the annual interests register was the responsibility of one unit, the training and communication was the responsibility of another, and internal monitoring of conflicts of interest was done by a third group. It was unclear how the different functions interacted.

“there is an opportunity for technology to be used further to address some of the complexities in managing conflicts of interest

We consider councils could benefit from ensuring that the senior leadership team can bring the different arrangements together to form a complete view of the various conflicts of interest functions. Although it is important that all senior leaders are involved in managing conflicts of interest, there might also be value in appointing a dedicated member of the senior leadership team to oversee all aspects of conflicts of interest. This signals that managing conflicts of interest is a priority and supports the delivery and monitoring of good practice.

Technology can be used to help manage conflicts of interest

Technology can be used to support conflict of interest management by making it easier for employees to put conflict of interest policies into practice.

We saw some good examples of technology being used to make it easier for employees to do the right thing:

- Automatic flagging was used in a purchase order system that required employees to confirm that there were no conflicts of interest. Where a conflict of interest was confirmed, the system would not let the employee proceed further and referred them to their manager to resolve the matter.
- The act of declaring an interest was made more straightforward by having a reminder email link directly to the declaration system rather than requiring the user to fill in a paper form.
- Employees' access to sensitive information was appropriately restricted by using security settings so that there is a smaller group of people who would have potential conflicts.

We also saw evidence of technology providing more options for training and communication. For

example, videos were used by leadership teams as a medium for communication on conflicts of interest. Integrating conflicts of interest into these mediums is currently being considered by some of the councils. In another council email, reminders were used for annual conflicts of interest declarations.

Over time, councils have developed a number of processes for dealing with conflicts of interest in their many and varied functions. Councils could consider how technology can help align separate processes and reduce duplication. Linking conflict of interest registers across the organisation to one central register, for example, might be one way of achieving this.

Knowing that the system works well

How can a council know how well it is managing conflicts of interest? Managers and governors need assurance that policies and procedures are working. Good information is key to providing that assurance.

“adopting a systematic approach to reviewing systems and processes would support continuous improvement

None of the councils we looked at were systematically checking how effectively they manage employees’ conflicts of interest. Nor were they collecting the types of information needed to assist them to do this.

We believe there are a number of things that councils can do better to monitor the effectiveness of policies.

A risk assessment can provide important insights

From our integrity work, we know the importance of building an understanding of integrity risks. This is key to ensuring that the appropriate policies and controls are in place.

In our view, a conflict of interest risk assessment could help councils manage the complex set of arrangements for conflicts of interest. A risk assessment can help to determine whether appropriate policies and procedures are being applied to each function of the organisation. A risk assessment could also identify any gaps across the

organisation where conflicts of interest management is less effective.

Ultimately, this would give management a clearer view of how conflicts of interest are dealt with and a starting point for monitoring and reporting.

We saw evidence that councils have included conflicts of interest when considering wider organisational risks. For example, conflicts of interest were discussed by some audit and risk committees as a subset of wider risks being considered.

“a conflict of interest risk assessment could help councils manage the complex set of arrangements for conflicts of interest

However, a specific conflicts of interest risk assessment had not been considered by any of the four councils. In our view, this means that they might not have the detailed information they need to provide effective oversight of their system for managing conflicts of interest.

We encourage councils to consider how they can use conflicts of interest risk assessments to strengthen their oversight.

Documentation protects everyone

Documenting the way conflicts of interest are being managed is essential.

Documentation protects both the organisation and the individual. It provides transparency for employees and means that expectations are clear. It also provides senior leaders with the information they need to be assured that processes are being followed.

All four councils were documenting the interests of their employees. We saw evidence that employees were required to regularly complete and submit a declaration listing personal interests. Although this is an important step, councils also need to clearly identify when these interests become a conflict and develop processes to support this.

We saw at least two councils clearly document conflicts of interest along with their mitigations. Those councils that did had a record that demonstrated both the individual and the organisation had considered the risks and taken the

appropriate steps to manage them. This is consistent with our expectations.

We were concerned that some councils were using less formal arrangements for managing conflicts of interest. These

processes typically involve conversations between management and employees, verbal agreement of any mitigation steps, and no documentation.

In our view, this does not support effective management of risks to the organisation or to the individual. These practices provide no record to show the public that the conflict has been considered and mitigated appropriately. This leaves the organisation and the individual exposed. Also, organisations cannot effectively monitor the decision-making about conflicts of interest without appropriate records.

“*we were concerned that some councils were using less formal arrangements for managing conflicts of interest*”

Learning from experience

We expect councils to use feedback and lessons learned from how they manage conflicts of interest as part of a continuous improvement programme.

We saw evidence in some councils that regular reviews took place, and advice on good practice was updated. We also saw an example where the individual employment agreement for new staff was changed after a conflict of interest policy breach. It is good these things prompted improvements in policy and procedures.

However, councils having a more proactive and systematic approach to reviewing their systems, policies, and processes would support innovation and continuous improvement. Employees' views on what conflict of interest processes work well and do not work well should be incorporated into these reviews. Reviews could also identify whether lessons learned from individual incidents could be more widely applied.

Governors have a role to play

Governors need to have the means to assure themselves that conflicts of interest involving employees are managed effectively. The public deserves to have confidence in how their councils manage organisational conflicts of interest.

Audit and risk committees may have a role to play in helping to ensure that there is appropriate assurance over the management of organisational conflicts of interest.

Two of the audit and risk committees out of the four councils we looked at were unclear about whether they should be involved in what they viewed as operational matters.

We agree that audit and risk committees do not have a role in making decisions about conflicts of interest involving employees. However, they may have a role in ensuring that there is appropriate assurance that the council's system for managing conflicts is effective.

Mayors rely on their chief executives to raise any concerns about organisational conflicts of interest that could risk the reputation of their council. We found that the communication between mayors and chief executives regarding conflicts of interest in the four councils to be largely informal. This approach cannot provide effective assurance and presents a significant risk to the reputation of councils.

August 2021

Resources

The Office of the Auditor-General produces a range of resources to assist public organisations with their management of conflicts of interest. These include conflicts of interest guides:

- [Managing conflicts of interest: A guide for the public sector](#); and
- [Local Authorities \(Members' Interests\) Act 1968: A guide for members of local authorities on managing financial conflicts of interest](#).

You can also test yourself with an interactive quiz:

- [Integrity town](#).

Sensitive Expenditure Policies from Timaru District Council Corporate Management Policies.

1. Alcohol Purchases

- 1.1. Generally no alcohol should be purchased by staff at the Council's cost.
- 1.2. Alcohol can only be provided at events where members of the public, guests, elected members or dignitaries are attending. This would include civic events and exhibition openings.
- 1.3. All alcohol purchases are to have the prior approval of the Chief Executive, Executive Secretary or Group Manager.
- 1.4. For functions, purchases should be made with an ability to return unused items. If this is not possible, any unused purchases can be held for the next event with approval of the Group Manager, or returned to the Executive Secretary for use in other areas.
- 1.5. Exceptions to the policy are to be approved by the Chief Executive only.

2. Credit Cards

- 2.1. Credit cards are issued at the Chief Executive's discretion.
- 2.2. The credit cards are only to be used for Council purchases where it is impractical to use other purchasing methods of orders and service requests. This would generally only be for overseas purchases to mitigate the cost of foreign exchange drafts and purchases when out of town on Council business.
- 2.3. Card limits are set at levels considerably lower than the staff member's delegated authority are detailed in the Delegation manual.
- 2.4. All receipts, tax invoices and information associated with credit card purchases are to be forwarded to the Accounts Payable Officer at the time the expense is incurred together with expense code, or alternatively held until the statement is received. When the credit card statement is received, this will be forwarded to the cardholder for authorisation.
- 2.5. Credit Card verification is as follows:
 - The Mayor will verify the Chief Executive's credit card statement
 - The Chief Executive will verify the Group Managers' credit card statements
 - Group Managers will verify their staffs' credit card statements
 - The Chairman of the Audit and Risk subcommittee will authorise the Mayor's credit card statement.

- 2.6. For the avoidance of doubt, no personal or private expenditure is to be charged to the Council credit cards. No cash withdrawals will be made with the Council credit cards.
- 2.7. Intentional unauthorised use of credit cards constitutes a breach of the Code of Conduct and may result in disciplinary action.
- 2.8. The Finance Unit shall be responsible for managing the acquisition and replacement of cards and monitoring use.
- 2.9. Any identified breaches of this policy shall be reported to the Group Manager Corporate Services and/or the Chief Executive.
- 2.10. Any staff member with a credit card who identifies that a credit card has been lost or stolen must report the loss to the Finance Unit as soon as possible. The Finance Unit shall arrange cancellation of the credit card. In the event that the loss is identified on a non-working day, the staff member shall advise the bank directly.

3. Expense Claims

- 3.1. All staff expense claims are to be completed by the employee and authorised by their Unit or Group Manager as appropriate using the official claim form RM8 Record #783030 or through the Intranet.
- 3.2. The Manager is responsible for ensuring that the amounts and codes are correct. These claims are to be forwarded to the Accounts Payable Officer for payment in the next payment cycle.

4. Daily Incidental Allowance

- 4.1. This payment is \$10 for each night that the employee is required to be away from home and is to cover incidental costs such as phone costs, or a beverage of your choice etc.
- 4.2. Where an employee is required to travel overseas this amount is to be \$25 per night.

5. Actual Expenses

- 5.1. These are reimbursed based on expenses incurred by the employee while on Council business. Employees are to provide GST receipts with the expense claim form. These expenses may include taxi fares while out of town without a Council vehicle, parking costs, meals and accommodation.
- 5.2. Items excluded from reimbursement are bar costs, minibar items, movies, personal tolls, child care, pet care and laundry costs. All accommodation is to be approved by the staff member's Group / Unit Manager prior to travel.
- 5.3. Alcohol purchases are at the staff member's expense.

6. Meal Expenses

- 6.1. If you are staying away from home for work purposes and your accommodation has a restaurant attached then your meals will automatically be charged to your room and paid directly by the Council.
- 6.2. When this happens we do not usually receive a copy of the detailed restaurant account however evening meals up to \$40 will be accepted and anything over \$40 maybe reviewed and a copy of your itemised account requested from the restaurant.
- 6.3. Lunch time meals up to \$20 will be accepted but anything over that amount may also be reviewed and a request made for an itemised account from the restaurant.
- 6.4. If you are claiming expenses for meals then an itemised GST invoice/receipt must be attached to your expense claim form.
- 6.5. Staff with amounts in excess of the above thresholds could be asked for the excess to be reimbursed to the Council.

7. Staying in a Private Residence

- 7.1. These expenses are to be approved by the staff member's manager prior to travel and be based on \$50 for each night's accommodation.

8. Use of Private Vehicle

- 8.1. There are two rates for reimbursement:
 - When a staff member uses their own vehicle on Council business at the Council's request they will be reimbursed at current IRD mileage rates.
 - When staff take their own vehicle voluntarily – currently 50c per km.

9. Gifts and Acknowledgements - Staff / Volunteers / Koha

- 9.1. All gifts and benefits, including meals, provided to staff (paid for by the Council), in excess of those in normal employment situations, are to be approved by the appropriate Group Manager and be part of the Group Manager's discretionary allowance. The Group Manager Corporate Services is to be advised of these payments to ensure the correct tax treatment.
- 9.2. All gifts and benefits provided to volunteers are to be approved by the appropriate Group Manager and charged to the operating expenses of the appropriate Unit. The Finance Manager is to be advised of these payments prior to the gift/benefit being provided to ensure the correct tax treatment. This includes petrol and gift vouchers and cash payments.

9.3. If a Runanga is providing a commercial service, it is expected that a tax invoice will be received relating to the service. However Koha might be appropriate in various other circumstances.

9.4. Koha can be a gift of an object (such as a tree) or in cash and reflects costs incurred such as travel. Koha of up to \$100 can be approved by a Unit Manager. Amounts in excess of \$100 can be approved by a Group Manager.

10. Loyalty Reward Schemes

10.1. The Council employees should where practical:

- Treat loyalty discounts received by an employee when carrying out their official duties as the property of the Council. Ensure that procurement decisions are not influenced by the prospect of receiving loyalty rewards when carrying out their official duties. For example, an employee's procurement decisions should not be based on the ability of the employee to accrue loyalty rewards points, ie Airpoints, Fly Buys, Farmlands Choices, and other loyalty rewards points
- Apply, as far as practicable, those loyalty rewards only for the benefit of the Timaru District Council.

11. Private Purchasing

11.1. Staff may make moderate use of any preferential access to goods and services through the Council's suppliers under the following conditions:

- Prior approval of the supplier by the Group Manager Corporate Services is required
- All orders are to be issued on a cash sales basis only and the staff member must pay in full for the goods and services directly to the supplier at the time of supply
- Staff may not use the Council's purchasing privileges on behalf of a third party beyond the staff member's immediate family.

12. Private Use of Council Equipment

12.1. No private use of any Council plant and equipment unless provided for in employment contract

13. Travel Costs

Airline Travel – Bookings / Changes

13.1. Seat or Seat and Bag fares should be booked as a first preference, with semi flexi fares to only be purchased should flight plans be in question, and with the prior approval of the Unit Manager

- 13.2. Where a staff member chooses not to travel following a flight booking (particularly if a non-refundable fare has been purchased), then the staff member's manager may request reimbursement of the costs
- 13.3. Where a staff member is unable to travel due to unforeseen work commitments or extraordinary personal circumstances (such as illness), then the staff member must advise their supervisor immediately
- 13.4. Flights should be booked as far in advance as possible in order to take advantage of lower priced fares.

Accommodation

- 13.5. All accommodation is to be booked using the Staff Travel and Accommodation booking form which is actioned by the Executive Office - <http://tdchome/assets/573798-Staff-Travel.pdf>
- 13.6. The Unit Manager should satisfy themselves, prior to granting approval, that:
 - The proposed travel and the associated costs are necessary and reasonable
 - Travel is for business purposes
 - Travel is consistent with the Policy
 - That costs can be covered by the available budget.

Private travel linked with official travel

- 13.7. Staff may take private travel before, during, or at the end of, travel on business provided:
 - No additional cost is incurred by the Council
 - The private travel is incidental to the business purpose of the travel
 - Pre-approval is granted
 - All costs associated with private travel will be the responsibility of the employee.

Spouse / Family Travel

- 13.8. Where the spouse, partner or other family member accompanies a travelling staff member on business related travel, any additional travel costs incurred by the Council are to be reimbursed to the Council within 14 days of being advised by the Finance team of the amount to be repaid.

Insurance

- 13.9. Work related travel insurance costs will be borne by the Council.

- 13.10. The Council will provide employees with overseas travel insurance while on the Council's business abroad. This cover can be extended for up to two additional days for personal use. Any additional periods (or additional family) are to be arranged through the Property Unit.

Travel – Other

- 13.11. Travel costs associated with a staff member who is requested to work on a particular project for the benefit of another organisation should be the responsibility of that outside organisation.

Travelling out of the District

- 13.12. Any staff member travelling out of the Timaru District must notify their Group Manager or Group PA

Draft Sensitive Expenditure Policy



Approved by: Timaru District Council

Date approved: TBC

1. Introduction

- 1.1. The Sensitive Expenditure Policy provides a contextual and principles-based framework for Council's sensitive expenditure practices. It clearly identifies the parameters within which Council shall authorise and incur expenditure of a potentially sensitive nature.
- 1.2. Through this Policy, Council recognises that dealing with public money means that expenditure should be subject to the standards of probity and financial prudence expected of a public entity. These expectations are necessarily higher than those that exist in the private sector.
- 1.3. Prudent sensitive expenditure policies and processes are strongly endorsed by the Office of the Auditor General (OAG), and the principles and standards set out in this Policy have been guided by the advice from the OAG.
- 1.4. This Policy should be read in conjunction with Timaru District Council Sensitive Expenditure Guidelines and Procedures (Appendix 1), and considered in reference to the Conflict of Interest Policy.
- 1.5. Sensitive expenditure by Elected Members is covered by the Elected Members' Remuneration, Allowances and Expenses Policy.

2. Purpose

- 2.1. The purpose of this Policy is to provide Timaru District Council management and officers with a clear framework for reviewing, approving, and managing sensitive expenditure, and addressing any potential conflict of interest or impropriety that may arise.
- 2.2. The Policy ensures all employees are treated with fairness in regard to sensitive expenditure.

3. Definitions

Approving Manager: Any employee's unit manager, or a manager higher in the financial delegation.

Conflict of Interest: Any situation in which an employee's official duties or responsibilities to Council could be affected or compromised or perceived to be, by some other interest or duty that the employee may have.

Credit Card: Includes traditional credit cards, vehicle fuel cards and other equivalent cards used to obtain goods and services before a payment is made.

Sensitive Expenditure: Any Council expenditure that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual Council officer that is additional to the business benefit to Council of the expenditure. It also includes expenditure that could be considered unusual for Council's purpose and/or functions, or that could be perceived as wasteful or extravagant.

Travel, accommodation, gifts and hospitality, staff support and welfare related expenditure are examples of sensitive expenditure.

4. Principles

- 4.1. Timaru District Council has adopted the principles-based approach to making sensitive expenditure as recommended by the OAG.
- 4.2. Although the principles-based approach requires careful judgement from employees spending and approving sensitive expenditure, it is also flexible and more enduring and practical to administer than a large number of prohibitive rules.
- 4.3. The principles that underpin Council's decision-making about sensitive expenditure are as follows:
 - **Have a justifiable business purpose** that is consistent with Council's objectives, makes clear sense, and is supported by evidence of the need for the spending, and evidence that a range of options have been considered.
 - **Preserve impartiality.** Impartiality means spending decisions are based on objective criteria, rather than based on any sort of bias, preference, or improper reason. All sensitive expenditure must adhere to Council's Conflict of Interest Policy.
 - **Be made with integrity** and exercising power in a way that is true to the values, purposes, and duties for which that power is entrusted to Council employees.
 - **Be moderate and conservative** when viewed from the standpoint of the public and given the circumstances of the spending. This includes considering whether the justifiable business purpose could be achieved at a lower cost.
 - **Be made transparently** requiring employees to be open about the spending and willing to explain any spending decisions or have them reviewed; and
 - **Be made with proper authority** and in accordance with Council's financial delegations and with the Sensitive Expenditure Guidelines and Procedures.

- 4.4. These principles are to be applied together in all cases of sensitive expenditure and all carry the same importance.

5. Responsibilities

- 5.1. The Mayor, Elected Members and the Senior Leadership Team are responsible for making it clear to employees what is and is not acceptable sensitive expenditure and for modelling these behaviours to the highest standard.
- 5.2. The Mayor, Elected Members and Senior Leadership Team will ensure transparency in sensitive expenditure through regular reporting to the Audit and Risk Committee.
- 5.3. Exceptions to this Policy and the supporting Guidelines and Procedures may be made under exceptional circumstances at the discretion of the Chief Executive.
- 5.4. The Risk and Assurance Manager will manage the audit and reporting of sensitive expenditure (as set out in section 8).

6. Approval of Sensitive Expenditure

- 6.1. Approval of sensitive expenditure must be:
 - 6.1.1. Given only when the person approving the expenditure is satisfied that a justified business purpose and other principles have been adequately met.
 - 6.1.2. Given before the expenditure is incurred wherever practical;
 - 6.1.3. Made only when budgetary provisions and delegated authority exist; and
 - 6.1.4. Given by an approving manager, adhering to the one-up principle. In all cases the authoriser should not be partaking in the sensitive expenditure. If any doubt exists, the next manager up should be requested to review the expenditure and authorise if appropriate.
- 6.2. For clarity, the Chief Executive's sensitive expenditure will be approved by the Mayor.

7. Sensitive Expenditure Payment and Reimbursement

- 7.1. Where reimbursement is sought by employees for any sensitive expenditure it is to be supported by appropriate documentation; including GST invoices or receipts, details of the business activity undertaken, and names of staff and external parties involved, as required.
- 7.2. All reimbursement is to be formally recorded on a Timaru District Council Expense Reimbursement Form, and approved by the relevant approving manager.
- 7.3. For further details on Council's Sensitive Expenditure expectations, obligations and processes refer to the Sensitive Expenditure Guidelines and Procedures.

8. Audit and Reporting of Sensitive Expenditure

- 8.1. Sensitive expenditure is a standing agenda item for the Audit and Risk Committee.
- 8.2. The Risk and Assurance Manager will review sensitive expenditure on a quarterly basis and will report to the Audit and Risk Committee:
 - sensitive expenditure disclosures for Elected Members, independent member of Committees of Council, the Chief Executive, Group Managers and Directors;
 - any instances of non-compliance with this Policy;
 - exceptions to the Policy granted by the Chief Executive;
 - any business cases for significant sensitive expenditure approved by the Chief Executive; and
 - any matters or recommendations arising from the Annual Report relating to sensitive expenditure; and
 - any other issues arising from the Policy.
- 8.3. Quarterly sensitive expenditure disclosures will be published on Council's website.

9. Policy Review

- 9.1. This Policy will be reviewed at least every three years by the Audit and Risk Committee. Any amendments will be adopted by Council.
- 9.2. The Sensitive Expenditure Guidelines and Procedures will be reviewed at least every three years by the Risk and Assurance Manager. Any amendments will be approved by the Chief Executive.
- 9.3. This Policy does not cease to have effect because it is due for review, or being reviewed.
- 9.4. This Policy takes effect from the date it is formally adopted by Council.

