

Conflicts of Interest and Register of Interests

The Otago Regional Councils Code of Conduct (“the Code”) requires Councillors to make an annual declaration of interests¹. This declaration, which is recorded in a Register of Interests, 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 member’s spouse for profit or gain;*
- b) *Any company, trust, partnership etc. for which the member or their spouse is a director, partner or trustee;*
- c) *The address of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and*
- d) *The address of any land owned by the local authority in which the member or their spouse is:*
 - *A tenant; or*
 - *The land is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse is a director, or a trust of which the member or spouse 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).”*

Keeping a Register of Interest allows the member and Council to identify and manage a conflict of interest when it arises.

Conflicts of interest may arise from pecuniary and non-pecuniary interests.

Conflicts which arise from a pecuniary interest, with particular reference to the Local Authorities (Member’s Interests) Act 1968 (“LAMIA”), is provided for in the Code².

To assist Councillors with their obligations under LAMIA, the Auditor General has produced a guidance document *“Guidance for Members of Local Authorities (Members’ Interests) Act 1968”*³ which provides direction on pecuniary conflicts of interest.

LAMIA applies to the pecuniary interests of members of local authorities. LAMIA:

- controls the making of contracts worth more than \$25,000 in a financial year between Councillors and their authority; and
- prohibits Councillors from participating in matters before the authority in which they have a pecuniary interest, other than an interest in common with the public⁴.

Whilst the Auditor General’s guidance document is targeted towards pecuniary interests, the document also includes guidance on non-pecuniary conflicts of interest.

Non-pecuniary conflicts of interest can arise through:

- a relationship or role that a Councillor has; or
- something that has been said or done by a Councillor.

In situations where there is a close relationship with a person or organisation involved in, or affected by, a matter before the Council, the Auditor General has recommended *“to avoid risks to the authorities decision, if you have any relationship with a person or organisation involved in a matter,*

¹ Clause 9, Otago Regional Council Code of Conduct, adopted 22 February 2017

² Clause 8, Otago Regional Council Code of Conduct

³ <https://www.oag.govt.nz/2010/lamia/docs/local-authorities-members-interests-act.pdf/view>

⁴ Paragraph 1.11 of the Guidance for Members of Local Authorities (Members’ Interests) Act 1968

you should seriously consider the wisdom of whether to participate at all. The safest advice is “if in doubt, stay out”⁵.

The Guidance document warns of an increased legal risk where a Councillor participates in consideration of a matter, that is before the Council, involving or affecting a club or similar organisation that the Councillor is involved in if:

- the member is an executive officeholder or trustee, or are otherwise publicly identified with the club; or
- the matter specifically and significantly involves or affects the club or organisation – such as a proposed grant of money to the club, or something else directly affecting the club’s finances or property⁶.

Care is also required where statements are made or conduct is undertaken which indicates that a Councillor has predetermined a matter before hearing all relevant information or where there is a close relationship or involvement with an individual or organisation affected by the matter. In such circumstances, the nature of the decision is important. There is unlikely to be any legal risk in commenting about broad policy issues, particularly if the remarks are expressed in general terms.

The same may not apply where the decision is focused on the rights and interests of one individual or a few individuals, and where other people have the right to make a submission to a formal hearing about the matter.⁷

Non-pecuniary conflicts of interest always involve questions of judgement. In the interests of openness and fairness, the Auditor General endorses a cautious approach.

In circumstances where a Councillor has identified that he or she has a non-pecuniary conflict of interest (in a matter before the Council), the Auditor General recommends the following process⁸:

- declare that you have a conflict of interest when the matter comes up at the meeting;
- refrain from discussing or voting on the matter;
- ensure that the declaration and abstention is recorded in the minutes; and
- it is good practice to also leave the table while discussion and voting on the matter takes place.

To assist Councillors compliance with clause 9 of the Code, staff have developed a Register of Interest form. This form is based on the interest register requirements contained in the Standing Orders of the New Zealand House of Representatives and Council’s Code of Conduct. A copy of the proposed Declaration of Interest Register is attached (along with a completed example).

The Declaration is required to be completed annually.

Gifts

Clause 10 of the Code requires Councillors to *“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”*.

In order to facilitate the above, staff have developed a Disclosure of Gift document (attached).

It is recommended that the Disclosure of Gift document is completed when a gift is accepted to ensure accurate reporting of such gifts.

⁵ Paragraph 5.34 of the Guidance for Members of Local Authorities (Members’ Interests) Act 1968

⁶ Paragraph 5.39 of the Guidance for Members of Local Authorities (Members’ Interests) Act 1968

⁷ Paragraph 5.25 of the Guidance for Members of Local Authorities (Members’ Interests) Act 1968

⁸ Paragraphs 5.54 and 5.55 of the Guidance for Members of Local Authorities (Members’ Interests) Act 1968

Councillor declaration of interest register

The guiding principle for Councillors' declarations in the interest register is set out in the Otago Regional Council's Code of Conduct⁹, which states:

"Ethical behaviour - Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour"

In addition, the Local Authorities (Members' Interests) Act 1968 is concerned with members' financial and non-financial interests. The Office of the Auditor General notes a conflict of interest can arise when: *"A member's or official's duties or responsibilities to a public entity could be affected by some other interest or duty that the member or official may have."*¹⁰

Keeping a Councillors' declaration of interest register (both financial and non-financial) allows the member and Council to identify and manage a conflict of interest when it arises. The register should also include any such interest(s) held by a Councillor's partner or spouse.

