



PALMERSTON NORTH CITY COUNCIL

AGENDA

COUNCIL

9AM, WEDNESDAY 1 DECEMBER 2021

COUNCIL CHAMBER, FIRST FLOOR,
CIVIC ADMINISTRATION BUILDING
32 THE SQUARE, PALMERSTON NORTH

MEMBERS

Grant Smith (Mayor)	
Aleisha Rutherford (Deputy Mayor)	
Brent Barrett	Patrick Handcock ONZM
Susan Baty	Leonie Hapeta
Rachel Bowen	Lorna Johnson
Zulfiqar Butt	Billy Meehan
Vaughan Dennison	Orphée Mickalad
Renee Dingwall	Karen Naylor
Lew Findlay QSM	Bruno Petrenas

AGENDA ITEMS, IF NOT ATTACHED, CAN BE VIEWED AT

pncc.govt.nz | Civic Administration Building, 32 The Square
City Library | Ashhurst Community Library | Linton Library

Heather Shotter

Chief Executive | PALMERSTON NORTH CITY COUNCIL

Te Marae o Hine | 32 The Square
Private Bag 11034 | Palmerston North 4442 | New Zealand
pncc.govt.nz

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CITY

COUNCIL MEETING

1 December 2021

ORDER OF BUSINESS

1. Apologies

2. Notification of Additional Items

Pursuant to Sections 46A(7) and 46A(7A) of the Local Government Official Information and Meetings Act 1987, to receive the Chairperson's explanation that specified item(s), which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded, will be discussed.

Any additions in accordance with Section 46A(7) must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

Any additions in accordance with Section 46A(7A) may be received or referred to a subsequent meeting for further discussion. No resolution, decision or recommendation can be made in respect of a minor item.

3. Declarations of Interest (if any)

Members are reminded of their duty to give a general notice of any interest of items to be considered on this agenda and the need to declare these interests.

4. Confirmation of Minutes

"That the minutes of the ordinary meeting of 3 November 2021 Public be confirmed as a true and correct record."

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REPORTS

5. **Adoption of Elected Members' Code of Conduct 2021** Page 15
Memorandum, presented by Hannah White, Democracy & Governance Manager.
6. **Council Work Schedule** Page 45

RECOMMENDATIONS FROM COMMITTEE MEETINGS

7. **Presentation of the Public Arts, Culture & Heritage Committee Recommendations from its 17 November 2021 Meeting** Page 49
8. **Presentation of the Public Finance & Audit Committee Recommendations from its 24 November 2021 Meeting** Page 53
9. **Exclusion of Public**

To be moved:

"That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered		Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution
10.	Minutes of the ordinary meeting - Part II Confidential - 3 November 2021	For the reasons setout in the ordinary minutes of 3 November 2021, held in public present.	
11.	Award of Contract - Healthy Homes Compliance Upgrades	Negotiations	s7(2)(i)
12.	Award of Contract -	Commercial	s7(2)(h) and s7(2)(i)

	Papaioea Place Stage 3	Activities and Negotiations	
13.	District Licensing Committee Appointment Process	Privacy	s7(2)(a)
14.	Wastewater Best Practicable Option Project - Consenting Phase Implementation	Third Party Commercial and Legal Privilege	s7(2)(b)(ii) and s7(2)(g)
15.	Request for Additional Funding for Chief Executive Performance Review Panel	Third Party Commercial	s7(2)(b)(ii)
16.	Part IIB: Chief Executive's Performance Review 2020/21 [Limited circulation]	Privacy	s7(2)(a)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Also that the persons listed below be permitted to remain after the public has been excluded for the reasons stated.

[Add Third Parties], because of their knowledge and ability to assist the meeting in speaking to their report/s [or other matters as specified] and answering questions, noting that such person/s will be present at the meeting only for the items that relate to their respective report/s [or matters as specified].

PALMERSTON NORTH CITY COUNCIL

Minutes of the Council Meeting Public, held in the Council Chamber, First Floor, Civic Administration Building, 32 The Square, Palmerston North on 03 November 2021, commencing at 9.03am

Members Present: Grant Smith (The Mayor) (in the Chair) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Apologies: Councillor Leonie Hapeta, Grant Smith (The Mayor) (early departure)

Mayor's comments

The Mayor updated Council on the following items:

He congratulated Chris Waller from the Manawatu for training the Melbourne Cup winning horse Verry Elleegant.

The Mayor acknowledged the passing of Emeritus Professor Wayne Edwards, former President of Institute of the Pacific United (IPU). Mr Edwards dedicated 29 years of his working life to Massey University and 10 years to IPU. On behalf of the Council, the Mayor passed on condolences to his wife Judith.

128-21 Apologies

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That Council receive the apologies.

Clause 128-21 above was carried 15 votes to 0, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Declaration of Interests

Councillor Renee Dingwall declared an interest in Item 6 Appointment as Zone 3, Local Government New Zealand representative (clause 131-21) and Item 7 Additional Portfolio Appointments for 2019-2022 triennium (clause 132-21) and abstained from voting.

Councillor Lorna Johnson declared an interest in Item 7 Additional Portfolio Appointments for 2019-2022 triennium (clause 132-21) and abstained from voting.

129-21 Confirmation of Minutes

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That the minutes of the ordinary meeting of 6 October 2021 Public be confirmed as a true and correct record.

Clause 129-21 above was carried 15 votes to 0, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

REPORTS

130-21 Annual Meeting Calendar 2022

Memorandum, presented by Hannah White, Democracy and Governance Manager.

The calendar will be amended so that the Environmental Sustainability Committee on 30 March meets at 9am rather than 1pm.

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That Council adopt the Annual Meeting Calendar 2022 (Appendix 1) (as amended).

Clause 130-21 above was carried 15 votes to 0, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad,

Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Moved Karen Naylor, seconded Vaughan Dennison.

On an amendment: That the Council agree to change the Committee of Council meeting from the 10th May to the 11th May at 1pm.

The amendment was lost 4 votes to 10, with 1 abstention, the voting being as follows:

For:

Councillors Vaughan Dennison, Billy Meehan, Orphée Mickalad and Karen Naylor.

Against:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Renee Dingwall, Patrick Handcock ONZM, Lorna Johnson, Bruno Petrenas and Aleisha Rutherford.

Abstained:

Councillor Lew Findlay QSM.

Councillor Renee Dingwall declared a conflict of interest and abstained from voting.

131-21 Appointment as Zone 3, Local Government New Zealand representative
Memorandum, presented by Hannah White, Democracy and Governance Manager.