References and Revision History					
References					
Include here reference to any documents related to the policy (e.g. operating guidelines, procedures)					
Document Reference	Title				
#1443125	Sensitive Expenditure Guidelines and Procedures				
Office of the Auditor General Advice	Controlling Sensitive Expenditure: Guide for Public Organisations https://oag.parliament.nz/good-practice/sensitive-expenditure				
Revision History					
Summary of the development and review of the policy					
Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
2.0	Commercial and Strategy Group Manager	TBC	Council	TBC	#1434245

Draft Sensitive Expenditure Guidelines and Procedures



Approved by: Timaru District Council

Date approved:

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1. Introduction

- 1.1. All sensitive expenditure made by Council officers must be in accordance with the Sensitive Expenditure Policy and these Guidelines and Procedures.
- 1.2. All sensitive expenditure made by Elected Members must be in accordance with the Elected Members' Remuneration, Allowances and Expenses Policy.
- 1.3. Exceptions to these Sensitive Expenditure Policy and these Guidelines and Procedures may be made under exceptional circumstances at the discretion of the Chief Executive.
- 1.4. Sensitive expenditure is any Council expenditure that provides, has the potential to provide, or has the perceived potential to provide a private benefit to an individual Council officer that is additional to the business benefit to Council of the expenditure. It also includes expenditure that could be considered unusual for Council's purpose and/or functions, or that could be perceived as wasteful or extravagant.
- 1.5. Sensitive expenditure includes, but is not limited to:
 - Staff travel and accommodation
 - Staff entertainment and hospitality, including meals, taxis and alcohol
 - Business-related entertainment and hospitality

- Staff events, gifts and farewells
- Staff training, reward and recognition
- Incidental expenditure, including donations, koha and personal use of information communications technology resources.

2. Credit Cards

- 2.1. All credit cards are issued and cancelled at the Chief Executive's discretion.
- 2.2. The Chief Financial Officer is responsible for all processes relating to the acquisition, monitoring and reporting on the use of credit cards, and will maintain a register of credit card holders.
- 2.3. Credit cards are only to be used for Council purchases where it is impractical to use other purchasing methods (such as purchase orders).
- 2.4. The use of credit cards for private expenditure or cash advances is prohibited.
- 2.5. Credit card limits are set in accordance with Council's Delegations Manual, and are set to be the minimum necessary to enable the card holder to carry out their duties for Council.
- 2.6. Credit card statements and all transactions are to be verified by the cardholder and approved by their manager in accordance with the Sensitive Expenditure Guidelines and Procedures.
- 2.7. All credit card transactions must be supported by original documentation to explain and corroborate transactions. For any entertainment of travel related expenses, the business reason and any other parties present are to be recorded.
- 2.8. All credit card statements will be verified by the card holder and approved by their manager, or another person senior to the card holder, in accordance with the one up principle.
- 2.9. Credit card payments made on the internet need to reflect good security practices, such as purchasing only from reputable companies known to Council. The card holder must keep a copy of any online order forms and invoices to support the payment.
- 2.10. If a credit card is lost or stolen, the Chief Financial Officer, or other member of the Finance Unit must be notified as soon as possible so that the card can be cancelled and replaced.
- 2.11. Any unintentional breaches of the Sensitive Expenditure Policy and Guidelines and Procedures relating to credit cards must be reported the staff member's manager and the Chief Financial Officer as soon as practical.
- 2.12. Intentional unauthorised use of a Council credit card constitutes a breach of the Code of Conduct set out in the Corporate Policy Manual and may result in disciplinary action.

3. Fleet Fuel Cards

- 3.1. Fuel cards are provided in each Council owned/leased car for the purposes of refuelling the fleet vehicle, and in some instances, refilling oil and car washes.
- 3.2. Fuel cards are not to be used for personal use, except as provided for in remuneration arrangements.
- 3.3. When purchasing fuel at designated service stations, the driver must provide the station attendant with the current odometer reading.
- 3.4. The person responsible for fleet management will undertake a quarterly audit of invoices to ensure compliance with the Sensitive Expenditure Policy and Guidelines and Procedures.

4. Staff Travel, Accommodation, and Meals

General Guidelines

- 4.1. Council may pay for reasonable travel expenses for staff undertaking Council business activities including attendance at Council-related conferences, functions, events, training, professional development and business meetings.
- 4.2. All travel and accommodation expenses should be prudent, booked as far in advance as practical, and secure the most cost-effective prices. Should any change or cancellation be required, flight and/or accommodation providers should be contacted as soon as possible to minimise any associated costs.
- 4.3. Any activity that is not related to a staff member's employment, role and responsibilities will not be paid for by Council.
- 4.4. Managers are encouraged to liaise with staff in related business areas to ensure that there is no unnecessary duplication of travel costs.
- 4.5. Approval for staff travel and all associated expenditure must be in accordance with the Sensitive Expenditure Policy and any associated financial delegations, subject to the following approval:
 - Teir 1, 2 and 3 managers may approve domestic travel expenses for staff undertaking Council business activities.
 - Members of the Senior Leadership Team may approve travel expenses for staff undertaking Council business activities within Australia.
 - The Chief Executive may approve all other overseas travel expenses
- 4.6. Where significant sensitive expenditure is incurred, in the case of overseas travel, a business case is to be prepared by the appropriate manager or the Chief Executive. The business case will clearly detailing the budget of expected expenditure and how the expenditure meets the principles outlined in the Sensitive Expenditure Policy. This will be reported to the Audit and Risk Committee once the expenditure has been incurred.
- 4.7. With prior approval from the appropriate manager, as set out above, personal travel may be permitted in conjunction with a business trip provided there is no additional cost to Council. Any personal leave must be applied for, managed and approved in the normal leave approval process.

- 4.8. Staff members are required to inform their manager if a spouse, partner or other family members are accompanying them on business-related travel.
- 4.9. Any travel-related costs for accompanying spouses, partners or other family members will not be organised or paid for by Council. Should any incidental costs of this kind be incurred by Council, these are to be reported in writing to the Chief Financial Officer and repaid within 14 days.
- 4.10. The cost of stopovers will only be reimbursed where they are preapproved and have a clear business purpose. In general, stopovers will only be approved for long distance, economy flights.
- 4.11. All travel expenses must be made within approved budgets.
- 4.12. All travel and accommodation costs associated with staff recruitment will adhere to these Guidelines and Procedures.

Travel Booking

- 4.13. Executive Assistants are responsible for managing all flight and accommodation bookings for staff, including travel insurance where required. All bookings are to be entered into the Staff Travel and Accommodation Bookings Register.
- 4.14. Staff should not book their own travel or accommodation unless in exceptional circumstances (e.g. flight cancellation or flooding).
- 4.15. All travel bookings should leverage savings from Council's All of Government contracts, including booking flights through the dedicated Air New Zealand booking portal.
- 4.16. International travel shall be by Economy Class. Where any flight exceeds nine hours, staff will be provided a 24-hour recuperation period.
- 4.17. Premium Economy travel is permitted only under exceptional circumstances and subject to preapproval by the CE, for flights exceeding nine hours where a 24-hour recuperation period is not possible, or if economy flights are not available and travel plans cannot be altered.
- 4.18. For domestic travel, staff may travel the day before the business event where this reduces the risk of delays due to early morning flight cancellation due to fog, or where the opportunity for business networking the evening prior to the business event.
- 4.19. All airpoints accrued by staff when travelling for work are to be treated as property of TDC and should not be used for personal benefit. Staff will report any accrued airpoints to their Executive Assistant, and these will be recorded in the Staff Travel and Accommodation Bookings Register. The Audit and Risk Manager will audit the register annually to identify if staff are accruing large numbers of business airpoints.
- 4.20. Council will not provide Air New Zealand Koru Membership for staff unless provided for in remuneration arrangements.

Accommodation

- 4.21. All business related accommodation costs should be moderate, cost effective and appropriate to requirements, taking into account location relative to where staff are undertaking Council business, the standard and type of accommodation, and safety and security issues.
- 4.22. Wherever possible, use should be made of TDC's preferred accommodation suppliers, and negotiated corporate rates.
- 4.23. Reasonable laundry charges may be claimed while on business-related travel.
- 4.24. If staff choose to stay with a friend or relative, rather than in paid accommodation, Council will pay \$50 per night in costs.

Transport

- 4.25. While travelling on Council-related business, all transport used by staff will be moderate, cost-effective and appropriate to the situation.
- 4.26. Rental cars are only permitted when it is not cost effective or practical to use a Council fleet vehicle, or a taxi or shuttle service. In such instances, the most economical type and size of rental car, consistent with purpose, distance and number of people should be used.
- 4.27. The use of taxis should be for Council-related business activities only and should be moderate and cost-effective relative to other transport options. Wherever practical, shuttle or bus services are to be used in lieu of taxis.
- 4.28. Staff are expected to comply with all traffic, parking and other laws when using a vehicle for Council-related business. The driver is responsible for any fines or traffic offences incurred. See Council's Safe Driving Policy for more information.
- 4.29. Council will reimburse expenses for rideshare transport (e.g. Uber) charged to staff personal credit cards where evidence is provided to support the business reason for the expense.
- 4.30. Council-funded transport should not be used for travel between home and work unless the reason for travel is due to work commitments requiring work beyond a reasonable hour, a safety concern, or similar justification.
- 4.31. Private vehicles should not be used for Council-related travel where travel by other means is more practical and cost effective. Preapproval from the appropriate manager is required for the use of private vehicles for Council-related travel. Where the use of a private vehicle has been approved, staff must complete and sign an expense claim, including the distance travelled and the business reason for travel.
- 4.32. Mileage will be reimbursed for private vehicles at the current Inland Revenue recommended rate.

Meals

- 4.33. Where meals are required while travelling, actual and reasonable meal expenses may be claimed. Indicative amounts for reasonable staff meal expenses are provided as follows:
 - Breakfast: \$20

- Lunch: \$25
 - Dinner \$45
- 4.34. The reimbursement of meals exceeding these indicative amounts may be approved by a Group Manager/Director, when deemed necessary and reasonable given the nature of the business activity or circumstances.
- 4.35. Where meals are provided as part of another package paid for by Council (e.g. lunches included in a conference registration, or breakfast included with accommodation), separate meal expenses cannot be claimed.
- 4.36. Council will not reimburse alcohol purchases, including mini-bar expenses through travel and accommodation expenses.

Tipping

- 4.37. Council may reimburse the costs of tipping in countries and those circumstances where tipping is local practice, if it is deemed appropriate and necessary, and the tip is a reasonable amount.
- 4.38. Council will not reimburse any tipping that occurs in New Zealand.

5. Entertainment and Hospitality

- 5.1. Council may reimburse staff expenditure when hosting or entertaining external stakeholders, including the costs associated with meals, gifts, and other appropriate Council-related activities.
- 5.2. Council-related entertainment and hospitality expenditure will only be permitted for the purposes of:
- Building professional sector relationships;
 - Representation of the organisation at Council-related events;
 - Reciprocity of Council-related hospitality;
 - Recognition of significant Council-related collaboration and achievement.
- 5.3. All entertainment and hospitality must be modest and appropriate, and commensurate with the nature of the relationship, stakeholders and/or associated business activity.
- 5.4. All expenditure must be bound by the principles of probity, integrity, and prudence. No entertainment, gifts or hospitality may be provided where there is the potential for a conflict of interest for the staff member or Council.
- 5.5. Approval for expenditure must be given prior to the purchase, wherever possible, by the appropriate manager, in accordance with the one up principle detailed in the Sensitive Expenditure Policy.
- 5.6. Any reimbursement claims for business-related entertainment and hospitality must be completed by the most senior staff member at the event and be accompanied by:

- a detailed record of the business activity and justification for expenditure;
 - the details of those in attendance (names, positions and organisations represented)
 - itemised GST receipts.
- 5.7. Indicative amounts for reasonable Council-related meal expenditure are provided as follows (per person):
- Breakfast: \$20
 - Lunch: \$25
 - Dinner: \$45
- 5.8. While not encouraged, alcoholic drinks may be purchased and paid for by Council if necessary due to the nature of the business activity or stakeholder relationship, and with the prior approval of the relevant manager, adhering to the one up principle.
- 5.9. Any alcohol purchased shall be mid-range, and limited to a reasonable and responsible amount. Indicative amounts for alcohol expenditure is up to three standard drinks per person, per event.

Purchase of Business Gifts

- 5.10. All gifts for external parties paid for by Council, must serve a recognised Council-related need, and require prior approval from the relevant manager, adhering to the one up principle.
- 5.11. For Council's policy on receiving gifts from external stakeholders, see the Conflict of Interest Policy.

6. Staff Events, Gifts and Farewells

- 6.1. Expenditure on staff events including farewells, long service and retirement functions, gifts and other activities should be modest and appropriate.
- 6.2. Council may provide a modest gift and function as part of a staff farewell or long service recognition. As an indication, any gift should be valued at \$20 per year of service to a maximum of \$500. Exceptions may be made with prior approval from a Group Manager/Director or the Chief Executive.
- 6.3. Refer to the Corporate Policy Manual for further guidance on procedures relating to farewells and long service recognition.
- 6.4. Council will not provide alcoholic drinks at staff events, except under special circumstances and with the prior approval of the Chief Executive. In such instances, any alcohol purchased shall be mid-range and appropriate to the nature of the event, and limited to a reasonable and responsible amount, at the discretion of the Chief Executive.

7. Goods and Services Expenditure

Loyalty Reward Scheme Benefits

- 7.1. Loyalty reward received while carrying out Council business and purchasing goods and services on behalf of Council are to be treated as the property of Council (in the same manner as airpoints).
- 7.2. Council procurement decisions are not to be influenced by the prospect of receiving loyalty rewards.

Private Use of Council Assets

- 7.3. Any physical item owned, leased or borrowed by Council is considered an asset for the purpose of this policy. This includes photocopiers, telephones, laptops, tablets, cell phones, cameras, office furniture, uniforms, stationary, vehicles and other equipment.
- 7.4. Personal use of Council assets may be permitted in some circumstances, and this should be approved by the appropriate manager with consideration to the principles of transparency, and moderate and conservative expenditure.
- 7.5. Limited personal use of office stationary, photocopying, telephones and internet access is permitted with approval from the appropriate manager. See the Communication and Mobile Device Policy and Computer System and Equipment Use Policy for further information.
- 7.6. Where personal use of Council assets occurs beyond these Guidelines and Procedures costs will be recovered from the staff member, unless it is impractical or uneconomic to separately identify those costs.
- 7.7. Staff and Elected Members are strictly prohibited from using Council assets for private business purposes.

Council Use of Private Assets

- 7.8. At times Council may reimburse staff for use of private assets where this is appropriate for reasons such as cost, convenience and availability. Council may decide to do this in circumstances where an asset would not be regularly used if Council were to acquire it directly, such as private motor vehicles, private mobile phones and private computers.
- 7.9. Such reimbursements must have a justifiable business purpose and require prior approval from the appropriate manager, in accordance with the one up principle.

Private use of Council's Suppliers

- 7.10. Council does not offer staff access to preferential deals from Council suppliers.
- 7.11. Council will not take preferential access to goods and services for staff into account when choosing suppliers.

Sale of Surplus Assets to Staff

- 7.12. The principles of impartiality and integrity will be adhered to when disposing of assets. Council will not sell assets at a discounted rate to staff if it is able to make more money through another method of disposal.

- 7.13. Council recognises that the book value of assets may not correspond with the market value, or the perceived or actual benefit received by staff.
- 7.14. No surplus assets with a market value of more than \$500 per item will be sold directly to staff or elected members. Staff or elected members are entitled to partake in any public tender process for the assets.
- 7.15. All assets under \$500 identified for disposal to staff are to be valued and subject to a tender or other process that is appropriate to the value of the asset.
- 7.16. All surplus Council assets sold for more than \$500 will be entered into the Asset Disposal Register.
- 7.17. Council will consider non-financial benefits, like sustainability, when disposing of assets and will offer assets to staff and elected members rather than sending the asset to the landfill.
- 7.18. Staff responsible for disposing of assets are prohibited from benefiting from the disposal.

8. Staff Support and Well-being Expenditure

Training

- 8.1. Any requests for professional development and training should be directed to an employee's manager in the first instance, and when appropriate, discussed with the Engagement and Culture Directorate.
- 8.2. Membership to a professional body is deemed to be sensitive expenditure due to the personal nature. Payment of professional fees by Council on behalf of an employee must be:
 - Covered by an employment agreement
 - Approved by a Group Manager/Director; and
 - No longer than one year in duration, unless significant discounts are available to Council.

COSI Committee

- 8.3. Council will provide an annual budget for the COSI Committee to support staff wellbeing initiatives and activities.
- 8.4. Any expenditure will be moderate and conservative and have a justifiable business purpose.

Sponsorship of sports teams

- 8.5. Council, through the COSI Committee, may sponsor a sports team comprising staff members. This sponsorship will normally be in the way of clothing, equipment or competition entry fees.
- 8.6. Applications for sponsorship are to be made in writing to the COSI Committee. Any sponsorship will be made within the Committee's annual budget and will be moderate and conservative and have a justifiable business purpose.

9. Other Types of Expenditure

Donations

- 9.1. Donations are considered to be voluntary payments (primarily financial or by way of goods or services) made by Council, without expectation of receiving goods or services in return.
- 9.2. While generally discouraged, donations may be made with the preapproval of a Group Manager/Director or the Chief Executive.
- 9.3. Any donation must be:
- Consistent with Council's business purpose;
 - Be appropriate to the circumstances;
 - Lawful in all respects;
 - Appropriately documented and disclosed;
 - Made to a recognised organisation by normal commercial means; and
 - Non-political.
- 9.4. Donations to organisations through staff fundraising (e.g. Casual Clothes Days) are not covered by these Guidelines and Procedures, however it is expected that such donations will be lawful; appropriately documented and disclosed; made to a recognised organisation by normal commercial means; and be non-political.

Koha

- 9.5. Koha is a gift, token or contribution given on appropriate occasions including:
- Tangihanga
 - Attendance at an event/meeting;
 - For use on or for a marae; and
 - Kaumata support for powhiri, mihi whakatua meetings or other events.
- 9.6. Council acknowledges the important practice of koha as a taonga and integral part of Tikanga Maori, under the Treaty of Waitangi.
- 9.7. Any koha given on behalf of Council should:
- Reflect the occasion;
 - Be approved by a Group Manager/Director or the Chief Executive; and
 - Be clearly documented with the date, amount, a description of the occasion or event, and purpose

Information Communications Technology Resources

- 9.8. Personal use of information communications technology (ICT) resources, including computers, internet, and mobile phones are governed by Council's Information Technology Acceptable Use Policy. This policy recognises that some level of personal use of ITC resources is reasonable.
- 9.9. Personal use of Council ITC resources should not:
- Include unlawful, offensive or improper activities;
 - Affect Council use of the ITC;
 - Affect how the staff perform their duties;
 - Be commercial in nature;
 - Involve unreasonable use of resources (such as network bandwidth); and
 - Include installation of communications technology to be used exclusively or predominantly for personal use.

10. Review of Guidelines and Procedures

- 10.1. The Sensitive Expenditure Guidelines and Procedures will be reviewed at least every three years by the Risk and Assurance Manager. Any amendments will be approved by the Chief Executive, in consultation with the Senior Leadership Team.
- 10.2. These Guidelines and Procedures do not cease to have effect because they are due for review, or being reviewed.

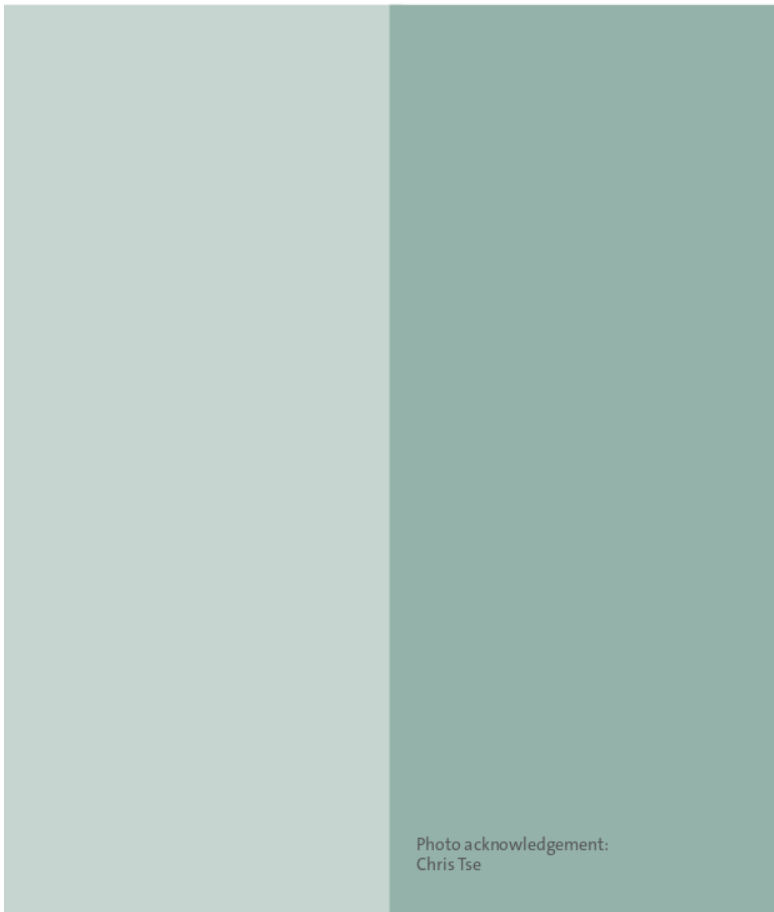
References and Revision History					
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Document Reference			Title		
Update			Sensitive Expenditure Policy		
Update			Conflicts of Interest Policy		
https://oag.parliament.nz/good-practice/sensitive-expenditure			Controlling Sensitive Expenditure: Guide for Public Organisations (OAG)		
Revision History					
Summary of the development and review of the policy					
Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
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DRAFT



Controlling
sensitive
expenditure:
Guide for public
organisations





Controlling sensitive expenditure: Guide for public organisations

This is a good practice guide,
published under section 21 of the
Public Audit Act 2001.

October 2020

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Foreword from the Public Service Commissioner

I often say the Public Service cannot operate without the trust and confidence of the people we serve.

New Zealand has a high degree of public trust and confidence in our system of government, but we can't take this for granted. It's something we need to work hard every day to maintain.

Many public agencies exercise special powers or influence over people's lives, and with this power comes responsibility. A responsibility to perform our duties in a manner that upholds the trust that New Zealanders have in us.

We must always be accountable and transparent.