The register must be reviewed annually¹¹. If a Councillor 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.

Where a Councillor's circumstances change, the Councillor must ensure the Register of Interests is updated as soon as possible.

The information in the completed declarations will be publicly available on Council's website.

	Type of Interest	Description
1.	Details of employment, trade or profession carried on by the Councillor or the Councillor's spouse / partner for profit or gain.	Councilor Contractor, Otago Polytechnic and Otago University
2.	Any company, trust, partnership etc of which the Councillor or their spouse / partner is a director, partner or trustee.	
3.	Other companies and business entities or interests.	
4.	Beneficial interests in trusts.	
5.	The address of any land in which the Councillor has a beneficial interest within the jurisdiction of the	3 Maggies Way, Wanaka


⁹ Adopted by the Otago Regional Council on 22 February 2017

¹⁰ Office of the Auditor General Good Practice Guide – Managing Conflicts of Interest: Guidance for public entities

¹¹ Refer clause 9, Otago Regional Council Code of Conduct

	Otago region.	
6.	The address of any land owned by the Otago Regional Council (in which the Councillor or his or her spouse / partner is): <ul style="list-style-type: none"> • A tenant; or • Which is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse / partner is a director or shareholder, or a trust of which the member or spouse / partner is a trustee or beneficiary. 	Chair of ALREC who is in discussion with ORC re the Wanaka ORC Depot on Riverbank Road
7.	Organisations and Trusts that obtain, or are seeking funding/other assistance from the ORC.	Member of the Upper Clutha Lakes Trust and Chair of Alpine Lakes Research and Education Centre
8.	Gifts.	
9.	Payments for activities or services.	
10.	Creditors (if greater than \$50K, but not the amount).	
11.	Debtors (if greater than \$50K, but not the amount).	
12.	Details of any ORC consents, permits or rights held by the Councillor, spouse / partner, family or trust/company.	
13.	Any other matters which the public might reasonably regard as likely to influence the Councillor's actions during the course of their duties as a member.	

The information contained in this statement is to the best of my knowledge complete and accurate as at the below date. I confirm that I have included in this statement details of any interests held by me or my spouse / partner through trusts or companies.

Signed  Date 30/08/18

Name: Ella Lawton

NB: Gifts register: Where a gift to the value of \$50 or more is accepted by a Councillor in their capacity as a Councillor, the Councillor must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests¹².

Example

Type of Interest	Description
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¹² Refer clause 10, Otago Regional Council Code of Conduct

1.	Details of employment, trade or profession carried on by the Councillor or the Councillor's spouse / partner for profit or gain.	Regional Councillor, company director, manager Spouse: company director and, accountant (ABC Accountants Limited)
2.	Any company, trust, partnership etc of which the Councillor or their spouse / partner is a director, partner or trustee.	Director and shareholder – ABC Limited ABC Family Trust – Trustee (spouse is also a trustee)
3	Other companies and business entities or interests.	Shareholder – ABC Electricity Limited Spouse – Shareholder, ABC Water Limited
4	Beneficial interests in trusts.	ABC Family Trust Spouse – ABC Family Trust
5.	The address of any land in which the Councillor has a beneficial interest within the jurisdiction of the Otago region.	123 Abc Street, Dunedin
6.	The address of any land owned by the Otago Regional Council (in which the Councillor or his or her spouse / partner is): <ul style="list-style-type: none"> • A tenant; or • Which is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse / partner is a director or shareholder, or a trust of which the member or spouse / partner is a trustee or beneficiary. 	Licence to Occupy – grazing strip – 500 Abc Street, Milton
7.	Organisations and Trusts that obtain, or are seeking funding/other assistance from the ORC.	ABC Farming Group - Chairman
8.	Gifts.	All Black Tickets and Hospitality – ABC Association Honorary membership – Abc Golf Club
9.	Payments for activities or services.	Fee – Guest Speaker – Abc Education
10.	Creditors (if greater than \$50K, but not the amount).	ABC Bank - mortgage
11.	Debtors (if greater than \$50K, but not the amount).	ABC Family Trust
12.	Details of any ORC consents, permits or rights held by the Councillor, spouse / partner, family or trust/company.	Resource consent to take water: RM18.9999
13.	Any other matters which the public might reasonably regard as likely to influence the	Memberships

	Councillor's actions during the course of their duties as a member.	Chairman, ABC Farming Group Member, Abc Farmers
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OTAGO REGIONAL COUNCIL – GIFT REGISTER



Councillor Gift Register

To: Chief Executive

Re: Disclosure of Gift(s) Accepted

Full Name:

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1. Gifts:

Where a gift to the value of \$50 or more is accepted by a Councillor in their capacity as a Councillor, the Councillor must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests

Date Gift Accepted	Gift	Donor	ORC Staff - Entered into the Register of Interests

Signed Date