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That Council adopt the Mayor's recommendation to appoint Councillor Renee Dingwall as one of Palmerston North City Council's representatives to the Local Government New Zealand Zone Three Group for the remainder of the 2019-2022 term.

Clause 131-21 above was carried 14 votes to 0, with 1 abstention, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Abstained:

Councillor Renee Dingwall.

Councillors Renee Dingwall and Lorna Johnson declared a conflict of interest, and abstained from voting.

132-21 Additional Portfolio Appointments for 2019-2022 triennium

Memorandum, presented by Hannah White, Democracy and Governance Manager.

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

1. That Council note the appointment of Councillor Lorna Johnson as lead contact person for MaLGRA in the People and Community Portfolio.
2. That Council note the appointment of Councillor Renee Dingwall as lead contact person for the Pasifika community in the People and Community Portfolio.

Clause 132-21 above was carried 13 votes to 0, with 2 abstentions, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Lew Findlay QSM, Patrick Handcock ONZM, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Abstained:

Councillors Renee Dingwall and Lorna Johnson.

133-21 Council Work Schedule

The Chief Executive informed Council that the update report on the Three Water reforms will be presented during December.

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That the Council receive its Work Schedule dated November 2021.

Clause 133-21 above was carried 15 votes to 0, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

RECOMMENDATIONS FROM COMMITTEE MEETINGS

134-21 Planning & Strategy Committee Public - 20 October 2021

Consideration was given to the Planning & Strategy Committee's recommendations below.

Moved Aleisha Rutherford, seconded Patrick Handcock ONZM.

The Future Use of 17 Summerhays Street (Former Terrace End Bowling Club) - Deliberations on Submissions

RESOLVED

1. That the future use of 17 Summerhays Street (Former Terrace End Bowling Club) be confirmed for housing.
2. That the Chief Executive be directed to further investigate the need, design and location of any public green space to support the repurposing of 17 Summerhays Street for housing as part of the necessary amendments to the District Plan and/or resource consent process.
3. That the Chief Executive be directed to initiate a District Plan change to enable the proposed repurposing of 17 Summerhays Street for housing.
4. That it be noted that should the District Plan be amended to enable the repurposing of 17 Summerhays Street for housing, the District Plan change process will include public submissions and an assessment of potential environmental effects, including those identified in submissions received on the Future Use of 17 Summerhays Street Statement of Proposal.
5. That it be noted that should the Council wish to repurpose 17 Summerhays Street for housing in advance of a District Plan change, the Council could consider a resource consent application.

Clause 134-21 above was carried 14 votes to 0, with 1 abstention, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Abstained:

Councillor Rachel Bowen.

135-21 Finance & Audit Committee Public - 27 October 2021

Consideration was given to the Finance & Audit Committee's recommendation below.

Moved Susan Baty, seconded Karen Naylor.

Quarterly Performance and Financial Report - Quarter Ending 30 September 2021

RESOLVED

1. That the memorandum titled 'Quarterly Performance and Financial Report – Quarter Ending 30 September 2021' presented to the Finance & Audit Committee on 27 October 2021, be received.

Clause 135-21 above was carried 14 votes to 0, with 1 abstention, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Abstained:

Councillor Rachel Bowen.

EXCLUSION OF PUBLIC

136-21 Recommendation to Exclude Public

Moved Grant Smith, seconded Aleisha Rutherford.

RESOLVED

That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered		Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution
12.	Minutes of the ordinary meeting - Part II Confidential - 6 October 2021	For the reasons set out in the ordinary minutes of 6 October 2021, held with public present.	
13.	District Plan Change Hearings 2022-2023 - Appointment of	Privacy	s7(2)(a)

	Commissioner		
14.	Electoral Officer appointment and other considerations for the 2022 Local body election	Third Party Commercial	s7(2)(b)(ii)
15.	Part IIB: Chief Executive's Performance Review 2020/21 [Limited circulation]	Privacy	s7(2)(a)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Clause 136-21 above was carried 13 votes to 2, the voting being as follows:

For:

The Mayor (Grant Smith) and Councillors Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan, Orphée Mickalad, Bruno Petrenas and Aleisha Rutherford.

Against:

Councillors Brent Barrett and Karen Naylor.

The public part of the meeting finished at 9.47am

Confirmed 1 December 2021

Mayor

MEMORANDUM

TO: Council

MEETING DATE: 1 December 2021

TITLE: Adoption of Elected Members' Code of Conduct 2021

PRESENTED BY: Hannah White, Democracy & Governance Manager

APPROVED BY: Sheryl Bryant, Assistant Chief Executive

RECOMMENDATION TO COUNCIL

1. That Council adopt the Elected Members' Code of Conduct 2021 (Attachment 1).
 2. That Council amend the Delegation Manual - Delegations to Chief Executive to read:

Section X: The Chief Executive or Legal Counsel to assign a panel of three independent persons from the approved list of independent persons to hear a code of conduct complaint.

Section Y: Legal Counsel to appoint independent investigators for code of conduct complaints, from approved list of independent investigators.

Section Z: Legal Counsel to appoint mediator for code of conduct complaints from the Arbitrators' and Mediators' Institute of New Zealand.
 3. That a report be brought to Council to establish a list of independent persons to hear code of conduct complaints, for 2022 and the following triennium in the first instance, and every following triennium.
 4. That a report be brought to Council to establish a list of independent investigators to review code of conduct complaints, for 2022 and the following triennium in the first instance, and every following triennium.
-

1. ISSUE

- 1.1 A code of conduct outlines the behaviours expected by elected members and the process to resolve complaints against the code.
- 1.2 The Council's current Code of Conduct was adopted on 24 April 2017. The review provision in the Code states that the Council will formally review the Code as soon as practicable after the beginning of each triennium.
- 1.3 Officers recommend that adopting the Local Government New Zealand (LGNZ) model template 2019 (with amendments to suit Palmerston North's

context) is the best approach to bring Council's Code of Conduct up to the date and in line with best practice.

- 1.4 The Local Government Act 2002 (LGA) requires Council to have a current code of conduct. That code can be amended or replaced by a new code of conduct at any time, but in either case, requires a vote of not less than 75% of the members present.

2. BACKGROUND

- 2.1 The current code was originally based on a LGNZ template produced at the time the LGA came into force. Since that time, new codes have been progressively adopted with each triennium so that the current code is now significantly different from both the original 2002 code and from the current 2019 LGNZ template.
- 2.2 The Council's code was reviewed in 2015, and then re-adopted in 2017 with one amendment to allow only elected members and the Chief Executive to initiate complaints.