I welcome these updated guidelines from the Controller and Auditor-General. The principles, guidelines, and examples contained in this document provide further guidance for senior managers and staff across the public sector, reinforcing the importance of ensuring that we perform at all times in a manner that stands up to rigorous parliamentary and public scrutiny.

The guidelines complement the Chief Executive Gifts, Benefits and Expenses model standards I have issued. Senior public servants need to model the behaviour that they want to see from their agencies. I expect that those public servants will continue to make their decisions based on the good judgement they have exhibited to date and informed by the principles outlined here.

The public's trust and confidence is our licence to operate.



Peter Hughes
Public Service Commissioner

27 October 2020

Auditor-General's overview

E ngā mana, e ngā reo, e ngā karangarangatanga maha o te motu, tēnā koutou.

Trust and confidence in public organisations is driven by competence, reliability, and integrity. Where there is any question about any one of those things, real or perceived, trust and confidence can be eroded. It is important that organisations and their staff are adhering to the highest standards of integrity and are seen to be doing so.

Sensitive expenditure is any spending by an organisation that could be seen to be giving private benefit to a staff member, their family, or friends. It risks harming an organisation's reputation and the public sector more generally – for example, if the expenditure could lead to concerns that the spending is inappropriate or lacks a legitimate business reason. Issues concerning sensitive expenditure arise regardless of how much money is spent. Even a small amount can raise concerns if it appears to be improper.

Public organisations therefore need to manage sensitive expenditure deliberately and diligently and, as with all spending, be able to justify it.

Public organisations' sensitive expenditure decisions have featured in a number of my Office's reports over recent years, as well as in the many queries my Office receives. I intend for this guide to help board members, chief executives, and senior management to take a best-practice approach to their organisation's handling of sensitive expenditure and to make decisions that will stand up to scrutiny.

This guide provides practical guidance on specific types of sensitive expenditure and outlines the principles for making decisions about sensitive expenditure. It also emphasises the importance of setting "the tone from the top", along with having suitable policies and procedures in place. Leaders' actions, inactions, and behaviours set the standards of an organisation more than a policy or procedure ever will. Leaders need to be seen to be consistently doing the right thing.

The guide is based on general public sector norms, and my Office might refer to the principles in the guide when carrying out performance audits, inquiries, annual audits, or our other assurance work.

A great deal of trust is placed in the public sector and the spending of public money. Therefore, a high level of integrity is expected. Strong controls and careful judgement should mean that sensitive expenditure in public organisations can withstand parliamentary and public scrutiny.

Auditor-General's overview

What is considered sensitive expenditure changes over time, and this guide will not cover every situation. Managing sensitive expenditure requires good judgement and consideration of the principles described in this guide. Appropriately identifying and managing sensitive expenditure is a critical skill expected of all public officials.

Nāku noa, nā,



John Ryan
Controller and Auditor-General

27 October 2020

1

Introduction

- 1.1 Public organisations spend public money. Their spending must meet standards of probity and financial prudence¹ so it can withstand parliamentary and public scrutiny and support trust and confidence in the public sector.
- 1.2 All public organisations will incur expenditure, including sensitive expenditure, as they work to achieve their objectives. The public expects that all expenditure decisions will be subject to proper authorisation and controls.
- 1.3 Sensitive expenditure is any spending by an organisation that could be seen to be giving private benefit to staff additional to the business benefit to the organisation. Problems can arise with expenditure related to travel, accommodation, and hospitality, and particular care needs to be taken with these. Problems can also arise from expenditure that is unusual or is not closely related to an organisation's purpose and/or functions.
- 1.4 There is heightened public sensitivity when public sector employees are perceived to benefit – or do benefit – personally from sensitive expenditure incurred during the conduct of a public organisation's business.
- 1.5 The Public Audit Act 2001 gives the Auditor-General authority to examine and report on any act or omission that shows, or appears to show, waste or a lack of probity or financial prudence by a public organisation or one or more of its members, office holders, or employees. Appendix 1 lists our reports that discuss poor sensitive expenditure practices. We also draw attention to sensitive expenditure matters in our reporting as part of our annual audits.
- 1.6 From these reports, and the questions that public organisations ask us, we have identified some recurring issues in relation to sensitive expenditure. The most frequent issues that can cause public organisations difficulty or concern are:
 - the level of expenditure that is, or could be regarded as, extravagant or immoderate for the public sector;
 - expenditure incurred without a justifiable and adequately documented business purpose that has a clear link to the organisation's objectives;
 - poorly defined sensitive expenditure policy and procedures;
 - expenditure that is not adequately substantiated by invoices, receipts, or other relevant documentation to support claims or payments;
 - expenditure that is made before appropriate authority has been obtained; and
 - expenditure that is made without proper scrutiny to ensure that it complies with an organisation's policy and procedures.

¹ In this guide, we define "financial prudence" as a public organisation using its resources carefully and not committing to a course of action beyond its means. We define "probity" as Parliament and the public's expectations of public organisations to act appropriately and ethically.

Purpose of this guide

- 1.7 This guide is to help public organisations improve, where necessary, their organisational approach to, and control of, sensitive expenditure. The aim is to assist anyone who might deal with sensitive expenditure, including board members, chief executives, and managers responsible for sensitive expenditure policies, procedures, and controls. The guide is also designed to help all employees dealing with sensitive expenditure.
- 1.8 In Part 2, we discuss the basic principles (based on general public sector norms and principles) that apply to sensitive expenditure.
- 1.9 In Part 3, we discuss how a good-practice approach to managing sensitive expenditure should be reflected in a public organisation's policies and procedures.
- 1.10 In Parts 4-9, we describe specific types of sensitive expenditure.

Using this guide

- 1.11 This guide provides our view of good practice for controlling sensitive expenditure. We will use it when carrying out our work, including our annual audits. We intend to review this guide from time to time and publish additional and updated advice on our website.
- 1.12 This guide is intended to complement, and not repeat, advice that has already been published elsewhere. Appendix 2 provides a list of resources and guidance on sensitive expenditure from other organisations.
- 1.13 We expect public organisations to implement the principles discussed in this guide into their sensitive expenditure policies and procedures. We also expect public organisations to carry out regular reviews, monitor compliance, consider high-risk areas, and make changes to policies and procedures as necessary. Public organisations should carefully consider the advice in Parts 4-9 and the underlying principles listed in paragraph 2.4 before taking a different approach.
- 1.14 Public organisations are responsible for deciding whether sensitive expenditure is appropriate in the particular circumstances and for ensuring that their sensitive expenditure policies, procedures, and decisions are fit for purpose and will withstand parliamentary and public scrutiny.

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Introduction

- 1.15 This guide does not affect any legislative requirements² that relate to sensitive expenditure – for example, any relevant tax requirements.
- 1.16 For those agencies within the remit of Te Kawa Mataaho Public Service Commission, this guide should be read alongside the Commission's guidance listed in Appendix 2.

2 For instance, the remuneration, expenses, and allowances payable to elected members of city, district, and regional councils are set out in the Local Government Members (2020/21) Determination 2020, and actual and reasonable expenses are outlined in council policies that have been formally approved by the Remuneration Authority (but subject to the provisions in the Determinations).

Principles applicable to sensitive expenditure

2

Taking a principles-based approach

- 2.1 Public organisations should take a principles-based approach to making sensitive expenditure decisions. Although a principles-based approach requires careful judgement, it is also flexible and more enduring and practical to administer than a large number of rules. In this Part, we describe the relevant principles for public organisations to consider when making decisions about sensitive expenditure.
- 2.2 We recognise that, for valid reasons, public organisations make their own decisions about what is appropriate sensitive expenditure. For example, a state-owned enterprise might make different judgements from a central government department or a local authority. However, all public organisations need to take into account the same principles when determining their approach (or attitude) to sensitive expenditure decisions.
- 2.3 All public organisations spend public money. Public money is not the property of people in the organisation (including members, office holders, managers, and employees) to do with as they please. Consequently, the expenditure should be:
- subject to the standards of probity and financial prudence expected of a public organisation; and
 - able to withstand parliamentary and public scrutiny.
- 2.4 There are principles that underpin decision-making about sensitive expenditure. Expenditure decisions should:
- **have a justifiable business purpose** that is consistent with the public organisation's objectives. A justifiable business purpose means a reason that would make clear sense, supported by evidence of the need for the spending and evidence that a range of options have been considered;
 - **preserve impartiality.** Impartiality means decisions based on objective criteria, rather than based on any sort of bias, preference, or improper reason;
 - **be made with integrity.** Integrity is about exercising power in a way that is true to the values, purposes, and duties for which that power is entrusted to, or held by, someone. It is about consistently behaving in keeping with agreed or accepted moral and ethical principles;
 - **be moderate and conservative** when viewed from the standpoint of the public and given the circumstances of the spending. It includes considering whether the justifiable business purpose could be achieved at a lower cost;
 - **be made transparently.** Transparency in this context means being open about the spending, and willing to explain any spending decisions or have them reviewed; and

Part 2**Principles applicable to sensitive expenditure**

- **be made with proper authority.** This means that the person approving the spending has the appropriate financial delegation to do so, for the type and amount of spending and follows correct procedures.

- 2.5 These principles should be applied together. None should be applied alone, and no principle should be treated as more important than any other.
- 2.6 For example, an employee asks to take annual leave in conjunction with business travel. The request might raise issues of what the primary purpose of the trip is, as well as issues about impartiality and transparency. If it were to approve the leave, the organisation would need to be satisfied that the primary purpose of the trip was for business, that no additional cost to the organisation would be incurred, and that the arrangement could not be reasonably perceived as inappropriate.
- 2.7 In practice, a properly authorised individual will make the decision for each instance of sensitive expenditure. Each individual making such decisions will need to use careful judgement in accordance with the principles and within the particular context of the circumstance. The organisation should have appropriate policies in place to guide that decision-making, including training to build awareness and develop good judgement (see Part 3).

Deciding when sensitive expenditure is appropriate

- 2.8 Each decision about sensitive expenditure is important, even if the amount of money spent is small compared to the organisation's total expenditure. Improper expenditure could harm the reputation of, and trust in, the organisation, as well as the public sector generally.
- 2.9 The decisions that public organisations make to determine "appropriate" types and amounts of sensitive expenditure are likely to differ, to some degree, between organisations. This is because of the broad range of public organisations and the varying nature of their functions and activities. For example, public organisations that are involved in commercial activities might spend money on sponsorship, marketing, and hospitality for its most important customers (which allow them to compete in their particular market). This would not be usual in a government department or a school.
- 2.10 However, we expect all public organisations to behave in a way that supports the public's trust in government generally and in public organisations in particular.
- 2.11 A public organisation deciding on what is appropriate sensitive expenditure needs to consider both individual transactions and the total amount of sensitive expenditure.

- 2.12 Even when sensitive expenditure decisions can be justifiable at the individual transaction level, the combined amount spent on a category of expenditure might be significant and the organisation could be criticised for extravagance and waste. In other words, the organisation has failed to ensure that the expenditure of public money is proper and prudent. For example, a gift valued at \$150 for an individual to mark a significant achievement or contribution might be acceptable. However, if that gift will be given to all employees of an organisation, then the total amount is likely to be considered extravagant.

Responsibilities of board members, chief executives, and managers

Setting the tone at the top

- 2.13 To maintain the public's trust and confidence in the public sector, board members, chief executives, and senior management need to ensure that their public organisations operate with a high level of integrity. The necessary behaviours of public servants to maintain the integrity of the public sector includes:³
- impartiality – to treat all people fairly, without personal favour or bias;
 - accountability – to take responsibility and answer for their work, actions, and decisions;
 - trustworthiness – to act with integrity and be open and transparent;
 - respect – to treat all people with dignity and compassion and act with humility; and
 - responsiveness – to understand and meet people's needs and aspirations.
- 2.14 In our view, responsibility rests with those “at the top” – that is, board members, chief executives, and senior management. They need to set the highest standard for what is and is not acceptable sensitive expenditure. All leaders should actively promote ethical behaviours, through role modelling, reinforcement, and communication.⁴ They need to have clear policies and processes that apply to all staff, including the chief executive, senior management, and the board, and to actively model their own and others compliance with those policies. As with other aspects of organisational performance, they also need to ensure that policy and processes are regularly and independently reviewed. That review will provide assurance they are operating appropriately and provide an additional line of defence against inappropriate sensitive expenditure being incurred.

³ Public Service Act 2020, www.legislation.govt.nz.

⁴ For more on ethical leadership, see: Brian Picot Chair in Ethical Leadership, Victoria University of Wellington (2019), *Opportunities and challenges for Aotearoa New Zealand*, Wellington. www.wgtn.ac.nz.

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- 2.15 We also expect that all leaders of public organisations should ensure that staff are trained on those policies and procedures and on developing awareness and good judgement, that adequate monitoring is carried out, and that the public organisation has a view on whether it is delivering appropriate outcomes on sensitive expenditure.
- 2.16 Policies and procedures support an organisation's culture by clarifying what is and what is not acceptable behaviour. To be effective, sensitive expenditure policies, procedures, and other controls should link to and reinforce the organisation's values, rather than be viewed or practised as a separate activity. When these are embedded into an organisation's culture, all staff become involved in the proper and prudent management of sensitive expenditure.⁵

Controls and judgement

- 2.17 Although having strong controls will help people make good sensitive expenditure decisions, careful judgement is also needed. This is because it is not possible or desirable to set rules for every possible situation. If there are no specific rules for a specific situation, we expect those incurring and approving sensitive expenditure to use careful judgement by applying the principles listed in paragraph 2.4. In more high-risk matters, an organisation might want to be more prescriptive.
- 2.18 Board members, chief executives, and senior management have a particular responsibility to ensure that sensitive expenditure is appropriate for their organisation.
- 2.19 We expect board members, chief executives, and senior management to ensure that there is transparency in both sensitive expenditure and remuneration systems, and to avoid any trade-offs between the two.

⁵ For the sorts of behaviours that support public trust and confidence in the integrity of government, see: Te Kawa Mataaho Public Service Commission (2007), *Standards of Integrity and Conduct*, Wellington, publicservice.govt.nz.

Preparing suitable policies and procedures

3

- 3.1 Parliament and the public should be able to have confidence that public organisations can make sensitive expenditure decisions properly and prudently. This requires:
- a principles-based approach;
 - leading proper and prudent practices by example;
 - approving and putting in place suitable policies and procedures;
 - procedures that consistently support all staff (at all levels and roles in the organisation) to follow proper and prudent practices;
 - appropriate training;
 - monitoring of activities to ensure effective control of sensitive expenditure;
 - carrying out regular reviews to ensure that there is compliance with policies and that the overall principles are being achieved; and
 - taking corrective action on failures and learning from them.
- 3.2 In this Part, we describe how to take a good-practice approach to:
- sensitive expenditure policies;
 - procedures for approving sensitive expenditure; and
 - requirements to maintain proper supporting records for sensitive expenditure incurred.
- 3.3 Where public organisations diverge from the broad approach outlined in this Part, we expect them to justify their decisions with respect to the principles listed in paragraph 2.4.

Sensitive expenditure policies

- 3.4 Sensitive expenditure policies need to:
- make clear what types of expenditure are and are not allowed;
 - outline clear approval processes that are specific about who approves what (including that expenditure should generally be approved before it is incurred) and any exceptions to that;
 - set spending limits or boundaries and specify dollar limits and defined boundaries, where practicable. Otherwise, the policies need to be clear about when people are expected to exercise careful judgement as to what is actual and reasonable;
 - allow a manager discretion to grant an exception (management override) to a policy or procedure only in exceptional circumstances;
 - specify the monitoring and reporting regime (including when exceptions to policies have been granted) and, where applicable, controls or checks that may be applied; and
 - specify the requirements for review of the policies and procedures.

Part 3

Preparing suitable policies and procedures

- 3.5 As well as a general sensitive expenditure policy, public organisations should also have more specific policies for common types of sensitive expenditure, such as travel, hospitality, and gifts. Further guidance on specific types of sensitive expenditure is provided in Parts 4-9.

Procedures for approving sensitive expenditure

- 3.6 Sensitive expenditure should be approved only when:
- the person approving the expenditure is satisfied that it is for a justifiable business purpose that is consistent with the public organisation's objectives, and all of the principles discussed in Part 2 have been adequately met;
 - approval is given before the expenditure is incurred, unless it is for small amounts (for example, taxi fares) and allowed in the organisation's policies;
 - the expenditure will be within budget and where delegated authority exists; and
 - approval is given by a person who is senior to the person who will benefit (or might be perceived to benefit) from the sensitive expenditure. Where that is not possible, this should be recorded, and any such expenditure should be subject to some form of monitoring.
- 3.7 For people in senior positions, the good practice of approval by a more senior person should be applied to the maximum extent possible. However, where there is no more senior person to approve the expenditure, an alternative approach will be needed.
- 3.8 In such instances, it is essential that there should be no reciprocal arrangement for approving sensitive expenditure (that is, with a person approving expenditure having their own expenditure approved by the person whose expenditure they are approving). An arrangement involving three people is one way to avoid this problem (for example, person A approves person B's expenditure, person B approves person C's expenditure, and person C approves person A's expenditure). Another way, where practical, is to have the whole management team approve the expenses.
- 3.9 The principle of **transparency** is particularly relevant to the approval of senior personnel expenses. It is worth considering having senior personnel expenses reviewed by an audit and risk committee and/or making the expenses publicly available. Publishing clear and detailed disclosures helps build and maintain the public's trust and confidence. Te Kawa Mataaho Public Service Commission has published model standards for chief executives' expenses⁶, guidance on expense disclosure process, and information on the type of expenses that should be disclosed.⁷

⁶ Te Kawa Mataaho Public Service Commission (2018), *Acting in the spirit of service: Chief Executive Gifts, Benefits and Expenses*, Wellington, publicservice.govt.nz.

⁷ Te Kawa Mataaho Public Service Commission (2018), *Chief Executive gifts, benefits and expenses disclosures: A guide for agency staff*, Wellington, publicservice.govt.nz.

- 3.10 Where public organisations incur significant sensitive expenditure (for example, on international travel) there should be a clear documented process for gaining approval for that expenditure. This process should include preparing a clear business case that describes how the expenditure is linked to what is expected to be achieved through the travel and a budget of expected expenditure, which should be reported against when the expenditure has been incurred.
- 3.11 Using credit cards and purchasing cards creates the risk that expenditure, including sensitive expenditure, is incurred before it is approved. If the public organisation does not have strong controls for card expenditure, there is a risk that cards can be used for inappropriate spending. We provide guidance on using credit cards and purchasing cards in Part 4.

Supporting records for expenditure incurred

- 3.12 Public organisations need to retain proper supporting records (invoices and receipts) for all expenditure incurred. These supporting records need to:
- clearly state the business purpose of the expenditure. If the supplier documentation supporting a claim for reimbursement does not clearly state the business purpose, a written statement of the purpose should be included as part of the claim;
 - be the original document (such as tax invoices) or electronic copies that are retained in a way that preserves the integrity and completeness of the document. Credit card statements are not adequate documentation to support reimbursement;
 - document the date, amount, description, and purpose of small expenditure when receipts are unavailable (for example, tips or vending machines);
 - be separate claims for each person wherever possible. Where a claim relates to more than one person, it should be made by the most senior person and list the other individuals to whom the expenditure relates. For example, when colleagues travel together for business reasons, the most senior person should pay;
 - be submitted promptly after the expenditure is incurred; and
 - be in English or Te Reo Māori (or independently translated before payment).
- 3.13 Where a business case and budget was required before the expenditure was authorised, an explanation should be provided for any incurred expenditure that is more than the agreed budget. This should be incorporated into the organisation's reporting mechanisms.

4

Using credit cards and purchasing cards

- 4.1 Using credit cards and purchasing cards⁸ is a common way to pay for sensitive expenditure and is more transparent than using cash. However, specific policies and procedures are needed for using cards to manage the associated risks. These risks include cards being used:
- for inappropriate business-related expenditure (in both the type of expenditure and how much);
 - to obtain cash for a business purpose, with subsequent expenditure being poorly documented or justified; and
 - for personal benefit, by obtaining cash or paying for personal items.
- 4.2 Organisations that allow credit cards and purchasing cards should have suitable policies and requirements governing use of the cards. They should also have controls to ensure that those policies and instructions are observed.
- 4.3 Policies for credit cards and other purchasing cards need to set out:
- who is eligible for a business credit card/purchasing card;
 - the person or people responsible for authorising card issue, managing the acquisition of cards, and monitoring and reporting on their use;
 - the process for cancelling and destroying cards;
 - credit limits (set by the public organisation and not by the card holder). The limit should be the minimum necessary to enable the card holder to carry out their duties for the public organisation;
 - that using cards for private expenditure or credit is prohibited;
 - the need to have acceptable original documentation to explain and corroborate transactions;
 - how credit card and purchasing card transactions are to be reviewed and approved by a person senior to the card holder (the one-up rule); and
 - the consequences of unauthorised use.

⁸ These include credit cards, vehicle fleet cards, purchasing cards, and equivalent cards used to obtain goods and services before payment is made.

Credit card cash advances

- 4.4 Credit cards should not be used to obtain cash advances unless cash is required:
- in an emergency (usually related to travel); or
 - for official purposes (in rare circumstances).
- 4.5 If an organisation would like to allow cash advances, they would need to be specifically provided for in the organisation's policy and should be properly documented and accounted for and reconciled to actual expenses.

Internet purchases using credit cards

- 4.6 Credit card payments made on the internet need to reflect good security practice, such as purchasing only from reputable companies known to the public organisation. The card holder needs to keep a copy of any online order forms completed when making purchases. The practice also needs to be consistent with the public organisation's normal purchasing controls.

5

Expenses when travelling

- 5.1 Public sector staff might need to incur travel and accommodation costs while travelling in New Zealand or overseas for work.

Issues and principles

- 5.2 Issues about expenditure on travel and accommodation, especially by governors, chief executives, and managers, are often brought to our attention. The principles of a **justifiable business purpose** and **moderate and conservative** expenditure are particularly relevant here.
- 5.3 Travel and accommodation expenditure should be economical and efficient, having regard to purpose, distance, time, urgency, personal health, security, and safety considerations.
- 5.4 Public organisations should have travel policies and procedures that:
- consider technology-enabled solutions as opposed to travel in person;
 - cover domestic and international travel;
 - require written approval before travel;
 - provide guidance on taking annual leave, staying away over weekends, stopovers, travelling with spouses or partners, and class of travel; and
 - outline the monitoring and reporting arrangements.

Cash advances

- 5.5 Where a staff member is required to travel overseas for work, it might be necessary to provide them with a cash advance. The public organisation's policies and procedures should allow for this. In these instances, the cash advance should be set at an appropriate level having regard to the circumstance, properly documented and accounted for, and reconciled to actual expenses on return.

Air travel

- 5.6 Public organisations should ensure that:
- air travel is booked to achieve the most cost-effective fare;
 - when deciding what class of ticket to purchase, cost is balanced with other considerations, such as purpose of travel, distance, time, urgency, security, and safety considerations. One option organisations can consider, if time allows, is whether it would be considerably cheaper to fly long distance in economy class, arriving earlier to allow rest;
 - there is a clearly explained rationale whenever a premium economy or business class ticket is purchased – business class is the exception, not the norm; and
 - they have policies on membership of airline clubs, with any membership of such clubs supported by a clear business purpose.

Air points and other travel-related loyalty schemes

- 5.7 Accruing air points⁹ from business-related travel can have significant personal benefit and potentially incentivise wasteful travel. Public organisations need policies to manage this risk.
- 5.8 We expect public organisations, to the extent that it is practically possible within the requirements of the law, to:
- treat air points that staff accrue when travelling for work as the property of the organisation;
 - use business air point rewards to benefit only the organisation (this could include using the air points for personal reasons and reimbursing the organisation);
 - ensure that staff keep a record of business air points accrued, air points used to benefit the organisation, and the balance of air points remaining, and regularly supply the organisation with a report of this record;
 - ensure that processes are in place to identify if staff are accruing a large number of business air points; and
 - ensure that business air points are used for travel where possible.
- 5.9 There are complexities to managing air points and the personal benefit that might come from them. Some airlines are aware of these issues and might offer schemes that assist public organisations to manage them.

Meals, accommodation, and transport while travelling

Meals

- 5.10 With reference to meals while travelling,¹⁰ we expect organisations to:
- give guidance to staff that describes what is appropriate and reasonable to spend on meals; and
 - state in their policies that separate meal expenses cannot be claimed if a meal is provided as part of another package paid for by the organisation – for example, when lunches and dinner are included in conference registration.
- 5.11 Increasingly, the expectation is that public organisations should not allow for reimbursement of alcohol purchases through travel or accommodation expenses.

⁹ Rental companies and hotel chains often have similar schemes.

¹⁰ There are two main ways that public organisations can cover expenses (in particular, meals) of their staff while travelling – having a daily allowance or individuals claiming back expenses on return. Where an organisation is using daily allowances, the standard rate should be linked to being appropriate and reasonable. For guidance on rates for international travel, public organisations can refer to the New Zealand Foreign Affairs and Trade Schedule of Per Diem Rates to cover the costs of meals, accommodation, and incidentals while overseas. See www.mfat.govt.nz.

Part 5
Expenses when travelling

The public expect prudence. Alcohol consumption is seen as a personal choice that public servants should pay for themselves.

Accommodation

- 5.12 We expect organisations to:
- ensure that accommodation is cost-effective;
 - take account of the accommodation's location relative to where staff are working;
 - check the standard and type of accommodation and safety and security issues; and
 - have a policy relating to costs/koha that might be paid, if any, for when staff stay with a friend or relative rather than in paid accommodation.

Transport

- 5.13 With reference to transport while travelling, we expect organisations to:
- ensure that the most economical type and size of rental car to be used is consistent with the requirements (including the distance, terrain, weather, and number of people) of the trip;
 - have a policy that the driver, not the organisation, will pay fines (parking or traffic offences) incurred while using a rental vehicle on business;
 - ensure that any private use of a rental car incurs no additional cost to the organisation and is reasonable in the circumstances; and
 - consider other cost-effective travel, such as public transport and rideshare.

Motor vehicles

- 5.14 We expect the use of taxis to be moderate, conservative, and cost-effective relative to other forms of transport. Public organisations are starting to use alternative forms of transport, such as those mentioned in paragraph 5.13.
- 5.15 Rideshare options are most often charged through an application (app) linked to a credit card. In these instances, see Part 4 for guidance on making credit card purchases. If the app is set up to use a personal credit card, the public organisation will need processes to distinguish legitimate work expenses from personal expenses, including enough evidence to support the business reason for the work expenses and documentation to support the payment.
- 5.16 Organisation-funded transport should not be used for travel between home and work, unless the reason for the travel is due to work commitments requiring work beyond a reasonable hour, a safety concern, or similar justification. Approval for the travel should be given where practicable.

- 5.17 We expect all taxi cards to be issued in an individual's name to support transparency about who used a taxi card and for what purpose. See Part 4 on using credit cards and purchasing cards for additional guidance.

Corporate vehicles

- 5.18 Corporate vehicles (provided outside remuneration arrangements) should not be used for private purposes. We expect the driver, not the organisation, to pay any fines (parking or traffic offences) incurred while using a corporate vehicle unless the fines relate to an aspect of the condition of the vehicle outside the driver's control.

Private vehicles

- 5.19 We expect public organisations to ensure that they do not pay for travel by private vehicle if travel by other means is more practical and cost-effective. Generally, pre-approval to use a private vehicle for work must be obtained. We expect the driver, not the organisation, to pay any fines (parking or traffic offences) incurred while using a private vehicle on business.
- 5.20 We expect public organisations to require a completed and signed claim based on distance travelled when reimbursing staff for using a private vehicle. The rates of reimbursement for a private vehicle should also be in line with the allowable expense for using a private vehicle for business purposes recommended by the Inland Revenue Department or an appropriate rate set by the organisation. Any claim should clearly state the business reason for the travel.

Tipping

- 5.21 The probity issue associated with tipping is that it is discretionary, and usually undocumented, expenditure. Tipping should not in any circumstance be extravagant. The principle of **moderate and conservative** expenditure is particularly relevant.
- 5.22 We expect staff of public organisations not to tip while they are travelling for work in New Zealand. We expect organisations to allow tipping expenses in countries where it is local practice and where it is appropriate in the circumstances. In these cases, organisations can provide staff members a daily allowance before travel to allow for this. This should be documented in the organisation's policies, and any unused funds are to be accounted for.

Part 5
Expenses when travelling

Other travel issues

Using telecommunications equipment

- 5.23 We expect guidance on the use of telecommunications equipment while travelling for work to be consistent with the guidance on information communications technology resources in Part 9.

Private travel combined with work travel

- 5.24 Staff members can go on private travel before, during, or at the end of travel paid by their organisation, provided there is no additional cost to the organisation and the private travel is only incidental to the business purpose of the travel. The organisation should have a clear process in place, set out in its policy, to ensure that any additional costs (for example, travel insurance) are identifiable and reimbursed as soon as is practicable after they have been incurred.

Spouses, partners, or other family members accompanying travel

- 5.25 A public organisation should not usually pay for travel costs of accompanying spouses, partners, or other family members. In the rare circumstances that involvement of a spouse directly contributes to a clear business purpose, we expect the spouse's travel to be pre-approved in accordance with the organisation's policy and delegations. The travelling staff member should discuss with their manager if they intend any family member to accompany them on work-related travel regardless of whether the organisation contributes to costs. This is to ensure that there is proper consideration of any perceived personal benefit. Public organisations should consider matters such as insurance as well as cost when approving family members' accompanying travel.

Stopovers

- 5.26 We expect the cost of any stopover that the organisation pays for to have a clear business purpose, be moderate and conservative, and be pre-approved. This could include a staff member flying long distance in economy class requiring a short (24-hour) stopover to aid their recovery when they arrive at their final destination.

Entertainment and hospitality expenditure

6

- 6.1 Entertainment and hospitality can range from tea, coffee, and biscuits to organisation-funded hosting at a sporting or cultural event.

Issues and principles

- 6.2 Expenditure on entertainment and hospitality is sensitive because of the range of purposes it can serve, the opportunities for private benefit, and the uncertainty as to what is appropriate.
- 6.3 The Institute of Internal Auditors New Zealand identified the following five business purposes for entertainment and hospitality expenditure for private and public organisations:¹¹
- building relationships;
 - representing the organisation;
 - reciprocity of hospitality where this has a clear business purpose and is within normal bounds – acceptance of hospitality is expected to be consistent with the principles and guidance for provision of hospitality;
 - recognising significant business achievement; and
 - building revenue.
- 6.4 The principles of a **justifiable business purpose** and **moderate and conservative** expenditure are particularly relevant here. Some public organisations might pay for hospitality to raise funds. We expect expenditure to be subject to controls for monitoring and reporting.

Guidance

- 6.5 We expect entertainment and hospitality expenditure to be:
- subject to policies that provide clear guidance about what is an acceptable level and type of expenditure and appropriate venues (for example, on seasonal occasions, such as a Christmas function);
 - provided only when it is cost-effective and appropriate for the occasion;
 - subject to policies that include a general prohibition on organisations paying for alcohol, except in specific circumstances and within prescribed limits;¹² and
 - supported by appropriate documentation that includes receipts, names of parties entertained, and the reasons for the entertainment and hospitality.

¹¹ Institute of Internal Auditors New Zealand Incorporated (1996), *A Management Guide to Discretionary Expenditure*, Auckland.

¹² As noted earlier, there is increasingly an expectation that public organisations not allow the use of public money to purchase alcohol. Where public organisations are still meeting the cost of alcohol, they will need to have a clear justification.

Part 6
Entertainment and hospitality expenditure

Recognising achievements

- 6.6 Organisations often spend money on events to recognise milestones, such as farewells, retirements, and staff achievements. This can include spending on functions, gifts, and other items.
- 6.7 Expenditure on farewells and retirements should not be extravagant or inappropriate. The principle of **moderate and conservative** expenditure is particularly relevant.
- 6.8 We expect any expenditure on recognising achievements or other milestones to be pre-approved at an appropriate level of management, and to be moderate, conservative, and appropriate for the number of years of service in the case of service milestones.

Receiving hospitality

- 6.9 We recognise that receiving hospitality is not strictly sensitive expenditure. This is because it does not involve expenditure on the part of the organisation. However, it is still a sensitive issue that organisations need to manage carefully. It is important that receiving hospitality does not affect an organisation's or an individual's decision-making because this could be perceived as acting without impartiality or integrity.¹³

7

Goods and services expenditure

- 7.1 In this Part, we discuss obtaining, disposing of, or using goods and services that are not covered by terms and conditions of employment.

Loyalty reward scheme benefits

- 7.2 Loyalty reward schemes benefit customers who continue to use a particular supplier.
- 7.3 It is important to preserve impartiality and integrity. We expect that staff making procurement decisions would not personally receive any loyalty rewards as a result of those decisions.¹⁴ There should be controls and clear guidance about expectations for all involved so that, to the maximum extent possible, the public organisation benefits from any rewards.
- 7.4 As with accruing air points, there are complexities to managing personal loyalty reward schemes. One option is for the public organisation to ask the supplier not to provide loyalty rewards for business purposes. Otherwise, where the rewards accrue to the individual who obtains the goods or service, we expect public organisations to follow the same advice relevant to air points in Part 5, regardless of who has paid for them.

Private use of public organisations' assets

- 7.5 Any physical item a public organisation owns, leases, or borrows is considered an asset for the purpose of this guide. This includes photocopiers, mobile devices, computer equipment, laptops, office furniture, uniforms, and stationery.
- 7.6 The principles of **transparency** and **moderate and conservative expenditure** are particularly relevant here. Personal use of these assets might be permitted in defined circumstances.
- 7.7 We expect public organisations to have policies that identify what, if any, private use of an organisation's assets is acceptable, the level of use (defined in terms of quantity), and the circumstances under which costs will be recovered. Generally, costs of private use should be recovered, unless it is impractical or uneconomic to separately identify those costs.¹⁵ We expect public organisations to prohibit an employee's use of an organisation's assets for their private business.

¹⁴ Refer to the government procurement rules, charter, and principles that set out clear expectations for staff involved in procurement – for example, government procurement principle five: Play by the Rules, procurement.govt.nz.

¹⁵ For further information in relation to directors of Crown companies, see: Crown Company Monitoring Advisory Unit (2004), *Crown Company Directors' Fees and Reimbursement Guidelines*.

Part 7
Goods and services expenditure

Public organisations' use of private assets

- 7.8 Sometimes a public organisation decides that reimbursing staff for using private assets is appropriate for reasons such as cost, convenience, or availability. An organisation might decide to do this for an asset that it would not regularly use if it acquired it directly, such as motor vehicles and mobile devices.
- 7.9 The main issue with an organisation using private assets is the risk that they then pay or reimburse the provider of those assets an amount that benefits the provider inappropriately.
- 7.10 The principles of **a justifiable business purpose, preserving impartiality, and integrity** are particularly relevant here.
- 7.11 Staff members must not approve or administer payments to themselves for the organisation's use of their private assets. We expect public organisations to have policies and processes in place, as well as monitoring and reporting, to ensure that this is the case.

Private use of a public organisation's suppliers

- 7.12 If a public organisation allows staff to obtain goods or services from a supplier on the same or a similar basis to the organisation, and staff are then able to obtain the goods or services at a discounted price not otherwise available to them, this is private use of an organisation's official procurement processes.
- 7.13 If staff have access to an organisation's suppliers on the same basis as the organisation, they might receive preferential access to goods or services at a preferential price not available to the public. The risk is that the availability of the discount to staff will influence the choice of suppliers to the organisation. Public organisations must not take preferential access to goods and services for staff into account when choosing suppliers.
- 7.14 In our view, it is inappropriate for public-sector staff to personally benefit from the purchasing power of their organisation. We expect it to be unusual and rare for a public organisation to give staff access to its suppliers on the same basis as the organisation. However, where this is allowed, staff should be moderate in their use of any preferential access to goods or services. These situations risk creating the perception that staff are privately benefiting from this access, which would need to be managed.
- 7.15 We expect public organisations to have a policy regarding staff use of preferential purchasing. Public organisations should ensure that the selection of suppliers is in their interest and not affected by the availability or possibility of purchasing privileges for staff.

- 7.16 Public organisations that allow staff to purchase directly from suppliers should set limits on the value and quantity of purchase. Public organisations should also monitor staff use to avoid any risks to future procurement decisions involving that supplier.
- 7.17 Public organisations' policies should state that staff cannot use purchasing privileges on behalf of any third party, such as family members or friends, and staff should pay in full and must not use the organisation as a source of credit. Resources of the public organisation, including staff time, should not be used to procure goods or services for employees' personal benefit.

Sale of surplus assets to staff

- 7.18 As part of their normal business, public organisations will occasionally dispose of their assets. Typically, this is when the assets become obsolete, worn out, or surplus to requirements. The procedures that public organisations follow when disposing of the assets need to be transparent and fair.
- 7.19 Public organisations should not sell assets at a discounted rate to staff if they can make more money through another method of disposal.
- 7.20 The principles of **preserving impartiality** and **integrity** are particularly relevant here. We expect that the staff disposing of the assets will not benefit from the disposal.
- 7.21 We expect public organisations to:
- recognise the value of the asset and any potential for actual or perceived undue benefit by staff;
 - maximise the return to the organisation if disposing assets, including to staff; and be able to justify that amount (for example, market value); and
 - ensure that all assets identified for disposal to staff are valued and subject to a tender or other process that is appropriate to the value of the asset.
- 7.22 Maximising return to the public organisation can include considering non-financial benefits like sustainability. If the organisation is unable to sell or find an alternative use for its assets, it might be better that the assets are offered to staff rather than being taken to a landfill.

8

Staff support and well-being expenditure

- 8.1 Public organisations can provide for staff support and well-being in various ways. The resulting benefits should be to both the organisation and the staff.
- 8.2 A public organisation can decide to make payments to meet its “good employer” obligations – for example, well-being payments for preventative health screenings, eye tests, and prescription glasses. An organisation can decide to meet costs for less specific purposes that generally contribute to a good relationship between it and its workforce or among its workforce. For example, an organisation can contribute to a social club or a sports team representing the organisation.
- 8.3 However, a public organisation also needs to be aware that payments for staff support and well-being could be seen as paying for what are ordinarily a staff member’s personal and private expenses. This could be seen as additional remuneration for the staff member. In those circumstances, the organisation needs to consider the implications for such matters as tax liability and relevant employment agreements.

Financing the activities of a social club

- 8.4 Public organisations may sometimes make a monetary contribution to a social club, either in the form of an all-purpose grant towards the club’s annual budget or as a grant or subsidy for a specific event.
- 8.5 It is important that there is a **justifiable business purpose** for any contributions to a social club. This purpose would typically be connected with organisational development and staff well-being.
- 8.6 We expect contributions to social clubs to be prudent and reasonable in terms of the benefit obtained by the organisation. The social club activities for which the subsidy is given should align with the principles listed in paragraph 2.4.

Sponsorship of staff

- 8.7 Staff taking part in an activity that is not part of their job, such as a sporting event, may be sponsored by their organisation through the provision of, or payment for, goods or services (for example, a t-shirt or an entry fee).
- 8.8 Sponsorship should have a **justifiable business purpose**, which could include publicity for the organisation and its objectives or organisational development. The cost to the organisation should be moderate and conservative. We expect sponsorship to be transparent and supported by a robust policy.

9

Other types of expenditure

Donations

- 9.1 A donation is a payment (in money, goods, or services) made voluntarily and without expecting reciprocation.
- 9.2 We expect public organisations to ensure that:
- the purpose of the donation is consistent with the business purpose of the organisation; and
 - the cost of the donation is appropriate in the circumstances.
- 9.3 The principles of **preserving impartiality, integrity**, and being **moderate and conservative** are particularly relevant here. Making a donation should not result in any obligation on individuals or organisations, other than to apply the donation to the purposes of the recipient.
- 9.4 We expect donations to be:
- lawful in all respects, including complying with parliamentary appropriations;
 - disclosed in aggregate (where required);
 - appropriately documented;
 - made to a recognised organisation by normal commercial means – not to an individual and not in cash;
 - non-political;
 - covered by a clear policy including delegations and authorisation; and
 - consistent with the objectives of the organisation making the payment.

Gifts

Giving gifts

- 9.5 Public organisations can give gifts – such as a thank you for a speech or presentation, or when giving gifts is customary (for koha, refer to the additional guidance below).
- 9.6 Gifts usually take the form of a tangible object, but might also be in the form of, for example, free use of a corporate box at a sporting event or privileged access to goods or services.
- 9.7 Giving gifts presents significant risks, including that:
- the value or nature of a gift is inappropriate or excessive to the occasion or the reason for giving it;

Part 9
Other types of expenditure

- the gift is given in explicit or implicit expectation of favour in return; and
- the gift is given in substitution for legitimate payment or remuneration.

- 9.8 The principles of a **justifiable business purpose**, being **moderate and conservative**, **acting with integrity**, and **preserving impartiality** are particularly relevant here.
- 9.9 Public organisations should have a policy on giving gifts, including specifying the purposes and occasions for when it is acceptable and the nature and value of gifts that are appropriate for particular occasions. An organisation might consider factors such as the staff member's service, the event the organisation is recognising, and the cost of the gift. See Part 6 for guidance on recognising achievements.

Receiving gifts

- 9.10 We recognise that receiving a gift is not strictly sensitive expenditure. This is because it does not involve expenditure on the part of the organisation or individual receiving a gift. However, it is still a sensitive issue that organisations need to manage carefully. It is important that receiving a gift does not affect an organisation's or an individual's decision-making because this could be perceived as acting without impartiality or integrity.¹⁶ Prizes received from a free competition entry obtained while carrying out an organisation's business are also considered to be receiving a gift for the purposes of this guide.
- 9.11 Cash gifts are unacceptable in any circumstances.
- 9.12 We expect public organisations to:
- carefully consider whether it is appropriate for the organisation to accept a gift;
 - record the acceptance of all gifts, except for inexpensive gifts that are openly distributed by suppliers and clients, in a gifts register;
 - treat all gifts that are accepted as the property of the organisation, to be used for either the organisation's or the public's direct benefit;
 - consider recording in the gift register those gifts that were offered but turned down;
 - limit the gifts that staff are allowed to personally acquire to infrequent, inexpensive gifts that are openly distributed by suppliers and clients (for example, pens, badges, and calendars); and
 - have policies defining "infrequent" and "inexpensive" in relation to receiving gifts.

¹⁶ Office of the Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington. oag.parliament.nz.

Koha

- 9.13 Koha is a gift, token, or contribution given on appropriate occasions including:
- tangihanga;
 - attendance at an event/meeting;
 - for use on or for a marae; and
 - kaumātua support for pōwhiri, mihi whakatau meetings, or other events.
- 9.14 The probity issue associated with koha is that it is discretionary and usually un-receipted expenditure.
- 9.15 Public organisations should have a policy on, and controls over, giving koha that specifies the means of determining the cost of any koha, and requires all koha made to:
- reflect the occasion;
 - be approved in advance at an appropriate level of authority; and
 - be clearly documented with the date, amount, description, and purpose.

Information communications technology resources

- 9.16 Information communications technology (ICT) resources¹⁷ are widely used in the workplace and some level of personal use of this technology is reasonable.
- 9.17 We expect organisations to have policies on personal use of ICT resources, including on reimbursement of costs, and to ensure that staff are well informed about them. We suggest that ICT personal use policies state that personal use of the organisation's ICT resources should be consistent with the organisation's values and policies and that usage must not:
- include unlawful, offensive, or improper activities;
 - affect the business use of the ICT;
 - affect how people perform their duties;
 - be commercial in nature;
 - involve unreasonable use of resources (such as network bandwidth); and
 - include installation of communications technology to be used exclusively or predominantly for personal use.
- 9.18 See guidance on private use of a public organisation's assets, and an organisation's use of private assets, in Part 7.