3. THE REVIEW PROCESS

- 3.1 Officers conducted a desktop review comparing the differences between the current Palmerston North City Council Code of Conduct and the LGNZ Model 2019. This resulted in a briefing paper which was presented to elected members, who were asked to consider the differences between the current PNCC code of conduct and the LGNZ model and comment on which they prefer.
- 3.2 Officers have reflected on feedback from elected members and propose Attachment 1. The main changes proposed are:
 - 3.2.1 **Agree to use the LGNZ Model Template** and to adapt it where necessary. The model is easy to understand, concise and has an improved format.
 - 3.2.2 **Code to apply to elected members only.** This is a standard approach across New Zealand. The current code of conduct includes appointed members, but changes in 2017 allowed only an elected member or the Chief Executive to initiate a complaint. This change was made prior to there being any appointed members to committees.

Palmerston North City Council (PNCC) currently has six appointed members on its committees, they include the five iwi representatives and the independent member on the Finance and Audit Committee.

Officers recommend that appointed members be excluded from the code of conduct, because the same level of public accountability does not apply to them. Council has different types of appointed members, whose conduct is managed through either contractual or partnership obligations.

- 3.2.3 **Retain the current PNCC complaints process.** The current complaints process allows for a more informal approach to be taken before a complaint is escalated for investigation which allows for minor grievances to be heard and resolved without starting a formal investigation.

Several suggestions to strengthen the current complaints process are noted in Section 5 below.

- 3.2.4 **Full Council to determine code of conduct complaints.** This is in-line with current Council practice.

- 3.2.5 **Complaints Panel and Council deliberation on Panel's recommendations to be held in public unless there are grounds under the Local Government Official Information and Meetings Act to warrant it being held in closed session.** Having an expectation that consideration of complaints will be held in public unless there are justifiable reasons not to, ensures transparency of the democratic process and enables the public to hold their elected members to account. Any complaint that involves a staff member, would likely be held in confidential session to protect the privacy of the officer (as the Chief Executive has a legal obligation to protect the wellbeing of their employees).

- 3.2.6 **Not include the LGNZ model reference to not blocking social media posts in Appendix A: Guidelines on the Personal use of Social Media.** This has been replaced with an emphasis on the important role of members being able to communicate the decisions of council in a courteous and professional manner.

- 3.3 Suggestions made by members which officers have not included in the draft code of conduct are:

- 3.3.1 **Remove requirement for elected members to attend compulsory training courses.** Officers recommend this be included in the code as it is reasonable to expect elected members to acquire the necessary knowledge to make informed decisions and grow in their leadership capacity in a way which promotes teamwork and fair access to knowledge.

- 3.3.2 **Allow code complaints to be received in writing to the Mayor, Deputy Mayor or Chief Executive.** This suggestion was to manage instances when the Chief Executive was involved in the incident of a complaint. Members considered it inappropriate for the Chief Executive to receive a complaint which involves them.

Current practice is for complaints to be in writing to the Chief Executive. This protects the privacy of all parties involved in the complaint. When an incident of a complaint involves the Chief Executive, Officers recommend Council's Legal Counsel receive such complaints rather than an elected member. The complaint process has been revised to manage such a scenario.

Limiting those who can receive complaints limits the risk to the privacy of the parties involved, ensures fair process that other elected members would not know about a complaint before the member to whom the complaint applies, and protects the integrity of the process.

3.4 Other changes

Officers have added a new Appendix B which guides how elected members respond to queries on Council litigation. This comes from Council resolutions from 1997 and 1999.

4. THE DRAFT CODE OF CONDUCT

4.1 Given the age of the current PNCC code of conduct, the proposed draft in Appendix 1 has been based on the LGNZ Model template. The template has been amended to incorporate the points listed above. Changes have been tracked against the model.

4.2 The code of conduct is self-policing; only elected members or the Chief Executive can make a code complaint against an elected member. Council officers and members of the public cannot make a code complaint, but a member or the Chief Executive could make a complaint on their behalf.

4.3 The Code acknowledges the use of social media and Appendix A provides guidance for how members should navigate the difference between speaking on behalf of Council and speaking about Council. Members need to be mindful of how they portray themselves online. Social media content that members post in their capacity as an elected member may be captured by code complaints, even where content posted on private accounts is not captured by the Local Government Official Information and Meetings Act.

5. THE COMPLAINTS PROCESS

5.1 Officers recommend that the current complaints process is adopted with some amendments noted below to promote timeliness and to simplify the process.

5.2 The complaints process has been described in full and presented in a flowchart (Appendix D: Making and Withdrawing a complaint) to make it easier to follow.

5.3 Officers have made a few additional changes to the current complaints process:

Support for all parties

5.4 Officers have included the right for the parties involved in a complaint (the parties) to bring a support person to any meeting they attend (during the process) and to give both parties five working days' notice of any meeting to reflect good faith.

Complaints against elected members that involve the Chief Executive

- 5.5 Officers suggest that when a complaint against an elected member involves the Chief Executive, the written complaint be addressed to the Council's Legal Counsel, who will be responsible for informing the relevant people to commence the process (see 3.3.2).

Preliminary investigation stage

- 5.6 The current complaints process lists a number of possible investigators, which differs depending on who made the complaint (see Table 1 below). Taking into consideration the additional scenario of a code complaint that involves the Chief Executive, the list would be increase by two.

Table 1: Possible list of investigators – for Preliminary Investigation stage

Complaint made by member against:	Investigated by:
a councillor(s) (not the Deputy Mayor)	Mayor and Chief Executive
NEW: a councillor(s) and involves the Chief Executive	Mayor and independent legal counsel
the Mayor or Deputy Mayor	Chief Executive and independent legal counsel
NEW: The Mayor or Deputy Mayor and involves the Chief Executive	Independent legal counsel
Complaint made by CE against:	Investigated by:
a councillor(s) (not the Deputy Mayor)	Mayor and independent legal counsel
the Mayor or Deputy Mayor	independent legal counsel

Officers believe this list is becoming overly complicated and recommend this stage be changed so that all preliminary investigations are completed by an external investigator regardless of where the complaint derives from.

- 5.7 A list of possible external investigators, with relevant experience could be appointed by Council at the beginning of the triennium.

Mediation

- 5.8 The current complaints process requires the investigators to appoint an independent mediator (which is mutually agreed by both parties) within 15 days of the investigator's report being written. If no mutually agreed mediator has been appointed within 20 working days, an independent mediator from the Arbitrators and Mediators Institute of New Zealand should be appointed.
- 5.9 Officers suggest that the Council's Legal Counsel appoint an independent mediator from the Arbitrators and Mediators Institute of New Zealand within 15 working days.