¹⁷ ICT resources include email and web browsing on a desktop or laptop computer, a smartphone, or a tablet.

Appendix 1

Our reports covering aspects of sensitive expenditure

(2000) Waitakere City Council: Payments and associated issues relating to certain staff redundancies

(2002) Cambridge High School's management of conflicts of interest in relation to Cambridge International College (NZ) Limited

(2002) Certain matters arising from allegations of impropriety at Transend Worldwide Limited

(2003) Inquiry into expenses incurred by Dr Ross Armstrong as Chairperson of three public entities

(2003) Inquiry into public funding of organisations associated with Donna Awatere Huata MP

(2004) New Zealand Trade and Enterprise: Administration of the Visitor Investing Programme

(2005) Central Government: Results of the 2003-04 Audits, Part 6 – Board chairpersons' expenses

(2005) Inquiry into certain aspects of Te Wānanga o Aotearoa

(2010) How the Department of Internal Affairs manages spending that could give personal benefit to Ministers

(2010) Auditor-General's inquiry into certain types of expenditure in Vote Ministerial Services – Part 1

(2019) Inquiry into Alpine Energy Limited's decision to install solar equipment at a senior executive's house

(2019) Report to the [Waikato Institute of Technology] Council: Additional assurance work on travel expenses, redundancy and severance payments

(2019) Severance payments: A guide for the public sector

(2020) Managing conflicts of interest: A guide for the public sector

Appendix 2

Other sources of advice

- Te Kawa Mataaho Public Service Commission (2007), *Standards of Integrity and Conduct*, Wellington, available at publicservice.govt.nz.
- Te Kawa Mataaho Public Service Commission (2009), *Board Appointment and Induction Guidelines* (updated 2015), Wellington, available at publicservice.govt.nz.
- Te Kawa Mataaho Public Service Commission (2018), *Acting in the spirit of service: Chief Executive Gifts, Benefits and Expenses*, Wellington, available at publicservice.govt.nz.
- Te Kawa Mataaho Public Service Commission (2020), *Speaking up in the State services*, Wellington, available at publicservice.govt.nz.
- The Government Procurement Rules, available at procurement.govt.nz.
- *Cabinet Office Circular CO (19) 1, Revised Fees Framework for members appointed to bodies in which the Crown has an interest*, available at dpmc.govt.nz/publications.
 - The modified Framework covers all statutory bodies, non-statutory bodies, and committees in which the Crown has an interest. The purpose of the Framework is to provide a basis for judgement in setting fees that will ensure a consistent approach to remuneration across all statutory and other Crown bodies, contain expenditure of public funds within reasonable limits, and provide flexibility within clear criteria.
- Crown Company Monitoring Advisory Unit (2004), *Crown Company Directors' Fees and Reimbursement Guidelines*, Wellington, available at treasury.govt.nz.
 - This document sets out the shareholding Ministers' expectations for the payment of directors' fees and expenses. The advice is intended to be used by chairpersons, directors, and managers of Crown entity companies and State Owned Enterprises.
- Institute of Internal Auditors New Zealand Incorporated (1996), *A Management Guide to Discretionary Expenditure*, Auckland.
 - This document outlines areas of potential risk and provides ideas and examples of good discretionary expenditure practice.
- Ministry of Education (2018), *Financial Information for Schools Handbook*, Wellington, available at education.govt.nz.
 - This handbook is intended to be a single reference point for school trustees, principals, and administrators, and covers some aspects of sensitive expenditure.

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CBay Review

Issued to: Craig Motley, Recreation and Facilities Manager
Symon Leggett, Group Manager, Recreational and Cultural Services

Copied to: Senior Leadership Team
Jason Rivett, Acting Chief Financial Officer

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1. Executive Summary

This internal audit highlights a CBay team that is well structured, knowledgeable staff and an awareness of the importance of internal controls throughout the end-to-end process. However there are processes and procedures that need to be put in place to improve compliance with policies and procedures.

We performed testing of the key internal controls in place to ensure CBay is purchasing goods and services and managing their operations i.e. expenditure, café management and cash management appropriately and performed as required by TDC's policies and procedures.

Our audit noted the majority of these key internal controls were designed and operating effectively. We noted several exceptions to the internal control environment and these are reported in the audit findings table below.

The scope of this internal audit was to carry out a high level testing on the purchases for goods and services within CBay, and we have identified some control gaps and risks to the purchases for goods and services. We would like to highlight that this is a TDC wide control gap and is currently being addressed by the current improvement programme which is underway. This covers the Procurement Framework, procure to pay and AP automation process. Also raised in our findings are issues identified in operating the café at CBay.

The audit findings are shown in the tables below. The Risk Priority has used the definitions provided from TDC's Risk Management Framework.

Table 1: CBay Audit Findings

Report Ref	Description of Audit Finding	Risk Priority
5.1	Purchases without purchase orders	High
5.2	Implement a centre led purchasing function	High
5.3	Findings at CBay Café	High

2. Introduction

This report is for the CBay review and the fieldwork that was conducted in Q4 (of the 20/21 financial year). The structure of this document reports each audit finding separately within the Detailed Findings section.

3. Scope

The scope of the review at CBay operations covered a high level review three areas:-

- Adhering to TDC's procurement policies and procedures
- Whether expenditure incurred were for business related purposes and were monitored so that it doesn't exceed budget
- Café operations appropriately managed according to TDC's policies and procedures

We performed the audit procedures to identify CBay processing risks, perform tests to verify effectiveness of internal controls, interview personnel and review supporting documentation to verify compliance with regulations and policy.

The audit period in scope for testing was 1 July 2020 through to December 2020.

The scope of the audit focused on assessing the following:

- Adequate controls in place to process payments in an efficient, accurate, complete and timely
- Review of accounts payable transactions for duplicate payments to vendors and/or unusual activities;
- Adhering to TDC's procurement policies and procedures

The risks considered included the following:

- Fraudulent payments made on purchases for goods and services
- Non-compliance with operational policy and procedures
- Non-compliance with legislation requirements

4. Approach

Risk and Assurance reviewed the CBay's practices by using the following approach:-

- Perform walkthroughs with staff to understand the processes and key controls in place
- Identify key risk areas in-line with our scope
- Assess the operating effectiveness of key controls by sample testing
- Discuss our findings with management

5. Acknowledgement

Risk and Assurance would like to acknowledge the support provided by the Recreations Facilities Manager and Team Leaders who have been very transparent with their processes. During the review we observed how various operational activities were carried out and had discussions with staff where Risk and Assurance acknowledges the excellent service that is provided and the planning behind the scenes to provide a top class recreation facility.

6. Detailed Findings

This section outlines the detailed findings where the responsibility is with the Recreation Facilities Manager. Each finding includes the observation, an assessment of the impact of the finding, our recommended action and a response from management.

6.1. Issues surrounding Purchase Orders

Priority: High

Observation

The following are issues noted from our review surrounding purchase orders:-

- There is currently no process in place to ensure that there are purchase orders for all purchases of goods and services. From our sample for the period 1 July 2020 to December 2020, we noted 87 % of the purchases made do not have associated purchase orders.

This is a TDC wide issue where an end-to-end procurement process and system is not in place, hence purchases can be made without purchase orders. There is an improvement programme which is underway which covers the procurement framework, procure to pay and AP automation process.

Without a proper end-to-end procurement process in place there has not been proper control and monitoring in place. However, Recreation and Facilities Manager has a process in place by evidencing and monitoring the purchases of goods and services through the information provided to him by his three team leaders.

- Currently there are only two designated team leaders who process all the requisitions and approve the purchase orders. There are five team leaders that report to the Recreation Facilities Manager. The other three team leaders do not have purchase requisition and purchase orders approvals set up in TDC's financial system, Authority, to carry out both these functions. We noted that between the two team leaders they have been issuing requisitions and approving the requisitions themselves and receipting the goods and services as well. There is no segregation of duties.

Impact

There is a risk that:-

- Payments made for purchases for goods and services that have not been received
- Expenditure incurred were not for business related purposes
- No segregation of duties in requisitioning, approving the requisition (to obtain a Purchase Order No,) and receipting the goods and services. This poses a possibility for fraud risk.

Recommendation

The following are the recommendations for the above issues:-

- To ensure that for all purchases for goods and services a purchase requisition and purchase order is raised
- There must be immediately put in place the segregation of duties for requisitioning and approving the Purchase Orders. The same team leader can't place a purchase requisition and approve the requisition.
- Recreation Facilities Manager to make a request to the CFO to set up in Authority, all team leaders at CBay with purchase requisition, purchase orders and a financial delegation.

- A one up approval is required for all purchase requisitions. The Receptions and Facilities Manager to advise finance on the structure of how this set up should be implemented to avoid all approvals being carried out by one person.

Management Comment

Agree that more team leaders need authority to do purchase requisition and purchase orders. Previously this has not been allowed by the Finance team. Along with this would come a segregation of duties for requisitioning and approving so that no individual can approve their own requisition and a one-up approval hierarchy. Once this is in place then the majority of purchases should have a PO.

Action/ Response Owner: RFM/CFO

Action By Date: 1st September 2021

CBay Review

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6.2. Findings at CBay Café

Priority: High

Observation

The café is managed by an experienced team leader and a team of committed staff at CBay. This was observed during the audit when we made an observation from the customer service provided and the effective co-ordination between the staff in carrying out their duties and responsibilities.

We noted the following matters that require improvement in managing the café:-

- Stock take is carried out once a year instead of once a month. There is no process to monitor the "in's and out's" of all items purchased in the café. Therefore opening and closing balance of stock is not tracked and unknown each month.
- There is no proper food and beverage costing carried out to support the pricing set on the products sold.
- There is no monitoring of budget vs actual as to how the café is tracking financially as planned. We were unable to obtain any report from the team leader. We were advised finance had not provided them any financial reports and therefore were unable to provide us this.

Impact

The following are the risk noted:-

- There is a risk of the café running out of stock.
- There is a risk that items could be taken for personal consumption.
- There is a risk that we may be undercharging/overcharging our customers which then could lead to the risk of not being able to determine what the targeted margins for the café are to be achieve.
- Not tracking the budgets vs actual income and expenses could mean the café business could risk running the café at a loss and the risk of incurring higher expenses than what it had budgeted for.

Recommendation

We recommend the following:-

- A stock take of all goods purchased be carried out on a monthly basis with proper records be maintained of the stock take.

CBay Review

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- A food and beverage costing for all products sold be carried out and this then would support the pricing of the products by determining the margins the café intends to make to support its operations.
- Monthly financial reports of budget vs actual need to be provided by finance to the management of CBay operations to ensure that the actual expenses incurred do not exceed budgeted expenses for their operations.

Management Comment

Doing a monthly stocktake would add considerably to the cost of running the café and is, I believe, unnecessary with the small amount of goods held and our relatively small turnover. Agree however, that a stocktake needs to be done more regularly and that this should be either six-monthly or quarterly.

All food and beverage sold is costed, however these costing had not been reviewed for several months. NB – this applies to goods we make ourselves – for goods received ready to sell e.g. drinks, ice blocks etc. we follow the RRP from the wholesaler. The café Team Leader has recently completed a full review of pricing of all goods.

Budget is monitored when the information is made available and this has been much more regular from the finance team in the last 6 months since this review was started.

Action/ Response Owner: RFM/Café Team Leader

Action By Date: Already completed except stocktake – await advice on appropriate number of times to complete.

Risk and Assurance response: Taking into consideration management's comments, we recommend that the stocktake be carried out quarterly.

7. Findings that is out of scope of the audit.

For Senior Leadership Team's (SLT's) consideration.

7.1. Implement a centre led purchasing function (SLT to provide management comment)

Priority: High

Observation

Internal audit observed that currently the procurement activity is decentralised across the Council. Every department/workgroup is able to procure goods and services and is responsible for its own purchases.

The current structure empowers individual departments and allows them to maintain control over their procurement processes and decisions. It also improves their overall satisfaction with procurement and accelerates the decision making and issue resolution process. However, Internal Audit notes that decentralized procurement does not allow the Council to leverage their total spend or align its objectives with the strategic plan of the Council.

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A decentralized purchasing model also leads to compliance issues such as inconsistencies in creating purchase requisitions, open purchase orders, inflation of outstanding commitments, GST allocations, purchase order compliance, good received not invoiced.

Internal Audit notes the following benefits and limitations associated with the centre-led model:

Benefits:

- Avoids duplication or redundancy of efforts, which means lower costs and standardized processes
- Best practices, policies and processes are centralised and redistributed throughout the organisation
- Allows for more comprehensive control and optimization of orders
- Reduces the total number of staff necessary and facilitates training, which may be seen in lower costs
- Volume purchasing is enabled, which means greater discounts and better terms
- Provides a known, centralized contact for suppliers, which can lead to cost and time savings
- May enable procurement staff to develop better relationships with suppliers, which can lead to greater collaboration and cost-saving suggestions

Limitations:

- Can become too big or too complex to be run efficiently
- Managers may have less autonomy, which can cause frustration
- It may lead to a longer and more intensive time consuming purchasing process
- May result in extended planning, delivery and turnaround time for critical purchases
- May lead to under-investment, and therefore inefficiency

Recommendation

Internal audit recommends that the management implement the centre-led purchasing function, which will have a comprehensive structure and significant involvement of a procurement team. The centre-led purchasing function would:-

1. align with the strategic goals of the Council,
2. consider the sourcing profiles and critical requirements for all categories of spend,
3. understand each business unit and stakeholder requirements,
4. ensure compliance with procurement policies and processes,
5. provide visibility to the entire Council and leverage best practice sharing across the departments, and
6. perform data analytics to create various reports and roadmaps to maximize value for money

Management Comment

While agreeing that centre-led purchasing would be helpful in many ways and already is (e.g. all of government electricity) we believe it should really apply to only the major items/areas. For instance we have several, unique to our area of business, suppliers. I would also be hesitant to be restricted to only one plumber or one electrician as if they were not available it could lead to issues with keeping facilities operational. In that example though, the approved supplier's process generally works well.

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I also think more education about our procurement policies and processes would be helpful to most Tier 3 managers. (Management comment from Recreation Facilities Manager)

Action/ Response Owner: SLT is still exploring the benefits of a centralised Procurement unit. The procurement project that is currently in progress to improve TDC's procurement processes will provide a recommendation to SLT on the matter.

Action By Date: March 2022

CBay Review

11



Contract Management Internal Audit

Timaru District Council

August 2021

Final Report Version

Author: Andrew Douglas, Managing Director, Opportune Consulting Ltd

Contract
Management

Opportune

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Contract
Management

Opportune

1. Background

Timaru District Council (TDC) engages with third party suppliers to deliver a range of services for the Council, of which a number of these hold significance as they are for key aspects of the Council's core services, such as for three-waters, roading, waste and parks.

To ensure the Council receives quality service delivery from its suppliers, an effective contract management process is essential. This internal audit has been requested to assess the processes and controls in place at the Council for effective contract management.

2. Objective

The objective of this engagement is to assess the processes and controls in place at the Council which enable the effective management of third-party suppliers and the quality of service they deliver.

3. Scope

The scope of this engagement is the assessment of Council contract management processes and controls, which includes:

- Documented policy and procedures
- Clarity of roles and responsibilities
- Clarity of delegation of authority for contract approval
- Contract development:
 - Inclusion of relevant provisions for:
 - Clear deliverables, timelines, KPIs and standards of quality.
 - A process to monitor and report against the activities.
 - Legal review of contract where applicable
 - Appropriate review and sign-off
 - Use of standard conditions for contracts
- Contract management
 - Contract register
 - Contract owner assignment (role and responsibilities)
 - Use of the Contracts module in Authority
- Contract performance
 - Regular monitoring of service provider performance against terms of contract
 - Regular meetings undertaken as per the contract and a record made to that effect
 - Audit/ review of contractor activity where applicable
 - Reporting and escalation of performance issues
 - Monitoring of contract financials, including against budget.
 - Contractor payments in accordance with the terms of the contract, authorisation of payments
 - Approval of contract variations (Letter of Variation in place)
- Contract renewal process
 - Appropriate review and approval
- Record keeping of contract evaluations and performance monitoring activities.

All Council contracts are in-scope.

Contract
Management

Opportune

Out-of-scope:

The procurement process is out-of-scope i.e. the tendering and evaluation of suppliers to award contracts.

4. Approach

Our approach to this assignment was to:

- Interview all Group Managers to understand the contract management process and controls within their service area.
- Interview the key staff involved in the management of key contracts within each service. A list of interviewees is provided in Appendix A.
- Review a sample of key contracts for each service.
- Perform a walkthrough with staff of the process and controls in place for the sample of key contracts.
- Inspect contract management systems and documentation that supports the key controls in place.
- Deliver a written report of our findings and recommendations.

5. Executive Summary

Our assessment observed a variety of practices in place for the management of third-party contracts which ranged from robust, formalised process, through to service areas which have ad-hoc, informal or a lack of process.

A primary root cause of this inconsistency in practices is the lack of Council-wide policy or formalised procedure to govern and provide direction of the expected contract management practices. We recommend a contract management policy and procedure are implemented as soon as possible.

The service areas with the greatest maturity in their contract management process were often those with the greatest financial spend and where traditionally, focus has been placed on ensuring adequate service delivery, which is the areas of roading, three-waters and for parks.

The service areas requiring increased guidance and formalisation of process are those where traditionally there has been less of a spotlight on third party contractor delivery, this includes the Digital and Property service areas.

A new contracts IT system is currently being implemented. This provides the Council with the ideal opportunity to implement robust processes and controls by utilising the functionality within the new contracts IT system. The Council must mandate that all contracts are recorded on this system. The system will allow benefits such as recording the Contract Owner for each contract, reporting of contracts that are about to expire, and allowing Group Manager's to view all contracts within their area.

We observed formal processes for monitoring the quality of contractor service delivery in the key areas of roading, three-waters and parks. This also included formal processes for the monitoring of costs, review of billings, holding management level meetings with contractors to review performance, and regular KPI reporting. Within this report we have highlighted that those formal processes were not observed Council-wide, only within certain service areas.

Due to the nature of activity performed by a Council, there are a large variety of contracts entered into and each contract will carry a different level of risk depending on factors such as the financial value, service being delivered, and terms of the contract. It is therefore we have recommended that clear guidance is developed for staff to provide them direction on the required process to follow depending on the level of risk involved in a contract, for example:

- Engaging a third party for a relatively straight-forward, low-risk engagement, would require a simpler form of contract and simpler level of monitoring by staff, compared to a large, financially significant, infrastructure programme of work.
- Not all contracts will require legal review; it will depend on the level of risk involved.

Summary of recommendations

From conducting this internal audit, our key recommendations are:

1. Formalise a contract management policy and procedures, which include:
 - a) Responsibilities of a Contract Owner and Contract Manager
 - b) Monitoring service delivery of contractors (outlining at least minimum expectations)
 - c) Expected monitoring of contract financial agreement to actual costs incurred
 - d) Guidance on when a legal review is required during the contract development stage
 - e) Direction on any Standard Terms of Contract required
2. Implementation of the Contracts System:
 - a) Mandate the use of the system for all contracts
 - b) Require regular reporting to identify contracts due to expire; action must be taken by Contract Owner
 - c) Investigate if financial monitoring of contracts should be performed using this system
3. Ensure a Contract Owner is formally assigned to all existing and new contracts.
 - a) In addition, appoint a Contract Manager where applicable (who is often involved in the day-to-day activities of operating the contract, compared to the Contract Owner who provides governance oversight).
4. Service Delivery: implement formal procedures to ensure:
 - a) Consistency in monitoring contractor service delivery.
 - b) Management level meetings are held with the contractor at time intervals appropriate to the significance and risk of the contract.
5. Financial monitoring: Provide guidance on expected financial procedures for managing contracts, including accruals process, use of purchase orders and regular monitoring.

6. Risk Rating Definition

The findings in this report have been rated using the risk definitions from the TDC Risk Management Framework. This requires a rating for the Consequence and Likelihood of the risk that has been identified, which then provides an Overall Risk Rating.

Appendix B contains the risk ratings definitions used in this report (taken from the Risk Management Framework).

7. Detailed Findings

This section of the report contains the detailed findings and recommendations.