Hearings of complaints

- 5.10 The current complaints process requires that if mediation does not succeed that three (suitably qualified) members of the public will be appointed to form a panel to hear the complaint. This panel will be appointed by the Council.
- 5.11 Officers recommend that Council agrees a list of independent persons at the beginning of each triennium, for a three-year term, and delegate the authority to the Chief Executive or Legal Counsel to assign three people from the list to sit on a code of conduct panel (if needed). This could be formalised by amending the Delegations Manual to read:

Section X The Chief Executive or Legal Counsel to assign a panel of three independent persons from the approved list of independent persons to hear a code of conduct complaint.

- 5.12 Council does not currently have any appointed independent persons, who could form a code of conduct panel. Officers recommend a list of independent persons is created for 2022- 2025 and brought to Council for approval in early 2022.
- 5.13 Delegating this responsibility to officers allows greater timeliness, rather than Council trying to appoint independent persons during a complaint process as the time needed to advertise, find suitable candidates to be an independent person and seek council approval would significantly delay the complaints process.

6. NEXT STEPS

- 6.1 If adopted, the code of conduct will be published on the Council's website and circulated to members.
- 6.2 Lists of independent persons and investigators will be brought to Council for approval by early 2022.

7. COMPLIANCE AND ADMINISTRATION

Does the Council have delegated authority to decide?	Yes
If Yes quote relevant clause(s) from Delegations Manual	
Are the decisions significant?	No
If they are significant do they affect land or a body of water?	
Can this decision only be made through a 10 Year Plan?	No
Does this decision require consultation through the Special Consultative procedure?	No
Is there funding in the current Annual Plan for these actions?	Yes
Are the recommendations inconsistent with any of Council's policies or	No

plans?	
The recommendations contribute to Goal 5: A Driven & Enabling Council	
<p>The recommendations contribute to the achievement of action/actions in Governance and Active Citizenship</p> <p>The action is: Ongoing review of governance systems and structures to support Council's effectiveness and reputation.</p>	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	The Code of Conduct outlines the expected behaviour of elected members and how complaints will be managed. This is a tool to ensure effective decision making can occur.

ATTACHMENTS

1. Draft Code of Conduct 2021 (track changed) [↓](#) 



Draft Elected Members' Code of Conduct

<u>Adopted by</u>	<u>Palmerston North City Council on 1 December 2021</u>
<u>Next review date</u>	<u>December 2022 (beginning of Council triennium)</u>
<u>Relevant legislation</u>	<u>Local Government Act 2002, Schedule 7, cl. 15</u>

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1. Introduction

The Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- Enhance the effectiveness of the local authority Council and the provision of good local government of the community and the city, district or region;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Council to its communities; and
- Develop a culture of mutual trust, respect and tolerance between the members of the Council and between the elected members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in the code.

2. Scope

1

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all elected members, ~~including the members of any local boards as well as the members of any community boards~~ that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- Each other;
- The Chief Executive and staff;
- The media; and
- The general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the Council to give effect to its statutory responsibilities.

The Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.



2.3. Values

The Code is designed to give effect to the following values:

1. **Public interest:** members will serve the best interests of the people of Palmerston North within their community, district or region and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner;
3. **Ethical behaviour:** members will act with honesty and integrity at all times and respect the impartiality, expertise and integrity of officials;
4. **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
6. **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.
7. **Equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.⁴

These values complement, and work in conjunction with, the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002.

3.4. Role and responsibilities

The Code of Conduct is designed to strengthen the good governance of your Palmerston North City Council, district or region. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

3.14.1 Members

The role of the governing body includes:

⁴-See Code of Conduct Guide for examples.



- Representing the interests of the people of ~~the city, district or region~~ Palmerston North;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its long term plan;
- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

3.24.2 Chief Executive

The Chief Executive is the only person directly employed by the Council itself (s.42 LGA 2002). All concerns about the performance of a member of staff must, in the first instance, be referred to the Chief Executive.

The role of the Chief Executive under the Local Government Act includes:

- Implementing the decisions of the Council;
- Providing advice to elected members.
- Ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of the ~~local authority~~; Council
- facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the ~~local authority~~ Council;
- Providing leadership for the staff of the Council; and
- Employing, on behalf of the Council, ~~the staff of the local authority~~, (including negotiation of the terms of employment for those staff).

4.5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

4.15.1 Relationships between elected members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that:

- Maintains public confidence;
- Is open, honest and courteous;



- Is focused on issues rather than personalities;
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoids aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.

Please note, nothing in this section of the Code is intended to limit robust debate.

4.25.2 Relationships with staff

An important element of good governance involves the relationship between a Council, its chief executive and its staff. The Chief Executive is the employer of all Council employees, only the Chief Executive can hire, dismiss, instruct or censure any employee. Members will respect arrangements put in place to facilitate this relationship, and:

- Raise any concerns about employees, officers or contracted officials with the Chief Executive;
- Raise any concerns about the performance or behaviour of the Chief Executive with the Mayor/~~Chair~~ or the chairperson of the Chief Executive Performance Review Committee ~~(however described)~~;
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer;
- Treat all employees with courtesy and respect and not publicly criticise any employee;
- Not do anything which compromises, or could reasonably be seen as compromising the impartiality of a council officer; and
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees.

Please note, elected members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's annual audit.

4.35.3 Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that Councils have the respect and trust of their citizens. To facilitate trust and respect in their Council members will:

- Ensure their interactions with citizens are fair, honest and respectful;
- Be available to listen and respond openly and honestly to citizens' concerns;
- Represent the views of citizens and organisations accurately, regardless of the member's own opinions of the matters raised; and



- ~~Ensure their interactions with citizens and communities uphold the reputation of the local authority Council.~~

6. Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role, the media needs access to accurate and timely information about the affairs of Council. Any failure by member to comply with the provisions of this section can represent a breach of the Code.

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

- The Mayor is the first point of contact for the official view on any issue. Where the Mayor is absent, any matters will be referred to the Deputy Mayor or relevant committee chairperson.
- The Mayor may refer any matter to the relevant committee chairperson or to a member holding a relevant portfolio or to the Chief Executive for his or her comment.
- No other member may comment on behalf of the Council without having first obtained the approval of the Mayor
-

In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, ~~committee or community board~~, or are expressing a personal view. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:

- Comments shall be consistent with the Code;
- Comments must not purposefully misrepresent the views of the Council or the views of other members;
- Social media pages controlled by members and used for making observations relevant to their role as an elected members should be open and transparent, except where abusive or inflammatory content is being posted; and
- Social media posts about other members, council staff or the public must be consistent with section five of this Code. (See **Appendix A** for guidelines on the personal use of social media).