Policy: No Council-wide Contract Management policy in place	
Overall Risk Rating	High
Findings	<p>There is no formal Policy in place to govern the management of contracts within the Council.</p> <p>This includes a lack of formalised procedure requirements for the management of contracts.</p> <p>We note that some individual teams have implemented their own formalised procedures, however there is no overarching Council-wide procedure requirements that have been agreed and approved by management and the Council.</p> <p>Observations include:</p> <ul style="list-style-type: none"> • The Infrastructure team has developed a Contracts Manual with formal procedures for its team to follow in the management of its contracts. • The Parks team have developed their own procedures including for auditing the service quality of their key contractors. • Other service areas lacked formalised procedures, such as Property and Digital, however we note for these areas during our staff interviews and inspection of contracts, these teams did have processes in place, however these were either ad-hoc or informal in nature.
Impact	A lack of formalised policy to govern the management of contracts increases the risk that supplier contracts are not managed appropriately by staff and may result in inadequate delivery of service by third parties that is not resolved in a timely manner.
Risk Consequence	Moderate (Key service not available to some of the community for ten hours or more, or, Continued service degradation for two days or more)
Risk Likelihood	Likely (60% to 90% chance of occurring in next 12 months)
Recommendation	A Contract Management policy and procedures should be implemented. The policy and procedures should cover the following areas: <ul style="list-style-type: none"> • Outline the guiding principles for the management of contracts

	<ul style="list-style-type: none"> • Roles and responsibilities, including the role of Contract Owner and Contract Manager. • The role of the Contracts Register, including the requirement for all contracts to be maintained on this system. • Provide guidance on the level of contract required, for example, using a Statement of Work for engaging with a professional services firm. • Contract development. Inclusion of relevant provisions for: <ul style="list-style-type: none"> ▪ Clear deliverables, timelines, KPIs and standards of quality. ▪ A process to monitor and report against the activities. ○ Legal review of contract where applicable ○ Appropriate review and sign-off ○ Use of standard conditions for contracts • Contract performance <ul style="list-style-type: none"> ○ Regular monitoring of service provider performance against terms of contract ○ Regular meetings undertaken as per the contract and a record made to that effect ○ Audit/ review of contractor activity where applicable ○ Reporting and escalation of performance issues ○ Monitoring of contract financials, including against budget. ○ Contractor payments in accordance with the terms of the contract, authorisation of payments ○ Approval of contract variations (Letter of Variation) • Contract renewal process <ul style="list-style-type: none"> ○ Appropriate review and approval • Record keeping of contract evaluations and performance monitoring activities.
<p>Management Response</p>	<p>Response: Agree with recommendation. Deadline: 31 Jan 2022</p> <p>Response From: Erik Barnes, Acting GM Commercial & Strategy</p>

Contract Owner: Role not formally defined	
<p>Risk Rating</p>	<p>High</p>
<p>Findings</p>	<p>There is no guidance or process to assign a Contract Owner for contracts and no formal definition of the responsibilities of a Contract Owner.</p> <p>We note:</p> <ul style="list-style-type: none"> • Certain service areas have implemented their own formal process, such as the Infrastructure team. • The Contracts System does include a field for entering a Contract Owner. • The lack of formal contract owner responsibilities does not directly result in poor delivery of the contact, as we noted certain contracts had sufficient

	<p>day-to-day operational delivery, such as the QV contract and ECAN contract, while lacking formal assignment of a Contract Owner.</p> <p>We note that the Council should also consider assigning at Contract Manager as well as a Contract Owner, as that is also common practice within organisations of a similar size. The Contract Manager is involved in the day-to-day operational activities, where as the Contract Owner holds management oversight and authority.</p>
Impact	A lack of a formal Contract Owner increases the risk to the Council of inadequate service delivery or the terms of contract not being met, through insufficient management oversight.
Risk Consequence	Moderate (Key service not available to some of the community for ten hours or more, or, Continued service degradation for two days or more)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	<ol style="list-style-type: none"> 1. Implement a policy and process to ensure all contracts have a formal Contract Owner. 2. The role responsibilities of the Contract Owner are documented and communicated to staff. 3. The Contract Owner name is recorded in the centralised contract management system. 4. Consider implementing the same recommendations for the role of Contract Manager.
Management Response	<p>Response: Agree with recommendation. Deadline: 28 Feb 2022</p> <p>Response From: Erik Barnes, Acting GM Commercial & Strategy</p>

Service Delivery: Monitoring service delivery and management oversight of contractor	
Risk Rating	High
Findings	<p>Throughout the Council there is mixed performance of contractor monitoring with certain service areas performing this well, while others lacked formalised monitoring processes. We noted:</p> <ul style="list-style-type: none"> • The Roading, Three Waters and Parks service areas perform formal monitoring of contractor service delivery, including aspects such as: <ul style="list-style-type: none"> ○ Roading physically inspect 20% of all contractor claims ○ Parks has an auditor to inspect all parks and some property (toilets)

	<ul style="list-style-type: none"> ○ Water perform onsite inspections. ○ The Management teams within each of the above have regular meetings with their contractor management counterparts to provide oversight of the entire agreement. ● Service areas such as Property and Digital lacked a formal process to monitor their contractor delivery, although these teams did have some processes in place. ● The Water team performing Capex works did not have sufficient records of their inspections performed (paper records were used but not always kept or formalised); This is especially important to resolve as Government stimulus funding has been received in this area and they are likely to receive an audit of their process.
Impact	Insufficient monitoring processes will increase the risk that poor service delivery by contractors is not identified in a timely manner.
Risk Consequence	Moderate (Key service not available to some of the community for ten hours or more, or, Continued service degradation for two days or more)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	Implement policy and procedure to ensure, Council-wide, there is: <ul style="list-style-type: none"> ● Monitoring of contractor service delivery, including recording the outcomes. ● Management level meetings are held with the contractor at time intervals appropriate to the significance and risk of the contract.
Management Response	Response: Agree with recommendation. Implementation 01 March to 30 June 2022 (trial of new policy and procedures will occur through the final months of project delivery in fiscal year 2021/22 enabling FY 2022/23 contracts to fully utilise the new systems in place). Response From: Erik Barnes, Acting GM Commercial & Strategy

Expired Contracts: Not identified and resolved in a timely manner	
Risk Rating	Medium
Findings	<p>There is no formal process in place to identify contracts that are due to expire, which would ensure that either a renewal discussion occurs timely, or the contract is exited appropriately. We note:</p> <ul style="list-style-type: none"> ● For example, the QV contract, expired a year ago and the Group Manager is currently identifying the appropriate course of action to take with the contract.

	<ul style="list-style-type: none"> The Contracts System does allow the reporting of contract by expiry date.
Impact	Without a formal process to monitor contracts due to expire, there is an increased risk that the contract expires without a discussion with the contractor to determine if the service continues or is exited from. This can lead to legal risk around the delivery and responsibilities within the contract.
Risk Consequence	Minor (One-off minor regulatory or legislative non-compliance with potential impact on the community's health or wellbeing)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	Implement a process for regular (i.e. monthly) reporting of contracts due to expire (showing those within at least the next eight weeks), which is sent to the Contract Owner and responsible General Manager.
Management Response	Response: Agree with recommendation. Deadline: 28 Feb 2022 Response From: Erik Barnes, Acting GM Commercial & Strategy

Lawyers, Standard Terms of Contract: Lack of guidance on the use of lawyers to review contracts and the use of Standard Terms of Contract	
Risk Rating	Medium
Findings	<p>There is no formal procedure in place to provide direction about the use of lawyers to review contracts. We note:</p> <ul style="list-style-type: none"> A review by legal is not always required, but there needs to be consideration of key risks that the contract creates and who is best to assess those risks. It could be assessed adequately by a knowledgeable TDC staff member, however at times outside legal advice may be required. <p>Also, there is no guidance available for staff on the use of Standard Terms of Contract and if any Council terms should be required.</p> <ul style="list-style-type: none"> The Council needs to consider if there are certain terms which it requires in certain types of contract. For example, to provide guidance on if third parties can retain a clause which gives them Intellectual Property rights for their deliverables in the engagement. We note the Infrastructure service areas do hold sufficient contract templates including their terms.

Impact	Without sufficient guidance to staff on when to have a legal review or use specific terms of contract, there is an increased risk that the contract contains provisions which are not appropriate and may cause damage to the Council.
Risk Consequence	Minor (One-off minor regulatory or legislative non-compliance with potential impact on the community's health or wellbeing)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	Implement guidance for staff on: 1. When to engage legal review of contracts. 2. Terms of contract which need to be considered and entered into.
Management Response	Response: Agree with recommendation. Deadline: 31 Mar 2022 Response From: Erik Barnes, Acting GM Commercial & Strategy

Financials: Need to provide guidance on expected financial procedures for managing contracts	
Risk Rating	Medium
Findings	<ol style="list-style-type: none"> 1. We noted a variety of processes in place to manage the financials of third-party contracts, with some service areas implementing robust, formal processes, and others containing informal process. Guidance is required to ensure consistency in practice 2. The following findings relate to Council-wide practices: <ol style="list-style-type: none"> a) We noted that an accruals process is not used to monitor contract financials, they are only done on a cash basis i.e. when a contractor invoice is generated. This creates a risk where financial performance is not monitored as closely as can be possible (and deviations are not identified in a timely manner). b) Where invoices are generated by the supplier, they are sent to the contract manager, not to a central Accounts Payable email address. This creates a risk to the organisation of invoices being misplaced and therefore the Council being unaware of costs incurred. We note that Purchase Orders are seldom used. <p>We understand from our interviews that the Council is seeking to increase the use of Purchase Order's and implementing an accruals process.</p>
Impact	Without robust financial processes there is an increased risk of detrimental financial performance within contract agreements.

Risk Consequence	Minor (Financial impact of over \$100k to 250k)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	Consider implementing procedures for: <ol style="list-style-type: none"> 1. Monitoring third party contract financials through an accruals process (not cash process). 2. Ensuring all third-party invoices are emailed directly to the Accounts Payable inbox; and all invoices contain a Purchase Order number (implement a policy of “no purchase order, no pay”) 3. Ensuring Purchase Orders are raised prior to commencing services with a third party.
Management Response	Response: Agree with recommendation. Deadline: 29 Apr 2022 Response From: Erik Barnes, Acting GM Commercial & Strategy

Procurement Policy: Not reviewed in a timely manner	
Risk Rating	Medium
Findings	We note that the current Procurement Policy was last reviewed in 2015. It is important to ensure the policy is reviewed regularly and that all requirements are up-to-date with current Council practices as well as expected Government Procedure Guidelines.
Impact	Without regular review there is an increased risk that the policy does not contain guidance or requirements that is inline with expected practice.
Risk Consequence	Minor (Financial impact of over \$100k to 250k)
Risk Likelihood	Possible (25% to 60% chance of occurring in next 12 months)
Recommendation	Perform a review of the Procurement Policy to ensure it aligns with current Government Procurement Guidelines and existing practices within the Council.
Management Response	Response: Agree with recommendation. Noting the Land Transport Unit is required to review and have their procurement plan approved by Waka Kotahi every three years. Deadline: 28 Feb 2022 Response From: Erik Barnes, Acting GM Commercial & Strategy

Appendix A: Interviews Held

Interviews were held with the following staff.

Role	Name
Acting Group Manager, Commercial & Strategy	Ashley Harper
Group Manager, People & Digital Acting Group Manager, Community Services	Symon Leggett
Group Manager, Environmental Services	Paul Cooper
Group Manager, Infrastructure	Andrew Dixon
Chief Financial Officer	Azoora Ali
Manager of Property Services and Client Relationships	Nicole Timney
Parks and Recreation Manager	Bill Steans
Parks and Recreation Asset Administrator	Stephanie Ford
Parks and Recreation, Contracts and Engagement Officer	Wayne Loveday
Drainage & Water Manager	Grant Hall
Land Transport Manager	Suzy Ratahi
Water Services Senior Administrator	Kate Walkinshaw
Infrastructure, Projects Officer	David Hooke
Water Services Reticulation Engineer	Gerard Cody
Chief Information Officer	Justin Bagust

Appendix B Risk Rating Definitions: Consequence, Likelihood and Response

The risk definitions provided in this Appendix and used throughout this report have been taken directly from the TDC Risk Management Framework.

Categories and Descriptors of Consequence

	1	2	3	4	5
	Insignificant	Minor	Moderate	Major	Extreme
Achievement of the Vision and Community Outcomes	No impact on the Vision and Community Outcomes	Inconvenience or delay in achieving the Vision and Community Outcomes	Significant difficulty introduced to achievement of the Vision and Community Outcomes Lost opportunity to contribute positively to one or more of the Vision and Community Outcomes	Failure to achieve a specific community Outcome Lost opportunity to significantly advance a specific Community Outcome	Failure to achieve multiple Community Outcomes Lost opportunity to significantly advance multiple Community Outcomes
Financial	Financial impact up to \$100k	Financial impact of over \$100k to 250k	Financial impact of over \$250k to \$1M	Financial impact of over \$1M to \$5M	Financial impact of more than \$5m
Health and Safety (customers, staff, contractors)	Minor injury, first aid not required	First aid or minor treatment	Medical treatment required	Serious harm, for example broken bones, hospitalisation	Loss of life; multiple serious harms; permanent severe disability
Service delivery to community	Short-term reduction in service delivery which is easily restored and does not compromise the community's health and wellbeing	Reduced service delivery that does not compromise the community's health and wellbeing	Key service not available to some of the community for ten hours or more Continued service degradation for two days or more	Key service not available to a significant portion of the community for two days or more Continued severe service degradation for one week or more	Key service not available to a large proportion of the community for one week or more Continued severe service degradation for one month or more

	1	2	3	4	5
	Insignificant	Minor	Moderate	Major	Extreme
Organisational capability and capacity	Temporary problem with organisational capability resulting in no impact on external service delivery	Loss of organisational capability in some areas resulting in sub-optimal support to external delivery activities	Organisation unable to function for less than 10 hours Serious reduction in organisational capability for one week or more	Organisation unable to function for more than 10 hours Serious reduction in organisational capability for two weeks or more	Organisation unable to function for more than two days Serious reduction in organisational capability for one month or more
Reputational	Negative feedback from individuals Short-term 'letters to the editor' (or online equivalent) commentary	Short-term loss of confidence among small sections of the community Regional adverse political or media comment for one or two days Sustained 'letters to the editor' (or online equivalent) commentary in usual sources	Short-term and manageable loss of community confidence Regional adverse political or media comment for more than two days Significant social media commentary or campaign from new sources	Loss of community confidence requiring significant time to remedy National adverse political or media comment for more than two days Regional adverse political or media comment for more than one week Requirement for (televised) public explanation	Insurmountable loss of community confidence National adverse political or media comment for more than one week Requirement for (televised) public apology or defence Adverse comments or questions in Parliament
Legislative / regulatory compliance	One-off minor regulatory or legislative non-compliance with no direct impact on the community's health or wellbeing	One-off minor regulatory or legislative non-compliance with potential impact on the community's health or wellbeing	Complaint to the Ombudsman, Auditor-General or other statutory office Multiple related minor non-compliances due to an underlying systemic issue Significant breach or non-compliance resulting in regulatory scrutiny	Significant breach or non-compliance, or multiple breaches or non-compliances, resulting in regulatory action and/or restrictions on Council activities	Court proceeding or criminal action for breach or non-compliance; potential for imprisonment of elected member or staff Judicial review on a matter of rates or other funding, or on a matter with significant financial impact

Categories of Likelihood

Almost certain	90% or greater chance of occurring in next 12 months or Certain to occur in next 5 years and It would be unusual if this didn't happen
Likely	60% to 90% chance of occurring in next 12 months or Expected to occur in next 5 years and It would be unusual if this didn't happen
Possible	25% to 60% chance of occurring in next 12 months or Likely will occur in next five years and Occurrence is always possible
Unlikely	2% to 25% chance of occurring in next 12 months or Expected to occur once every 5 to 20 years and May occur
Rare	Up to 2% chance of occurring in next 12 months or Could occur once every 50 or more years and Will only occur in exceptional circumstances

Risk Rating Matrix

LIKELIHOOD	Almost certain					
	Likely					
	Possible					
	Unlikely					
	Rare					
		Insignificant	Minor	Moderate	Major	Extreme
		CONSEQUENCE				

SEVERITY RATING

LOW	MEDIUM	HIGH	EXTREME
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Risk Response

Overall risk rating	Action	Reporting
Extreme	<p>Urgent and active management required.</p> <p>Risk treatment plan must be implemented immediately to reduce the risk exposure to an acceptable level.</p> <p>Regular reporting required.</p>	<p>Immediate notification to Audit and Risk Committee, Chief Executive and relevant Group Manager. Advise Group Manager Commercial and Strategy to allow tracking of risk.</p>
High	<p>Management attention is required.</p> <p>Risk treatment plan required.</p> <p>Regular reporting required.</p>	<p>Notification to relevant Group Manager.</p> <p>Advise Group Manager Commercial and Strategy to allow tracking of risk.</p>
Medium	<p>Management responsibility to monitor.</p> <p>Focus on ensuring internal controls are effective and monitoring the ongoing risk.</p>	<p>Included on management-level risk registers</p> <p>Group Manager Commercial and Strategy to review risk registers periodically.</p>
Low	<p>Can be monitored using routine practices.</p> <p>Focus on ensuring internal controls are effective.</p>	<p>Included on management-level risk register.</p> <p>Group Manager Commercial and Strategy to review risk registers periodically.</p>



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Timaru District Council

Tax Review: Indirect Taxes and GST



Report

February 2021

Confidential

Prepared for: Ernest Bernard, Risk & Assurance Manager – Commercial & Strategy

Prepared by: Jarod Chisholm, Senior Partner – Tax Advisory
Marilyn Maloney, Manager – Tax Advisory



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Executive Summary

Objective and Scope

The objective of this review will be to assess the adequacy of the systems, processes and controls relating to the management of GST, PAYE, FBT, withholding tax and any other indirect taxes applicable for the Timaru District Council ("the TDC") in terms of compliance obligations.

The scope of the review will encompass the TDC and any relevant components of its operation. The review does not encompass any of the subsidiaries/joint ventures.

The review focused on the income and expenditure lines relevant to indirect taxes and GST and will identify any issues or risks that may need to be considered.

The review was conducted primarily by having discussions, and applying observations, analytical computation and review techniques with detailed testing being undertaken to confirm and verify the treatment of various items identified. We also reviewed relevant contracts and other underlying documentation, as necessary, to understand the nature of the payments and/or receipts, and any implications arising from same.

The detailed scope is included in Appendix 2.

Overview

The TDC is a local government organisation whose purpose under section 10 of the Local Government Act 2002 is: -

- To enable democratic local decision-making and actions by, and on behalf of, communities; and
- To promote the social, economic, environmental and cultural well-being of communities in the present and for the future.

The TDC provides Community Support activities to a wide area.

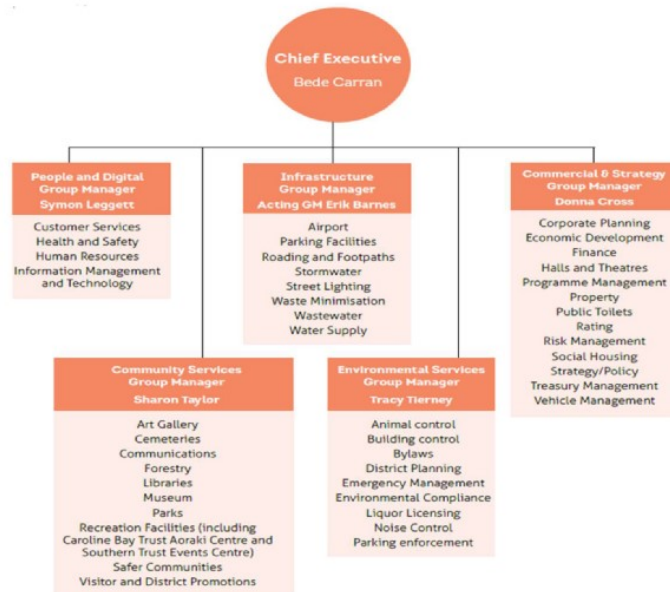
- Airport
- Community Facilities (includes Cemeteries and Public Toilets)
- Community Funding
- Economic Development and District Promotions
- Emergency Management
- Safer Communities
- Social Housing

The TDC has two Council Controlled Organisations (CCO's). They are Venture Timaru and Timaru District Holdings Limited. TDC has no involvement in these entities Indirect tax obligations.

A number of independent contractors are engaged, for a variety of roles within the Council, as is determined appropriate on a case by case basis.



An overview of the TDC structure is below;





Summary of Key Findings

Overall, our review of GST and indirect taxes identified a number of matters to be considered.

We have provided a summary of our significant findings below, and a more detailed outline of the findings is contained in the various tables from page 7 onwards:

GST

GST is a high-risk area for the Council. The system adopted is an Australian based system that has been adapted for use in New Zealand. We were advised that it does not allow you to review the mechanics in the system to ensure that the correct New Zealand GST treatment is being followed therefore providing uncertainty about the figures being produced. Most similar systems would provide an audit report which would set out the GST treatment of the various transactions.

There appears to be inconsistencies with the GST treatment of some of transactions while others appear to claim GST on items that are normally exempt supplies such as Bank Fees, Bonds & Deposits and Interest. While no GST appears to have been returned Uniformed Annual General Rates of \$11,977,717 in the 2021 financial year, we understand that this is due to an agency relationship with ECan. It may be worth reviewing to ensure treatment is correct. While we understand property transactions are reviewed to determine if these are zero-rated, standard-rated or exempt, we were advised that there was concern around the sharing of settlement statements etc.

We therefore suggest that a more in-depth review be completed on the GST system to ascertain the depth of the issues with GST.

We therefore suggest that the Council not only draft the policies surrounding the GST compliance process, how the data for GST calculations is collected as well as clearly defining who is ultimately responsible for compliance with the GST regime. We also recommend reasonableness testing on a monthly basis to ensure that the GST is being returned accurately. Such changes would help to ensure that the GST calculations which are performed are robust and meet all requirements.

FBT

Motor Vehicles

Council policies which have been enacted to reduce the Councils exposure to FBT liabilities have not totally achieved alignment with the FBT rules themselves. Therefore, in several areas, there is potential for an FBT liability to be arising to which the Council is not recording adequately nor including in their FBT calculations. There are also a number of errors identified in the determination of the FBT liability, such as the incorrect number of days in the calculation.

The process is not clearly defined on who is responsible for which tasks nor who is ultimately tasked with the responsibility of ensuring compliance with FBT requirements is met.



We therefore suggest changes to the calculations and that the Council review/update policies surrounding the use of their vehicles and also implement a series of simple but effective changes to both the way in which rules surrounding the use of the Council vehicles is presented to employees, and how the data for FBT calculations is collected as well as clearly defining who is ultimately responsible for compliance with the FBT regime. Such changes would help to ensure that the FBT calculations which are performed are robust and meet all requirements.

We also note that although awareness of FBT requirements is shown by key Council employees, the level of understanding by both users of Council vehicles and those who make decisions regarding their use is not supported by standardised training nor accessible information. This means not all staff with access to Council vehicles are fully informed about the restrictions of use, nor understand the rationale for such restrictions being FBT or otherwise.

Employee understanding of FBT requirements is fundamental to the implementation of an effective internal system for FBT calculations as it is the information generated by employees which form the basis of the information for the calculations. It is also important that employees understand and adhere to any usage restrictions on vehicles to ensure FBT liabilities are not arising of which the Council is left unaware.

Payroll

We reviewed the PAYE process and have found from items sampled that PAYE is being deducted and accounted for correctly with Inland Revenue. There are some risk areas that we have identified from a process perspective and have provided more detail in the Payroll Policy/Process section. These are more around reducing the risk to TDC.

Other matters

Other miscellaneous matters were tested, and comment is made below.