7. Information



Access to information is critical to the trust in which ~~a local authority~~ Council is held and its overall performance. A failure to comply with the provisions below can represent a breach of the Code.

7.1 Confidential information

In the course of their duties members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

[See Appendix B for how Elected Members could respond to queries from the public around claims or litigation against Council.](#)

7.2 Information received in capacity as an elected member

Occasionally members will receive information from external parties which is pertinent to the ability of their Council to properly perform its statutory duties. Where this occurs, and the information does not contravene the privacy of natural persons, the member will disclose such information to other members and ~~for~~ the ~~C~~ehief ~~E~~xecutive as soon as practicable.

8. Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's ~~spouse~~/partner has a pecuniary interest, such as through a contract with the Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*. Members may also contact the Office of the Auditor-General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.



Please note: Failure to observe the requirements of LAMIA could potentially invalidate a decision made, or the action taken, by the Council. Failure to observe these requirements could also leave the elected member open to prosecution (see **Appendix C**). In the event of a conviction elected members can be ousted from office.

9. Register of Interests

Members ~~shall~~must, at least annually, make a declaration of interest. These declarations are recorded in a public Register of Interests maintained by the Council. The declaration must include information on the nature and extent of any interest, including:

- a) Any employment, trade or profession carried on by the member or the members' ~~spouse~~/partner for profit or gain;
- b) Any company, trust, partnership etc for which the member or their ~~spouse~~/partner is a director, business partner or trustee;
- c) A description of any land in which the member has a beneficial interest within the jurisdiction of the ~~local authority~~Council; and
- d) A description of any land owned by the ~~local authority~~Council in which the member or their ~~spouse~~/partner is:
 - A tenant; or
 - The land is tenanted by a firm in which the member or their spouse/partner is a business partner; a company of which the member or their spouse/partner is a director; or a trust of which the member or their spouse/partner is a trustee.
- e) Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note, where a member's circumstances change, they must ensure that the Register of Interests is updated as soon as practicable.

10. Ethical behaviour

Members will seek to promote the highest standards of ethical conduct. Accordingly, members will:

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Not influence, or attempt to influence, any Council employee, officer or ~~other~~ member in order to benefit their own, or families, personal or business interests;
- Only use the Council's resources (such as facilities, staff time, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- Not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where



a gift to the value of \$50 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

Any failure by members to comply with the provisions set out in this section represents a breach of the code.

11. Creating a supportive and inclusive environment

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment or evaluation of the Council's performance and operating style during the triennium.²
- Taking all reasonable steps to acquire the required skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of Palmerston North City.~~the city, district or region.~~

12. Disqualification of Members from Office

Elected members are automatically disqualified from office if they:

- Are convicted of a criminal offence punishable by two or more years imprisonment; or
- Breach the provisions of or are convicted of an offence under the Local Authorities (Members' Interests) Act 1968; or
- Cease to be or lose their status as a parliamentary elector.

Elected members who are declared bankrupt must notify the Chief Executive as soon as practicable after being declared bankrupt. The Chief Executive will then notify the Mayor and all other elected members.

13. Breaches of the Code

Members must comply with the provisions of ~~the this~~ Code (LGA 2002, schedule 7, cl. 15(4)). Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member may make a complaint to that effect. All

²~~A self-assessment template is provided in the Guidance to the code.~~



complaints will be considered using the complaints procedures outlined in Appendix D.
~~Principles~~

~~The following principles will guide any processes for investigating and determining whether or not a breach under the code has occurred:~~

- ~~• That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;~~
- ~~• That the processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and~~
- ~~• That the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, directly affected parties:~~
 - ~~○ Have a right to know that an investigation process is underway;~~
 - ~~○ Are given due notice and are provided with an opportunity to be heard;~~
 - ~~○ Have confidence that any hearing will be impartial;~~
 - ~~○ Have a right to seek appropriate advice and be represented; and~~
- ~~Have their privacy respected~~

14. Penalties and actions

Where a complaint is ~~determined to be material and~~ referred to the Council ~~or an adjudicative body established to consider complaints~~, the nature of any penalty or action will depend on the seriousness of the breach.

11.2 Material breaches

~~In the case of material breaches of the Code, Where there are no statutory provisions, if the Council, or the adjudicative body with delegated authority,~~ may require one of the following:

1. A letter of censure to the member;
2. A request (made either privately or publicly) for an apology;
3. Removal of certain Council-funded privileges (such as attendance at conferences);
4. Removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
5. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. Limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
7. A vote of no confidence in the member;
8. Suspension from committees or other bodies to which the member has been appointed; or
9. Invitation to the member to consider resigning from the Council.

~~A Council or adjudicative body with delegated authority~~ may decide that instead of a penalty, one or more of the following may be required:



- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

11.3 14.1 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under LAMIA);
- Breaches which result in the Council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s.44 LGA 2002 which may result in the member having to make good the loss or damage); or
- Breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

12.15. Review

Once adopted, the Code continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code. Amendments to the Code require a resolution supported by 75 per cent of ~~the members of the Council~~ elected members present at the Council meeting at which the amendment is considered.

~~The Councils are encouraged to will~~ formally review their ~~existing~~ Code ~~and either amend or re-adopt it~~ as soon as practicable after the beginning of each triennium in order to ensure that all members have the opportunity to provide their views on the Code's provisions.



Appendix A: Guidelines on the personal use of social media³

There's a big difference in speaking "on behalf of Council" and speaking "about" the Council. While your rights to free speech are respected, please remember that citizens and colleagues have access to what you post. The following principles are designed to help you when engaging in **personal or unofficial online** communications that may also refer to your Council.

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
2. **You are responsible for your actions.** Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense.
3. **Be an "advocate" for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.
4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.
5. **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
6. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.
7. **Elected Members' social media pages should be open and transparent.** Members have a role in communicating the decisions of council in a courteous and professional manner. When commenting on matters related

³ Based on the Ruapehu District Council Code of Conduct.



to ~~the local authority~~Council no members should represent themselves falsely via aliases or differing account names.

~~or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.~~



Appendix B: Protocol on Responding to Queries on Council Litigation⁴

Elected Members are under a strict responsibility not to divulge confidential information in relation to any potential claim or action against the Council.

In the event that Members are approached relating to matters that are the subject of a potential claim or action against the Council, they should respond in the following manner:

Refer any queries from the public relating to any potential claim to the Chief Executive, or relevant General Manager

Express absolutely no opinion on the validity or otherwise of Council's actions, or of the complainant's claim.