Contractors and Withholding Obligations

There are a large number of contractors engaged on an independent contract basis by the TDC. We recommend that the arrangements be reviewed regularly to determine whether the contractors are contractors and not employees, and that contractors confirm their treatment for GST and Withholding Tax. Ideally this confirmation should be signed by the Contractor lessening the risk to the Council. We also suggest these are reviewed regularly.



Findings and Recommendations: GST

1. GST		Rating of finding: High
Finding	Recommendations	Management comment(s)
<p>GST Treatment Generally</p> <p>1. The Council uses a GST system that was developed in Australia. It does not allow you to review the mechanics in the system to ensure that the correct New Zealand GST treatment is being followed therefore providing uncertainty about the figures being produced. As such, the accuracy of each GST return is solely dependent upon the software calculating this correctly and the data being input correctly.</p> <p>2. We have reviewed the transaction ledger for a sample period and reviewed the coding contained within used to determine the GST to be returned.</p> <p>Some red flags of GST being charged on items that are normally exempt from GST are:-</p> <ul style="list-style-type: none"> a) Bank Fees b) Bonds & Deposits c) Loan Funds Received <p>Some transactions appear to have no GST claimed where it would be expected that there would be a GST charge. For example, Accounting Fees, Legal Costs, Uniformed Annual Charge. The amount of the later is income of \$11,977,717.</p>	<p>GST Treatment Generally</p> <p>1. As we were unable to get any GST reconciliation report to review the GST returns in detail, we recommend a more in-depth review to look at the issues with the GST system to identify exactly which codes are incorrectly having GST.</p> <p>2. There needs to be better reporting around GST to enable the preparer to be able to determine the accuracy of the coding contained within the system.</p>	<p>1. There is little evidence of substantial incorrect coding in the current system however the lack of transparency of the current system, which is inherently part of the Civica Authority financial management system, has been identified previously and potential options being considered including greater clarity from the provider relating to the underlying methodology.</p> <p>2. TDC will continue to advance the discussions with our software provider and obtain external assistance as required.</p>

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1. GST		Rating of finding: High
Finding	Recommendations	Management comment(s)
<p>There also seems to be some inconsistency in GST treatment between years with some items having GST charged in one year and not the next.</p> <p>3. At present the Senior Accountant is having to rely on the final output figures to file the GST without any assurance they are correct.</p> <p>Residential Rental</p> <p>1. The Council owns some community housing. As mentioned previously some staff occupy this type of accommodation. We have been unable to determine whether the GST system charges GST on this supply.</p>	<p>3. We recommend investigating the Uniformed Annual Charge further.</p>	<p>3. Rates which are not included for GST are for Ecan where the Council acts as an agent. Other transactions are included in the monthly review of these but see the preceding notes about review of the processes</p> <p>1. It is unclear the GST on this comment. Supply of residential accommodation is an exempt supply. We would like further clarification on this, in light of SOLGM methodology.</p> <p>1. The definition of entertainment which is partially deductible will be clarified and this should be identified on the same basis as gifts, etc which may be subject to FBT, however the risk relating to this is very small and immaterial as little non-deductible expenditure occurs based on current evidence.</p>



1. GST		Rating of finding: High
Finding	Recommendations	Management comment(s)
<p>GST on Entertainment</p> <p>1. All entertainment expenditure for the current year has been provided on the premises. The Senior Accountant is unaware of any entertainment expenditure being incurred. There is no process in place to advise the Senior Accountant of the cost of any entertainment taking place.</p>	<p>GST on Entertainment</p> <p>1. We recommend that when any type of entertainment is undertaken whether on or off the premises is provided that there be a process of noting any such expenditure to ensure that it is considered for any potential GST or FBT exposure.</p>	



2. GST Policy/Process Recommendations		Rating of finding: High
Finding	Recommendations	Management comment(s)
<p>GST Treatment Generally</p> <ol style="list-style-type: none"> 1. There is no procedures manual on how to process GST. If the current Chief Financial Officer is on leave this poses a risk to the Council. 2. As mentioned previously in the GST section there appears to be inconsistencies between years on whether GST is applied and whether certain transactions are being treated correctly in accordance with New Zealand GST legislation. <p>Land Transactions</p> <ol style="list-style-type: none"> 1. As mentioned under the Contract Section accounting staff are often unaware of the detail of the sales and purchases which has potential GST implications. 	<p>GST Treatment Generally</p> <p>We have identified the following recommendations:</p> <ol style="list-style-type: none"> 1. An GST compliance policy is adopted that clearly sets out who's responsibility it is for ensuring that the councils' internal controls over GST are maintained to an appropriate level as well as defining the roles, requirements and responsibilities of any employee involved to ensure there is accountability for robustness of the GST system. 2. As discussed earlier, a more in-depth review should be undertaken of the GST system to ensure the correct GST is being accounted for per type of transaction. <p>Land Transactions</p> <ol style="list-style-type: none"> 1. A process is recommended to circulate all land transactions to accounting staff, at all times, to ensure GST is accounted for to ensure Council's GST obligations are met. 	<ol style="list-style-type: none"> 1. As noted previously this will be addressed as part of the process mapping and review already initiated. 2. As noted previously this will be reviewed both with the current provider and in assessing alternative methodologies and system. 1. When a sale does occur, the paperwork has been given to Finance to review and check off the treatment of GST - the Council does not do many land transactions.

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<p>Donations</p> <p>1. There is inconsistency on the treatment of GST on donations received and paid.</p> <p>Grants</p> <p>1. Different types of grants are received. Some grants are included for GST purposes and some are excluded. It appears that there is now policy on checking whether GST should be return on the Grant income.</p>	<p>Donations</p> <p>1. Ensure that accounting staff are aware whether a Donation should be GST exempt or not.</p> <p>Grants</p> <p>1. A process is recommended to circulate all grant details to accounting staff, at all times, to ensure GST is accounted for to ensure Council's GST obligations are met.</p>	<p>1. We are not aware of any specific examples where GST has been inappropriately applied however the communication of the basis of assessment around this will be updated and issued to relevant staff for clarity.</p> <p>We do understand that GST does not apply to donations.</p> <p>1. Noted and Agreed. The treatment of grants from a GST perspective can be complex. A member of the finance team will be responsible for overseeing the GST treatment and we will review our process.</p>
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Findings and Recommendations: FBT

3. Fringe Benefits		Rating of finding: Moderate-High
Finding	Recommendations	Management comment(s)
<p>Motor Vehicles and FBT</p> <ol style="list-style-type: none"> The TDC has three different types of motor vehicles. <ol style="list-style-type: none"> 100% FBT Paid Work-related vehicles Pooled Vehicles. Vehicles that are provided to staff as part of their remuneration package with 100% FBT paid on these vehicles. These vehicles have no council logo on them and are used for private use by staff. These vehicles are being treated correctly for FBT purposes. When calculating FBT on vehicles, there is a technical classification of vehicle called a "work related vehicle" which has unique rules around generating (or avoiding) an FBT liability. For a vehicle to be a work-related vehicle it has to meet all the following criteria at all times; <ul style="list-style-type: none"> Not be a motorcar – a motorcar is designed exclusively or mainly to carry people (which includes vehicles that have rear doors and collapsible rear seats) Prominently and permanently display the employer's identification The vehicle <u>must not be available for any private use</u> other than travel to and from an employee's home. 	<p>Motor Vehicles and FBT</p> <p>We have identified the following recommendations:</p> <ol style="list-style-type: none"> Ensure all vehicles meet the work-related vehicle criteria to minimise FBT exposure. Work related vehicles should have periodic checks carried out every 3 months to ensure that the vehicles are not being used for private use. Copies of private use restrictions in employment contracts should be readily available to verify the private use restriction for each work-related vehicle. 	<ol style="list-style-type: none"> We will conduct a visual review of all vehicles to ensure that this requirement is complied with and review the fleet management approach to ensure that it is managed from an FBT perspective. Private usage is currently reviewed at least quarterly, although the methodology for ensuring compliance is being reviewed to improve the efficiency of the process. We will consider the amendment of employment contracts relating to work-related vehicles however we will also consider implementing an annual letter to affected staff.



<p>If a work-related vehicle is made available for any other private use outside of travel to and from work then by definition, it ceases to be a work-related vehicle on those days and becomes subject to FBT like any other motor vehicle.</p> <p>The staff using these vehicles have a clause in their employment contract advising that the vehicles are not to be used for private use. No FBT is paid on these vehicles. No checks, other than for excessive fuel use, are made on these vehicles to see if they are being used for private use outside of any incidental use. Having not sighted these vehicles, we are also unsure if all of these vehicles meet the entire work-related vehicle criteria.</p> <p>4. Pool vehicles are operated on a booking system. All pool vehicles are sign written. There are no private use restrictions in place for these vehicles. These vehicles are therefore, by default, "available" for private use even if they are not used for privately. FBT should therefore be paid on 365 days of the year unless the vehicles are being used for exempt purposes.</p> <p>For vehicles that don't meet the work-related vehicle criteria or is a "work-related vehicle" being used for private outside of allowed home to work criteria, FBT is calculated daily less any "exempt" days.</p> <p>"Exempt" days are days where specific events occur which will negate any private use implications on that day e.g. emergency callouts. There is no formal procedure to capture these days.</p> <p>Currently FBT is only being paid on pooled vehicles where a vehicle has been used for private use. GPS is being checked to determine if there has been any private use by staff. Due to the number of vehicle</p>	<p>4. Written notice should be given to employees who use the Pool vehicles to ensure that they are aware there should be no private use unless approved by their manager. If they do need to use the vehicles for private use, then we suggest that when the vehicle is booked they should indicate this so this can be factored into the FBT calculation.</p>	<p>4. Pool vehicles are not generally available for private use and usage is reviewed to monitor this.</p> <p>We will review the general policy to ensure that the requirements that use be restricted to work usage only is clear in the policy and it will be prominently displayed in each vehicle.</p>
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<p>movements and multiple staff using the pooled vehicles this is a lengthy exercise in trying to determine whether the use is private, or work related without any understanding of the actual use.</p> <p>5. An FBT liability is calculated on the value of the vehicle multiplied by the number of days in the quarter the vehicle is available for private use less any exempt days, or 90, whichever is the lesser and then divided by 90. From the information provided, it appears that when calculating the FBT instead of the number of days in the quarter is being used when this is in excess of 90.</p> <p>FBT and Other Benefits</p> <p>1. Free, subsidised or discounted goods and services provided by the employer may constitute an unclassified benefit. If the value of services is provided to an employee at a price which is less than that provided to members of the general public then a benefit arises.</p> <p>CBay staff currently receive a 25% discount on their pool and gym membership.</p> <p>Council staff are also offered a discounted rate if a minimum number of staff join. If this offer is extended to other large public Corporate clients, then a benefit will not be considered to have arisen. If the discounted offers are only extended to Council staff, then an FBT liability will arise for the Council on the difference between what is charged and the current market value of the service.</p> <p>2. Any second-hand equipment is being sold to staff at book value. There is an FBT exposure for the Council between the market value and the book value if the market value exceeds the current book value.</p>	<p>5. For each FBT quarter ensure that the days available for private use do not exceed 90. Review prior periods and provide a voluntary disclosure to Inland Revenue to get refunded if material.</p> <p>FBT and Other Benefits</p> <p>We have identified the following recommendations:</p> <p>1. Ensure FBT is being captured on any discounted services at below market value where these are not being offered to the public in general.</p> <p>2. Ensure FBT is being captured on any equipment being sold to employees at below market value.</p>	<p>5. We will adjust the calculation methodology as necessary and review the financial implications in the context of materiality parameters.</p> <p>1. This has been reviewed and we have not identified any Council services provided to staff at discounted rates which are not also available to the public or other organisations. As a general principle we would not do so due to public perception of this. This will continue to be monitored on an ongoing basis to ensure that it does not inadvertently occur.</p> <p>2. TDC will further review the extent to which this maybe applied in light of this report.</p> <p>Excess furniture is assessed for value then disposed of to staff accordingly however most of</p>
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<p>3. Gifts provided to employees on their retirement are considered for Fringe Benefit tax. Current practise is that receipts are randomly provided to the Chief Accountant who has to consider whether the de-minimus threshold of \$300 per employee per quarter (\$1200 per annum,) or total employer exemption of \$22,500 has been exceeded in order to determine if FBT should be paid.</p>	<p>3. A register should be kept of any gifts provided to staff upon leaving to ensure no thresholds have been exceeded for FBT purposes. Receipts must also be maintained.</p>	<p>this has no residual value and would not be cost effective to offer externally.</p> <p>3. Gifts for any purpose are separately identified for the FBT return and it is never expected that gifts exceed thresholds. The process for ensuring that the threshold is not exceeded will be more explicitly managed as part of the current FBT methodological review and process improvement. It is intended to refine the process by which the preparer of the FBT returns is advised of this to both ensure compliance but also to improve the efficiency of the process. It is considered extremely unlikely that the thresholds have been exceeded in any year.</p>
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4. Fringe Benefits - Policy/Process Recommendations		Rating of finding: Moderate - High
Finding	Recommendations	Management comment(s)
<p>Motor Vehicles and FBT</p> <ol style="list-style-type: none"> We are unaware of any FBT policy document the requirements and expectations when using Council vehicles. As outlined in the above point 2.3, when dealing with both "general motor vehicles" such as unmarked sedans and "work related vehicles", the FBT consequences are drastically different dependent upon which vehicle is in use. Maintaining an effective internal system for ensuring FBT requirements are met requires that all employees are aware of their responsibilities in relation to FBT and that these are enforced appropriately by managers. <p>An employee's role is primarily related to providing the raw information which forms the basis of the quarterly FBT calculations as well as complying with the restrictions of use on council vehicles. Compliance by employees should be monitored and enforced to ensure that the information which is required to be obtained for FBT purposes is sufficient and reliable.</p> <p>From a higher level, this process needs to be monitored and reviewed to ensure that it is working as intended.</p> <ol style="list-style-type: none"> Currently, Council employees are not given any specific FBT training. When employees request use of a Council vehicle they are given verbal direction about 	<p>Motor Vehicles and FBT</p> <p>We have identified the following recommendations:</p> <ol style="list-style-type: none"> Write a policy around the use of Council motor vehicles to ensure all staff are aware of policy surrounding the use. Create separate requirements of use for general motor vehicles and work-related vehicles to avoid confusion around their use. An FBT compliance policy manual is adopted that clearly sets out whose responsibility it is for ensuring that the council's internal controls over FBT are maintained to an appropriate level as well as defining the roles, requirements and responsibilities of any employee involved to ensure there is accountability for robustness of the FBT system. Letter issued to all staff regarding private use of vehicles and the consequences of such use if it hasn't been approved 	<ol style="list-style-type: none"> As noted above the policy regarding motor vehicle usage is included in the Corporate Policies which are provided to all staff. Communications regarding this policy more frequently to ensure that it is complied with will be addressed as also noted previously. Comments noted and agreed. TDC will refine current documentations. We agree that this should be prepared in the context of completing a full process mapping exercise and the review of methodology and calculation which has been initiated prior to the audit. The suggestion of an annual letter to relevant staff is being considered. It is not expected that a general letter to all staff be sent as for most this is irrelevant. As part of the



<p>their general responsibilities in relation to the use of the vehicle.</p> <p>Employee awareness of actions which have FBT consequences is crucial to the ultimate robustness of FBT calculations as the employees are the ones who interact with the vehicles on a day-to-day basis, and who are tasked with maintaining vehicle log books.</p> <p>5. With a fleet as large as the one the Council operates, that private use of Council vehicles will sometimes occur when it was not authorised. There may also be exceptional cases where the Council approves private use of a vehicle outside the normal allowed scope.</p> <p>The Council should be able to record prospectively any approved exceptional private use as well as retrospectively record any unauthorised use if an employee discloses this. Being able to demonstrate a fixed procedure for such occurrences and keeping records which are included in the FBT calculation is imperative, as it is expected by the IRD that such occurrences are inevitable within large fleets. The Council therefore, should have appropriate procedures in place to ensure compliance with FBT requirements to the greatest extent practicable.</p> <p>6. We are unaware of any cost recovery when an employee may use a motor vehicle for private use beyond that which normal home to work travel.</p> <p>When recovering costs, the main usages must be considered and what basis for cost recovery best reflects that use.</p> <p>An example is for the additional private use, ensuring that fuel is recovered may be satisfactory.</p>	<p>5. Carry out an audit regularly of the vehicle usage using GPS records, rather than using these to confirm if there is any private use or not.</p> <p>6. Create an FBT training module to be included in every employee's induction training when they commence employment with the Council. We would also suggest periodic update sessions. Note: the definition of employee for FBT purposes is anyone on PAYE deducted income as well as any contractors/consultants subject to withholding tax.</p>	<p>general review noted previously the utilisation of the intranet to ensure that information is more readily accessible seems desirable.</p> <p>5. Comments Noted. TDC will review the current methodology requiring review of the GPS records to ascertain potential private.</p> <p>6. Comments noted. This will be considered in the context of wider review of induction processes between Financial Services and People & Capability.</p>
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<p>7. There is no written policy that goods or services provided to staff are at market value, exposing the Council to an FBT liability if they are provided at below market value.</p>	<p>7. The training would include how FBT works as well as explain the rationale for usage limits set by the Council.</p> <p>8. Create an internal recording and feedback procedure for when exceptional and/or unauthorised use of Council vehicles occur.</p> <p>9. An FBT compliance policy is adopted that clearly sets out who's responsibility it is for ensuring that the councils' internal controls over FBT are maintained to an appropriate level as well as defining the roles, requirements and responsibilities of any employee involved to ensure there is accountability for robustness of the FBT system.</p> <p>10. Policy should be made as to whether any costs are to be recovered in relation to additional private use. After this, a decision must then be made on what unit of use to base cost recovery on and how will this be charged.</p> <p>11. Policy should be considered on the provision of goods or services to employees as to ensure that they are provided at market value to restrict any FBT exposure for the Council.</p>	<p>7. Noted.</p> <p>8. The current process should identify this however the policing process will be reviewed to ensure that is the case.</p> <p>9. Noted and agreed, TDC will discuss with wider team.</p> <p>10. The requisite cost recovery is set out in the Corporate Polices for take-home vehicles which would be applied to other relevant vehicles however the application of this will be explicitly clarified.</p> <p>11. A written policy will be promulgated for the current operational practice.</p>
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<p>FBT and Other Benefits</p> <p>1. There is no process on notifying the Chief Accountant on any discounted goods and services or gifts for staff who was unaware of any discounts being provided to staff. Gifts receipts are also randomly dropped off.</p>	<p>FBT and Other Benefits</p> <p>We have identified the following recommendations:</p> <p>1. Write a process on how benefits are to be notified, how any receipts are to be stored, and whose responsibility this will be. For example, staff could complete periodic declarations.</p>	<p>1. The same principles applying to gifts will be applied generically to other similar expenditure including clear guidance to managers regarding this. This will also be noted in the "sensitive expenditure" policy update currently being prepared.</p>
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Findings and Recommendations: Reporting and filing

5. Return obligations		Rating of finding: Moderate
Finding	Recommendations	Management comment(s)
<p>Reporting</p> <ol style="list-style-type: none"> 1. There is no policy regarding amending returns once they have been filed. 2. There is no third party reviewing the reason behind any return amendments or changes to bank account numbers with Inland Revenue. 3. During the period reviewed there was no late filing penalties that we are aware of, however we have been advised that there have been at least two instances from July 2020 to 31 December 2020 GST periods where the tax returns were either filed late or had to be amended. One was due to time constraints with other work and the other due to a misunderstanding with instructions left by previous staff who have left. 	<p>Reporting</p> <ol style="list-style-type: none"> 1. We recommend a policy be implemented amending returns with Inland Revenue. 2. We also recommend period checks of any Inland Revenue correspondence to ensure no bank accounts are being changed with Inland Revenue. 3. We recommend that periodic checks are undertaken to ensure that returns are filed on time. 	<ol style="list-style-type: none"> 1. Amended returns are subject to the same authorisation requirements as original returns and the reason for amending them would be identified clearly. Several independent staff members would be informed directly by IRD if any changes are made to bank accounts.