If pressed, undertake only to offer to put any concerns a plaintiff may about the manner in which a claim is being dealt with by the Council, to the Council.

HOW SHOULD A MEMBER RESPOND?⁵

- Listen to concerns.
- Seek clarification.
- Refer person to appropriate agency, eg. Chief Executive, Solicitor, Consultants, Dispute Tribunal, etc.
- Relay information to Chief Executive or appropriate manager of the Council.
- Advocate on behalf in a limited capacity to the Council.
- Notify the Chief Executive where notice of intention to make a claim against the Council is given, or there are facts present which involve the assertion of action against the Council.

WHAT SHOULDN'T A MEMBER DO?

- Admit liability
- Settle or make or promise any payment
- Do anything that may prejudice the insurers defence of litigation.
- Disclose any information that the Councillor has received by way of confidential briefings on the litigation matter.

⁴ Resolution Council 23 June 1997

⁵ Resolution Council 26 April 1999



Appendix C: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz.

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their ~~spouse~~ partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- A person, or ~~spouse~~ partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their ~~spouse~~ partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected member's¹ family trust and the Council.

Determining whether a pecuniary interest exists

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned." (OAG, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?



- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor/~~Chair~~ or other person, to determine if they should discuss or vote on an issue, but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

The contracting rule

A member is disqualified from office if he or she is "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

"Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.



Members focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise, however ~~he/she/they~~ must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another ~~Councillor-member~~ is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.



Crimes Act 1961

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- Use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

The Local Government Act 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles, and details the personal liability of members.

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

- a) Money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) An asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) A liability has been unlawfully incurred by the local authority; or
- d) A local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.⁸⁹⁰

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) Without the member's knowledge;
- b) With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) Contrary to the manner in which the member voted on the issue; and
- d) In circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.



In certain situation members will also be responsible for paying the costs of proceedings (s47 LGA 2002).



Appendix D: Making and withdrawing a complaint

Principles

The following principles will guide any the processes for investigating and determining whether or not a breach under the code has occurred:

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- That the processes of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- That the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This includes, conditional on the nature of an alleged breach, directly affected parties:
 - Have a right to know that an investigation process is underway;
 - Are given due notice at least five working days' notice before any meeting and are provided with an opportunity to be heard;
 - Have confidence that any hearing will be impartial;
 - Have a right to seek appropriate advice and be represented at any meeting they attend during the process; and
 - Have their privacy respected.
- A complaint can be withdrawn at any stage.

Definition of Terms

Independent Investigator - person responsible for investigating the complaint at the preliminary stage.

Parties – to mean the person(s) who made the complaint and the elected member(s) who the complaint is about.

Independent legal counsel – legal counsel not employed by the Council.

Making a Complaint

- A complaint can be initiated by any elected member(s) or the Chief Executive.
- It must be in writing to the Chief Executive unless it involves the Chief Executive, in which case it should be presented to the Council's Legal Counsel.



- Allegation of a breach must indicate which part of the code has been breached and include supporting evidence. (the complaint).

Informal Resolution

Depending on the persons involved in the complaint, the complaint will be reviewed by either the Chief Executive, Mayor or independent legal counsel, who will endeavour to settle it informally.

All parties will be given a copy of the full complaint, (and supporting evidence) at least five working days before the meeting and will be offered the opportunity to bring a support person to any meeting they attend (during the process).

The table below outlines who is responsible for reviewing the complaint depending on who made the complaint.

<u>Complaint from:</u>	<u>Reviewed by:</u>
<u>an elected member</u>	<u>Chief Executive</u>
<u>an elected member but involves the Chief Executive</u>	<u>independent legal counsel</u>
<u>the Chief Executive against a councillor (not the Deputy Mayor)</u>	<u>Mayor</u>
<u>the Chief Executive against the Mayor or Deputy Mayor</u>	<u>independent legal counsel</u>

If no resolution can be found, the complaint will progress to a preliminary investigation.

Preliminary investigation

Council's Legal Counsel will appoint an independent investigator to conduct a preliminary investigation to ascertain if there has been a breach of the code of conduct.

A preliminary investigation involves the investigator(s) conducting a thorough review of the complaint to ascertain if there is a breach of the code of conduct.

- The investigator will meet with both parties separately. Both parties will be given a copy of the full complaint, (and supporting evidence) at least five working days before meeting the investigator and will be offered the opportunity to bring a support person to any meeting they attend.
- The investigator will gather any other evidence they need to reach a decision.
- The investigator will write a report detailing their findings and stating whether or not they consider there is a case to answer including reasons.
- Report will be shared with all parties.

~~Depending on the persons involved in the complaint, the complaint will be investigated by one of the groups below and a written report produced.~~

Complaint made by member against:	Investigated by:
a councillor(s) (not the Deputy Mayor)	Mayor and Chief Executive
a councillor(s) (not the Deputy Mayor) but involves the Chief Executive	Mayor and independent legal counsel
the Mayor or Deputy Mayor	Chief Executive and independent legal counsel
the Mayor or Deputy Mayor but involves the Chief Executive	Independent legal counsel

Complaint made by CE against:	Investigated by:
a councillor(s) (not the Deputy Mayor)	Mayor and independent legal counsel
the Mayor or Deputy Mayor	independent legal counsel

~~If the report concludes that there is no breach of the code of conduct. The complainant has 10 working days of the date of the report, to express their intent to pursue the complaint otherwise the complaint is considered withdrawn.~~

~~A complaint will proceed to mediation if:~~

~~— Investigators are unable to agree the outcome the complaint, or~~

- ~~• If the report states that there is a case to answer, or~~
- ~~• The complainant gives written notice of their intent to pursue the complaint within 10 working days of the date of the report.~~

Mediation

~~Mediation involves appointing a mediator to try and resolve the complaint.~~

~~If the complaint proceeds to mediation,;~~

~~The Council's Legal Counsel investigators must appoint an independent mediator from the Arbitrators and Mediators Institute of New Zealand within **15 working days** of the date of the report.~~

~~— Investigators will endeavour to appoint a mediator agreeable by both parties to resolve the complaint.~~

~~However, if no mediator can be agreed within **20 working days** of the date of the report, the investigators may appoint a mediator from the Arbitrators and Mediators Institute of New Zealand~~

~~Mediation will be private, confidential and the agreed settlement binding on the parties.~~

- The mediator will inform the investigators whether or not an agreement was reached.
- The Council's Legal Counsel to inform Council if the complaint is resolved, excluding the specifics of the resolution.

Hearing of complaint by Independent Persons

If an agreement is not reached at mediation, a hearing of independent persons is/will be scheduled/arranged to hear the complaint.

- The Chief Executive or Council's Legal Counsel will inform and assign three independent persons (from the list appointed by Council) that a hearing needs to occur.
- A date to hear the complaint will be agreed with the independent persons.
- All paperwork will be sent to both parties **at least 20 working days** before the date of the hearing.
- The independent persons will decide if the hearing is to be held in public or private.
- Both parties (and supporters) may speak at the hearing and may table or pre-circulate any relevant documents.
- The independent persons will deliberate on all the evidence and submissions in private and will prepare a report to the Council which will recommend whether the complaint should be upheld and any actions to be taken (refer to 14 Penalties and actions).

Deliberation of Independent Persons' Report

- The Council will determine whether the independent persons' report is to be considered in public or private.
- All elected members involved in the complaint should declare an interest and not participate in deliberations.
- The Council will consider the report and may adopt, modify or reject the recommendations and proposed penalty or action. If it rejects the recommendations, Council must re-hear the complaint before making a different decision.

COMMITTEE WORK SCHEDULE

TO: Council

MEETING DATE: 1 December 2021

TITLE: Council Work Schedule

RECOMMENDATION TO COUNCIL

1. That the Council receive its Work Schedule dated December 2021.

ATTACHMENTS

1. Work Schedule - Council [!\[\]\(f2fdbbba686c1099e6b2b8779766e2d3_img.jpg\)](#) 

COUNCIL

WORK SCHEDULE – December 2021

Item No.	Estimated Report Date	Subject	Officer Responsible	Current Position	Date of Instruction/ Point of Origin
1	December 2021	Central Economic Development Agency (CEDA) - Shareholding arrangements	Chief Planning Officer	In progress – expected 20 December 2021	Council 21 December 2020 Clause 157-20
2	December 2021	Three Waters Reforms – report on Government guidance regarding the next steps	Chief Executive	In progress – expected 20 December 2021	Council 1 September 2021 Clause 89-21
3	December 2021	Creation of Adaptive Management Systems Governance Group	Chief Planning Officer/ Assistant Chief Executive	In progress – expected 20 December 2021	Council 15 September 2021 Clause 108-21
4	March 2022	Remits from PNCC	Assistant Chief Executive		Council 24 June 2020 Clause 69-20
5	April 2022	Manawatū Residents' card	Assistant Chief Executive	In progress	Council 25 May 2020 Clause 48-20
6	May 2022	Remits received from other Territorial Authorities	Assistant Chief Executive		Council 24 June 2020 Clause 69-20

CONFIDENTIAL DECISIONS RELEASED

Meeting date	Report Title	Released	Not Released
15 September 2021	Request for support for Manawatū Jets	Redacted report	Appendices – Withheld LGOIMA s7(2)(h) Commercial Activities
6 October 2021	Trustee Appointments to Globe Theatre Trust Board	Report and resolution	Appendix Withheld LGOIMA s7(2)(a) Privacy
3 November 2021	District Plan Change Hearings 2022-2023 - Appointment of Commissioner	Report, resolution and division	Appendix Withheld LGOIMA s7(2)(a) Privacy
3 November 2021	Electoral Officer appointment and other considerations for the 2022 Local body election	Redacted report, resolution and division	N/A

More information on the decisions released can be found on [released decisions](#)

RECOMMENDATIONS FROM COMMITTEE

TO: Council

MEETING DATE: 1 December 2021

TITLE: Presentation of the Public Arts, Culture & Heritage Committee Recommendations from its 17 November 2021 Meeting

Set out below are the recommendations only from the Arts, Culture & Heritage Committee meeting Part I Public held on 17 November 2021. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

28-21 Caccia Birch Trust Board - Annual Report 2020-21

Memorandum, presented by Hannah White, Democracy & Governance Manager and Grant O'Donnell, Chair.

The **COMMITTEE RECOMMENDS**

1. That Council receive the Caccia Birch Trust Board's Annual Report 2020-21 (Attachment 2 of the memorandum titled 'Caccia Birch Trust Board – Annual Report 2020-21'), presented to the Arts, Culture & Heritage Committee on 17 November 2021.

29-21 The Regent Theatre Trust - Annual Report 2020-21

Memorandum, presented by Hannah White, Democracy & Governance Manager and David Walsh, Manager.

The **COMMITTEE RECOMMENDS**

1. That Council receive the Regent Theatre Trust Board's Annual Report 2020-21 (Attachment 2 of the memorandum titled 'The Regent Theatre Trust – Annual Report 2020-21'), presented to the Arts, Culture & Heritage Committee on 17 November 2021.

30-21 The Globe Theatre Trust - Annual Report 2020-21

Memorandum, presented by Hannah White, Democracy & Governance Manager and Gerry Keating, Manager.

The **COMMITTEE RECOMMENDS**

1. That Council receive the Globe Theatre Trust Board's Annual Report 2020-21 (Attachment 2 of the memorandum titled 'The Globe

Theatre Trust – Annual Report 2020-21'), presented to the Arts, Culture & Heritage Committee on 17 November 2021.

31-21 **Te Manawa Museums Trust - Annual Report 2020-21**

Memorandum, presented by Hannah White, Democracy & Governance Manager and Andy Lowe, Chief Executive.

The **COMMITTEE RECOMMENDS**

1. That Council receive Te Manawa Museums Trust Board's draft Annual Report 2020-21 (Attachment 2 of the memorandum titled 'Te Manawa Museums Trust – Annual Report 2020-21'), presented to the Arts, Culture & Heritage Committee on 17 November 2021.

32-21 **Statements of Expectation for Cultural Council Controlled Organisations 2022-2023**

Memorandum, presented by Gillian Tasker and Stephanie Velvin, Community Development Managers.

The Regent report that they have addressed the final issue in the table under Section 2, Development of the Statement of Intent. They have reviewed employee leave procedures and reduced employee leave liabilities accordingly. Officers recommended that this item be removed from the Regent's SOE.

The **COMMITTEE RECOMMENDS**

1. That Council approve the Statements of Expectation for Te Manawa Museums Trust, Regent Theatre Trust (as amended), and Globe Theatre Trust (Attachments 1–3 of the memorandum titled 'Statements of Expectation for Cultural Council Controlled Organisations 2022-2023'), presented to the Arts, Culture & Heritage Committee on 17 November 2021, as the basis for the Statements of Intent 2022–2025.