Findings and Recommendations: Contract Arrangements

6. Contract arrangements		Rating of finding: Moderate
Findings	Recommendations	Management comment(s)
<p>Land Transactions</p> <p>1. The Council has a number of land transactions of residential and commercial properties.</p> <p>As TDC owns both commercial and residential properties, it is important that these are treated correctly. Land transactions often have GST impact, whether they be zero-rated, standard-rated or exempt.</p> <p>Accounting staff have advised that they are often unaware of the detail of the sales and purchases which has potential GST implications. T</p>	<p>Land Transactions</p> <p>We have identified the following recommendations:</p> <p>1. A process is recommended to circulate all land transactions to accounting staff, at all times, to ensure GST is accounted for to ensure Council's GST obligations are met.</p>	<p>1. Processes relating to the acquisition and accounting for assets are under review and the GST elements pertaining to land will be included in that review. It is anticipated that as part of improved project management, accounting and capitalisation processes the purchases to which GST may appertain will be included from an GST perspective.</p>



Findings and Recommendations: Payroll

7. Payroll		Rating of finding: Low
Findings	Recommendations	Management comment(s)
<p>Wages</p> <p>1. The majority of staff are employed on a salary and wage basis. We reviewed the PAYE process and have found from items sampled that PAYE is being deducted and accounted for correctly with Inland Revenue. There are some risk areas that we have identified from a process perspective and have provided more detail in the Policy/Process section.</p>	<p>Wages</p> <p>1. We recommend that the process be reviewed and have provided more details in that section.</p>	<p>1. Unclear what payroll tests were performed. Management to understand what was tested to ensure the extent of testing was comprehensive.</p>
<p>Contractors</p> <p>1. The Council employs a large number of contractors. A check is done when the Contractors first invoice is received whether they require a Withholding Tax to be deducted or not, depending on the type of service the Contractors are providing. The creditors system is updated to reflect a Withholding requirement if it exists. No mention of whether consideration has been given to an employee versus self-employed contractor test for any past staff taken on as contractors.</p> <p>2. Also, if a contractor was to change overtime this may not be picked up.</p>	<p>Contractors</p> <p>1. We recommend that this be reviewed regularly to determine whether the contractors are contractors and not employees.</p> <p>2. We recommend that the contractor fills in a form disclosing whether a contractor or not and if they hold a Certificate of Exemption.</p>	<p>1. Currently our People & Capability Manager has a project underway to provide clarity and documentations for TDC employees. This will assist with the rigor required from the start of the contract to ensure the correct documentation is provided and clarity on status before individuals are commissioned to undertake work for TDC.</p> <p>2. We note that enhancements can be made to the current process and will discuss implementation of these.</p>



7. Payroll		Rating of finding: Low
Findings	Recommendations	Management comment(s)
<p>Termination/Retirements Payments</p> <p>1. We reviewed a sample of termination payments. These payments appear to have been accounted for correctly from a taxation perspective.</p> <p>Allowances</p> <p>1. There are few allowances paid. We would expect that there would be more non-taxable allowances made, particularly around travel, reimbursements etc.</p>	<p>Allowances</p> <p>1. We recommend a review of the allowances paid and the costs incurred by staff members to determine if the treatment of these is correct.</p>	<p>We will review the procedures for engaging contractors to ensure that appropriate checks are consistently done and requisite information, such as Certificates of Exemptions, identified and retained.</p> <p>1. We do not have an appetite for CCO's to be established for ACC Levies. We will consider whether there are legitimate means of reducing ACC Levies. Establishing a CCO is a major undertaking, and amongst other matters requires public consultation. Additionally, it introduces compliance costs, creates income tax consequences for Council etc.</p> <p>2. Aside from this, establishing a CCO solely to reduce ACC levies is not appropriate for a public sector entity.</p>



8. Payroll – Policy/Process Recommendations		Rating of finding: Low
Findings	Recommendations	Management comment(s)
<p>Wages</p> <ol style="list-style-type: none"> Majority of staff are on salaries. The remaining staff are required to record their hours on a manual timesheet. This will then be entered manually into the system. Salaried staff are not always completing a timesheet therefore the system is based on Trust that the employees have completed their hours for the pay period. In light of Covid-19 the Council is more reliant on the honesty of their staff. Changes to bank accounts are generally received via email however the changes are input by the same staff member who sets up all of the staff in the system. No exception report is being printed to ensure no duplicate bank account numbers are being used for staff payments leaving a risk that an employee could use their bank account for multiple staff. When a staff member leaves their staff, profile is not completely locked down. It can be reopened at any stage. This is a risk for ex-employee's accounts to be activated and used dishonestly without an audit trail existing. 	<p>Wages</p> <ol style="list-style-type: none"> We recommend that the Council determines whether all salaried staff need to complete timesheets or only those who need to on-charge their time. This should then be communicated to the staff. We understand these are checked by a second person however we recommend that a report is produced listing any bank account changes and these are verified against source documentation by a different employee to the one that made the changes. We recommend that an exception report be printed to check for duplicate bank accounts being used to mitigate risk of employee theft and that report is checked by a third party separate from the pay process. We recommend that an exception report be run for an ex staff accounts being reactivated. Confirmation of a staff member re-joining the Council should be made directly with that person and not rely on any Payroll staff for confirmation to mitigate any risk. 	<ol style="list-style-type: none"> Bank accounts are checked by a second person, not just the person making the changes. Exception reporting has been implementing. There is an audit report for the Management Accountant to check.



8. Payroll – Policy/Process Recommendations		Rating of finding: Low
Findings	Recommendations	Management comment(s)
<p>Contractors</p> <p>1. Due to the large number of contractors engaged by the Council there is a risk these are categorised incorrectly.</p> <p>Allowances</p> <p>1. There are various types of allowances paid by the Council. Majority of these are being treated as taxable allowances but there could be potential to pay some of these as non-taxable allowances.</p> <p>2. There are a few staff paying for accommodation provided by the Council. These staff are paying market rent therefore appear to have been accounted for correctly.</p>	<p>Contractors</p> <p>1. We recommend that a form is filled out by the contractor confirming their status and signed. It should have notes to notify of changes. A sample of these should also be reviewed for accuracy.</p> <p>Allowances</p> <p>1. We recommend that a review is undertaken as to whether some of these allowances can be paid as non-taxable allowances.</p> <p>2. A review should also be undertaken of reimbursements.</p> <p>3. We recommend a review of the rent being paid by staff occur on an annual basis to confirm and document the current market rate.</p>	<p>1. As noted above Council does not pay many allowances due to sensitive expenditure concerns and the need to consider the use of public funds, however we will review this generally in the context of wider employment remuneration.</p> <p>2. It is unclear as to what this recommendation relates to specifically however we will consider a review of reimbursements and consider the extent that these should be processed through the payroll system.</p> <p>Expense reimbursements are put through finance rather than Payroll</p> <p>3. We will consider a more detailed review of the contracts of</p>

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8. Payroll – Policy/Process Recommendations		Rating of finding: Low
Findings	Recommendations	Management comment(s)
		<p>employment but generally, Council does not pay many allowances as, amongst other considerations, we are mindful of our duties to the ratepayer.</p> <p>4. We are currently considering the automation of this process via our Procure to Pay Automation project, during this phase we will also consider a review of the reimbursements provided to employees, and as appropriate.</p> <p>Regarding the accommodation and market rental, the Commissioners Statement (Para 34, 16/02 which indicates "at least every three years") will be reflected on to decide whether we diarise for annual, bi-annual or tri-annual valuations.</p>



Findings and Recommendations: Donations and Grants

9. Donations/grants/bequeaths		Rating of finding: Low
Finding	Recommendations	Management comment(s)
<p>Donations</p> <p>1. The Council has transactions coded to Donations Received and Donations Paid. Over the past 4 years there have been some minor amounts that have had GST accounted for. Donations are generally an exempt supply.</p> <p>Bequests</p> <p>1. The Council occasionally receives bequests. These are normally exempt from GST. These payments appear to have been accounted for correctly from a taxation perspective.</p> <p>Grants</p> <p>1. Different types of grants are received. Some grants are included for GST purposes and some are excluded. It appears that there is no policy on checking whether GST should be return on the Grant income.</p>	<p>Donations</p> <p>1. See GST Policy/Process Recommendations.</p> <p>Grants</p> <p>1. See GST Policy/Process Recommendations.</p>	<p>1. See comments on donations above.</p> <p>1. See comments on grants above.</p>



Appendices

Appendix 1 – Classification of Findings

Risk ratings are based on the use of professional judgement to assess the extent to which deficiencies could have an effect on the performance of systems and controls of a process to achieve an objective.

Rating	Definition	Guidance	Action required
High	<ul style="list-style-type: none"> Issue represents an incorrect interpretation, or a potentially incorrect interpretation but of high value, which could cause or is causing non-compliance with New Zealand tax legislation. 	<ul style="list-style-type: none"> An incorrect approach or interpretation has been adopted which could or has resulted in a tax shortfall. The amounts involved could result in an enquiry from the IRD and there may be insufficient basis to support the position being taken 	<ul style="list-style-type: none"> Requires a review of the position being taken and remedial action is required. Requires immediate attention.
Moderate	<ul style="list-style-type: none"> Issue represents a potentially incorrect interpretation, which could cause or is causing non-compliance with New Zealand tax legislation. 	<ul style="list-style-type: none"> The position needs to be more carefully reviewed and worked through to ensure that any position adopted is at least taking an acceptable interpretation for taxation purposes. The amounts involved may not be significant, but the issue has wide application in terms of volumes of transactions or numbers of people affected. 	<ul style="list-style-type: none"> Requires a review of the position being taken and remedial action may be required. Requires prompt review.
Low	<ul style="list-style-type: none"> Issue represents a minor potential issue but is one that should be considered. 	<ul style="list-style-type: none"> Events, operational and business There is a potential for non-compliance. The matter should be reviewed and either sufficient records should be collated and maintained to support the position, or the approach could be changed. 	<ul style="list-style-type: none"> Requires a review of the position taken and options for addressing any issue going forward. Requires action commensurate with the issue.



Appendix 2 – Detailed Scope

The review considered and assessed the effectiveness of the following under each of these key compliance elements:

Timely filing of requisite information – noting that this was not to be a key focus of the review as the TDC considers itself to be compliant in this regard.

- GST returns and GST assessment records
- PAYE and FBT information/return lodgement and assessment records
- Other indirect tax returns and assessment records, as appropriate
- Accounting policies and procedure documentation

Reporting and maintenance of complete, timely and accurate information

- Review GST and indirect tax compliance system setting processes and security
 - Completeness of coverage and correctness of system settings
 - GST and indirect tax compliance working papers and related calculations
 - Processes for periodically validating GST and indirect tax compliance process outputs
 - Proof of ledger tax account balances
 - Proof of systems gross ledger integrity to gross GST return values
 - Proof of systems recording and deducting PAYE and accounting for correct FBT amounts
 - Proof of systems to calculate, record and account for withholding tax obligations.
 - Sight a sample of transaction documentation, particularly tax invoices and contracts, payroll sample and sample employment agreement
 - Unusual/rare/high value transactions review
 - Review the adequacy of reconciliations between the TDC's financial accounting systems and Inland Revenue assessments and records
 - Advice previously received and related implementation
 - Tax compliance culture
 - Tax policies, tax training and compliance staff access to technical support.

Payment of tax on time

- Process documentation and adherence to this in practice

Particular focus on instances of changes in systems, legislative requirements and/or staff including absences.



Appendix 3 – Basis and Use of this Report

This report is prepared on the basis of the limitations set out below:

- Our procedures were performed according to business standards and guidelines taking into account the tax laws of New Zealand as they relate to GST and indirect taxes.
- Because of the inherent limitations of any internal review, it is possible that errors or irregularities may occur and not be detected. Our procedures were not designed to detect issues that arise from an industry and taxpayer perspective, but it is not possible to review each entry to ensure the correctness of the treatment.
- The matters raised in this report are only those which came to our attention during the course of performing our review and are not necessarily a comprehensive statement of all issues or breaches that exist or improvements that might be made. We cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud. Accordingly, management should not rely on our report to identify all weaknesses that may exist in the systems and procedures under examination, or potential instances of non-compliance that may exist.
- Recommendations for improvement should be assessed by management for their full commercial and taxation impact, before they are implemented.
- This Report is not to be used by any other party for any purpose nor should any other party seek to rely on the opinions, advice or any information contained within this Report. In this regard, we recommend that specific targeted advice be sought on matters to be addressed. Crowe disclaims all liability to any party other than the client for which it was prepared in respect of or in consequence of anything done, or omitted to be done, by any party in reliance, whether whole or partial, upon any information contained in this Report. Any party, other than the client for which it was prepared, who chooses to rely in any way on the contents of this Report, does it so at their own risk.

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1. Executive Summary

Purpose of the Internal Audit Plan

The purpose of this Internal Audit Plan is to provide the Council and the Audit and Risk Committee with a balanced risk-based approach to gaining assurance over its risk management and internal control environment.

The plan has needed to recognise and account for the continuous significant Council and economic impact from Covid-19. This has forced a refreshed view over risk and control coverage, and the internal audit delivery approach. Reviews now need to ensure internal audit engagement focuses on important and relevant coverage to support Council through the lockdown and recovery. This has resulted in planned coverage for 2021/22 including:

- *Lockdown key controls assurance (continued if applicable);*
- *Rates setting, billing, remissions & collection.*
- *Accounts payable, banking and transaction controls.*
- *Payroll Processing*
- *Capital spend/project management: Sample test and review key project controls.*
- *Probity/sensitive expenditure controls, analysis and sample-test.*
- *Internet Usage at Work by Staff.*
- *Cash Control Review*
- *Management of Forestry*

As the Council control environment matures and the organisation manages disruption and returns to a new normal post Covid-19, our aim continues to not solely focus on stewardship, but also leadership and influencing. Accordingly the plan consists of engagements reflecting a need to keep our house in order and manage disruptions. This is reflected in our coverage of key controls within core and inherently high risk activity, combined with a fresh perspective of reviews covering heightened risk activity that is more temporary or outside of normal operation (such as those noted above).

The Internal Audit Plan will also undergo regular review to ensure scheduled reviews and focus remains relevant when considering the fluid pandemic and economic emergency.

Development of the Internal Audit Plan

There is an intention to focus on extending the plan to continue to a three year horizon, maintaining alignment with Council's risk management efforts, and keeping a realistic delivery that provides core and targeted coverage over key risks and controls.

We have utilised available risk registers, senior management engagement, External Consultants knowledge base, methodology and insights from wider NZ Councils, and our experience within TDC to identify and prioritise assurance coverage. This allows internal audit to take a risk and control approach for each engagement at the planning, execution and reporting stages.

The risk assessment and reference to assurance coverage is summarised in Section 2. The resulting plan is detailed in Sections 3.

An outline of the process followed to produce the Internal Audit Plan is included below:

- Consideration of resourcing and the Council's pandemic response/recovery challenges, with a preference toward application over heightened risks and controls.
- Utilised risk identification, treatment and ongoing exposure at Chief Executive, Group Manager and Unit Manager's meetings to identify and evaluate updates and changes to risks and associated mitigations.

- Discussed Internal Audit Plan and Scope with Deloitte

Council context

Some key context in considering internal audit coverage and approach:

- New Zealand is responding and recovering from a global pandemic crisis (Covid-19), which will have lasting and profound effects on people, economies and businesses.
- The Council is an organisation with approximately 396 staff disbursed across multiple sites, \$62m operating spend (excluding depreciation) and with \$1B approximately asset base.
- Risk management maturity is ongoing with areas to be brought to a level of better understanding and discipline for capturing, escalating and managing risks.

Internal Audit objective and scope

Internal Audit has a core objective, scope and coverage outlined in its Charter. The Internal Audit Plan maintains alignment with these and will deliver a mix of evaluation, assurance and improvement advice.

Alongside the independent assurance role, a key principle of Internal Audit is to add value by assisting Council achieve its objectives. There are a number of ways in which internal audit seeks to support Council in achieving its objectives/goals and outcomes whilst fulfilling its assurance role.

These include:

- Engaging with the business and stakeholders to provide leadership, advice and foster improvements in controls and control-environment;
- Building capability and platform to develop and deliver nimble focused reviews along with a continuous assurance programme as different forms of key-control assurance;
- Providing capacity to deliver prompt reactive assurance engagements (for example concerning, crises response, matters of probity, fraud or potential conflicts of interest);
- Evaluation and practical relevant advice for risk management improvement, efficiency and economy of resources, and business processes (rather than merely assessment); and
- Continued engagement with the business, post review completion, ensuring visibility, accountability and remediation of issues raised in reports.

2. Assurance Plan Summary

The proposed Internal Audit Plan is presented in summary below, with indication of period scheduled and reference to risk coverage. The Plan will continue to be monitored for potential change to ensure it remains dynamic, and assurance coverage is appropriately prioritised.

The full objective and scope of these engagements along with resourcing, will be confirmed during the review planning stage and agreed with the relevant Review Sponsor.

#	Review	21/22	22/23	23/24
Core / cyclic coverage				
Key financial risk coverage				
1.	Rates setting, billing, remissions & collection.	✓		
2.	Development Contributions inputs, setting and billing.		✓	
3.	Accounts payable, banking and transaction controls.	✓		
4.	Payroll processing.	✓		
5.	Capital spend/project management: Sample test and review key project controls.	✓	✓	✓
6.	Operational spend monitoring/management.		✓	
7.	Financial controls: reconciliations, reporting, ledger administration and overhead/internal allocations.		✓	
8.	Probity/sensitive expenditure controls, analysis and sample-test.	✓		✓
9.	Contract management.			
10.	Procurement.		✓	
Key business risk coverage				
11.	Internet Usage at Work by Staff.	✓		
12.	Health & Safety.			✓
13.	Employee recruitment.			
14.	LIMs preparation, billing and issuing.			
15.	Fraud prevention/governance.		✓	
16.	Licence/consent/registrations: billing, cost-recovery, issuing & compliance.			
17.	Alcohol licence - billing, issuing, & compliance			
18.	Food licence - billing, issuing, & compliance			✓
19.	Resource consent – billing & issuing		✓	
20.	Resource consent – enforcement			✓
21.	Building consent – billing & issuing		✓	
22.	Building consent – enforcement			

#	Review	21/22	22/23	23/24
23.	Animal control - billing, issuing, & enforcement		✓	
24.	Parking - enforcement & collection			✓
25.	Site operational controls, cyclic visit: (Pools, community facilities, service desks, libraries, nurseries, park-sites).		✓	
26.	Subsidiary governance/monitoring and financial service controls.			
27.	Resource consent compliance.		✓	
28.	Policy Management		✓	
29.	Management of Forestry	✓		
Non-cyclic coverage				
30.	Lockdown key controls assurance (if applicable)	✓	✓	✓
31.	Wastewater systems review		✓	
32.	Cash Control Review	✓		
33.	Facilities maintenance and security			✓
34.	Treasury & cash flow management.		✓	
35.	GST, PAYE and FBT tax compliance evaluation			
36.	IT software licence management			✓
37.	Credit management			
38.	Procurement framework review			
39.	Asset purchase and disposal (non-construction)			
40.	Infrastructure renewals planning and prioritisation			
41.	Parks management/operations			
42.	Property Lease Management			
43.	Drinking water and trade-waste billing			
44.	Grant award: application evaluation, payment & performance			
45.	Events: booking, billing, management			
46.	Privacy / Public Records Act compliance			

3. Detailed Internal Audit Plan 2021/22

	Review Name	Review Description	Area	Risk Category	Number of Hours	When
1.	Rates setting, billing, remissions & collection.	<p>Rates are the Council's primary funding source. Compliance with the Local Government (Rating) Act 2002 (LGRA), for rates setting and collection, is critical to ensure that rates are validly set and not at risk of challenge.</p> <p>The Council needs to ensure that it has appropriate processes in place, including seeking legal advice where appropriate, to ensure its rates and rating processes, comply with legislation.</p>	Commercial & Strategy	Legislation /Regulatory	Outsource	Q3
2.	Accounts payable, banking and transaction controls.	<p>The objective of the review is to provide assurance to:</p> <ul style="list-style-type: none"> • Ensure adequate internal controls exist over the AP, banking and transactions processes and that those controls are operating effectively. • Evaluate AP, banking and transactions processes for operating efficiencies and applicability of best practices. 	Commercial and Strategy	Financial	Outsource	Q2
3.	Payroll Processing	To provide assurance that there are effective controls in place carrying out Payroll activities by:	Engagement and Culture	Human Resources	200	Q2

		<ul style="list-style-type: none"> • Reviewing current process (Inc. pay runs, time sheeting, adding, editing and terminating employees from payroll system) • Assessing process to best practice • Transactional testing (where required) • Application of payroll policy • Leave policy and process review and application • Review and reporting 				
4.	Capital spend/project management: Sample test and review key project controls.	<p>The review will cover:-</p> <ul style="list-style-type: none"> • The commencement of any project that is supported by a project plan which sufficiently clearly defines and confirms the scope of the project, how it can be delivered and managed together with defined roles and responsibilities. • Clear project critical success factors should be determined at the project justification stage and monitored against throughout and at the end of the project. • It is essential that a project has specific, well defined and measurable benefits identified so that Council can ensure the benefits used to justify the investment in the project are delivered in practice. • Consider the use of formal independent 	Infrastructure and Commercial & Strategy	Operations	200	Q3

		<p>Project Quality Assurance arrangements to help provide comfort that the project is being conducted appropriately and complies with management standards and policies.</p> <ul style="list-style-type: none"> Clearly define change management approval processes including where appropriate the definition and application of tolerance levels for such changes or deviations from plan. Ensure the governance and accountability structure in place for the project continues through to the formal project closure approval Risk is captured throughout the project and managed appropriately. All risks is identified, analysed and treated with appropriate action plans. 				
5	<p>Probity/sensitive expenditure controls, analysis and sample-test.</p>	<p>The objective of the review was to assess the effectiveness of TDC’s animal control processes to ensure that they are undertaken in accordance with overarching Policies, Plans and Bylaws and risks are managed appropriately.</p>	<p>Council Wide</p>	<p>Council Wide</p>	<p>120</p>	<p>Q4</p>
6	<p>Internet Usage at Work by Staff.</p>	<p>The purpose of the audit is to provide assurance to management that the controls which it has put</p>	<p>Council Wide</p>	<p>Council Wide</p>		<p>Q2</p>

		<p>in place to manage key risks relating to the use of the Internet and electronic communications are effective. The audit will cover the following:-</p> <ul style="list-style-type: none"> • that systems are not misused within working hours, leading to reduced employee efficiency and financial loss; • that systems are used to access or distribute are not illegal or unacceptable material; leading to reputational damage or legal liability • that the use of systems does not impede network performance and leads to reduced efficiency; and 				
7	Cash Control Review	<p>To determine if internal controls surrounding cash handling practices appropriately mitigate the risk of misappropriation of Council funds.</p> <ul style="list-style-type: none"> • To determine if cash controls are robust enough to mitigate risk of loss. • To review cash handling procedures and test historical cash documents' compliance with established policies. 	Council Wide	Council Wide	200	Q3
8	Management of Forestry	<p>The objective of the audit is to evaluate the adequacy and effectiveness of the internal controls, processes and procedures in place to mitigate the business risks associated with managing Forestry. The audit approach will include a review of Council policies and procedures, tree planting, contractor</p>	Infrastructure	Parks and Recreation	200	Q2

		performance and payment processing, data analyses of transactional and work order data, physical sampling of records, and interviews with staff and management.				
8	Lockdown key controls assurance (if applicable)	To carry out nimble test on key financial and business controls are in place	Council Wide	Council Wide	120	When lockdown is declared by Government

Total Hours 1040 hours

Available hours for 1 person: (2072 hours less AL, SL, PH and Training and less Q1 480 hours) 1040 hours

Resourcing (1040/1040) 1 FTE

Strategy to carry out the above audits.

- 1. Risk and Assurance Manager together with Risk and Assurance Officer will carry out 5 of the audits**
- 2. 2 of the audits will be outsourced**