34-21 **Feasibility and Process for Establishing a Heritage Advisory Panel**

Memorandum, presented by David Murphy, Chief Planning Officer.

During discussion, Elected Members felt that Palmerston North had a unique story to tell, and that consideration of a Heritage Advisory Panel should be referred to the 2022/23 Annual Budget.

The **COMMITTEE RECOMMENDS**

1. That the Chief Executive is directed to prepare a programme to establish a Heritage Advisory Panel to be considered as part of the

2022/23 Annual Budget.

2. That it be noted that should the Council wish to proceed with the establishment of a Heritage Advisory Panel it will be recommended that:
 - The panel is a volunteer community-based panel that helps scope research of heritage themes to be addressed as part of the delivery of Council activities
 - The panel contains Rangitāne representation
 - The membership and terms of reference of the panel are prepared in consultation with Rāngitane, Manawatū Heritage Trust and other interested heritage stakeholders.

RECOMMENDATIONS FROM COMMITTEE

TO: Council

MEETING DATE: 1 December 2021

TITLE: Presentation of the Public Finance & Audit Committee Recommendations from its 24 November 2021 Meeting

Set out below are the recommendations only from the Finance & Audit Committee meeting Part I Public held on 24 November 2021. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

78-21 Victoria Esplanade Hospitality Review

Report, presented by Kathy Dever-Tod, Manager - Parks and Reserves and Aaron Phillips, Senior Parks Planner.

The COMMITTEE RECOMMENDS

1. That Council allow the Lions Club to sell a restricted selection of non-café food and drink items, in the Victoria Esplanade, as part of the operation of their proposed mini-golf course.
2. That Council note lease discussions between the Council and the café tenant are progressing and that officers will report back to the Council on the requested extension to the café lease in due course.
3. That once lease negotiations have concluded, the Chief Executive issues licences, under delegation, to a limited number of mobile vendors, with restrictions on trading hours and products for sale, to enable them to trade at the Victoria Esplanade.

79-21 Palmerston North Airport Ltd - Statement of Expectations 2022-24

Memorandum, presented by Steve Paterson, Strategy Manager - Finance.

During discussion Elected Members proposed amendments to the Statement of Expectations, as follows:

Section 3(iii) Environmental Impacts: replace the words 'national goal' with 'PN City Council goal'; and remove phrase 'below 2005 levels' to align with PN City Council policy.

The COMMITTEE RECOMMENDS

1. That the memorandum titled 'Palmerston North Airport Ltd – Statement of Expectations' presented to the Finance & Audit

Committee on 24 November 2021, be received.

2. That the Statement of Expectations for Palmerston North Airport Ltd 2022-24 be adopted, as amended.

82-21

Waka Kotahi New Zealand Transport Agency 2021-24 National Land Transport Plan Funding Allocation

Report, presented by Sandra King, Acting Transport and Infrastructure Manager.

During discussion Elected Members were of the opinion that the state of the transport network means Council needs to use all available tools to manage the impacts of heavy traffic, and requested a report back to the Planning & Strategy Committee on process and options, including use of bylaws, to establish and enforce heavy vehicle routes in the city's urban transport network.

The **COMMITTEE RECOMMENDS**

1. That Council note the significant funding allocations provided within the 2021-24 National Land Transport Plan (NLTP) from Waka Kotahi New Zealand Transport Agency (NZTA).
2. That Council note that Maintenance, Operations and Renewal (MOR) programmes across the 2021-24 NLTP period will continue as planned, and notes that officers will monitor budgets and address any additional funding requirements due to network needs, through future Annual Budgets.
3. That Council note NZTA approval of 85% of Low Cost Low Risk (LCLR) capital new programmes across the 2021-24 NLTP period, and notes that specific projects have been identified as un-funded.
4. That Council note probable funding from NZTA in the 2021-24 NLTP for the following larger programmes of work is subject to finalisation of business case work for:
 - a. Improvement to existing Asset Management Plan (AMP)
 - b. PNITI – Local Road Improvements (Package 4 of PNITI Programme Business Case)
 - c. PN to Feilding Shared Path (Implementation)
 - d. Roberts Line/KB Road Intersection Safety Improvements.
5. That Council note the following larger programmes are NOT approved by NZTA in the 2021-24 NLTP:
 - a. Urban Bus Terminal Redevelopment
 - b. Palmerston North – Enabling Streets for People, Local Road Improvements (Package 7 of PNITI Programme Business Case).

6. That Council approve the transfer of \$500,000 from Sealed Pavement Renewals (Programme 115) for 2021/22 to Sealed Pavement Maintenance (Operational Expense) to enable urgent heavy maintenance to be carried out on the transport network, including Summerhill Drive.
7. For the un-funded Low Cost Low Risk (LCLR) programmes within the 2021-24 NLTP period, that Council confirms that:
 - a. Council residual share (\$1.09M) of Tennent Drive Improvements (programme 1121) is refocused to enable early intervention works to facilitate Palmerston North Integrated Transport Initiative (PNITI).
 - b. For Infill Street Lighting (programme 1367) provide additional capital borrowing of \$431k in 2021-22 (of \$1.32M three year programme) to fund NZTA share to deliver the whole programme.
 - c. For Regional Shared Path Network (programme 2057) that due to limited Council residual funding (\$19.6k), Napier Road Shared Path (Te Matai to Gasworks drain link) be removed from the programme.
 - d. For Off-Road Shared Path Network Improvements (programme 2021), provide additional capital borrowing to fund NZTA share (\$285,600) to deliver the programme.
8. That the Chief Executive report to Planning & Strategy Committee within six months on process and options, including use of bylaws, to establish and enforce heavy vehicle routes in the city's urban transport network.

83-21 Proposed Road Stopping - Land Adjoining 18 Carey Street, Longburn

Report, presented by Bryce Hosking, Manager - Property.

The COMMITTEE RECOMMENDS

1. That Council declare that the 46 square metres (more or less) of the road reserve adjacent to the property at 18 Carey Street, Longburn is not required for public work and is surplus to Council's operational requirements.
2. That Council proceeds with the formal road stopping process for the 46 square metres (more or less) of road reserve adjacent to the property at 18 Carey Street, Longburn.
3. That Council agree to dispose of the 46 square metres (more or less) of road reserve adjacent to the property at 18 Carey Street, Longburn through sale to the owner of the adjacent property owner.
4. That Council delegate to the Chief Executive Officer the power to

conclude all matters in relation to the road stopping and disposal of the Land, including all legal matters including issuing the relevant public notice, declaring the road stopped, negotiating the terms of the sale, imposing any reasonable covenants and any other necessary actions.