

Conflict of Interest – Managing the tightrope

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Overview

Part 1: Local Government

Part 2: Public Service

Part 3: Private Sector

Part 4: Discussion and Q&A



Part 1: Local Government

Robert Foitzik





Small Town Conflicts

Setting the scene – statistics

- District: population 52,000; Blenheim: 30,000
- Average: 5 people/ km²
- 30-64 years: 46%; 65 years and older: 17%
- 9x retirement villages, 1x Pak'nSave, 3x Countdowns, 4x pharmacies, 10x EV charger for 3x Teslas, 2x post shops, 1x Postie+, 1x Farmers
- No: shopping mall, traffic lights (roundabouts only!), noise (after 9pm)



Procurement

- Local service providers/ construction companies, consultancies v staff knowledge/ relationship
- Objective tender/ evaluation process ?



Employment relations/ staff

- Personal relationships/ family/ friends
- Familiar with/ related to customers, complainants etc
- Professional duties/ obligations v social/ private life



Local law firms

- 7x long established firms (full-service)
- Regular/ inherent client conflicts as often acted previously for either party



Council/ Councilors

- Previous professional relationships
- Personally affected by Council decision
- Grant/ funding recipient





Sounds Recovery

- 2021/ 2022 storm events
- 4000 faults, 670km roads damaged
- Total: \$400m - Council: \$104 million
- Stantec Study to determine future level of service
- consultation as part of LTP
- Rates increase – targeted rate or UAC
- OAG declaration?



Local Authorities Members Interest Act 1968 (LAMIA)

- Protection of integrity of Local Government
- Principle simple, details and exemptions complex
- Two main rules:
 - Non-participation rule
 - Contracting rule
- Application: Councils, community boards, local boards, other public bodies (Appendix 1) and committee members (regardless whether member of Council)
- Not: CCOs, port-, airport-, energy companies, tertiary education institution



Contracting Rule (s3 LAMIA)

- Automatic disqualification if
 - Concerned or interested in contract(s) with local authority; and
 - and
 - Total payments exceed \$25,000 pa (incl. GST)
- Only applies to member, not local authority (= contract valid)
- Includes grants + subcontracts
- Party to contract or financial benefit
- Deemed interest through company (10% or MD/ GM position)
- OAG approval (Appendix 3)





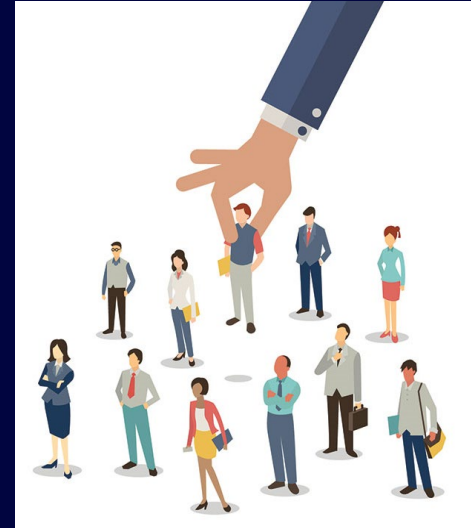
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Voted

Non-participation rule – s6 LAMIA

- Not take part in discussion or vote if financial interest (= reasonable expectation of gain or loss from decision) unless
 - in common with the public = no different to general public interest (but what is the ‘public’ , i.e. comparator group?)
 - Exceptions (s6(3))
 - OAG exemption
 - Flowchart (OAG guide)
- - Offence and disqualification if convicted (stricter than Companies Act)
 - **Direct:** direct financial gain or loss to member
 - **Indirect:** gain/loss to other people/organisation member is connected to
 - **Deemed** interest through partner or company

Non-participation rule – direct/ indirect

- Indirect and direct interest:
 - for instance landowner company and proposed proposed Council irrigation scheme – indirect re indirect re shareholding of company – direct as direct as landowner
- Council decisions at different stages – discussion, development, consultation, proposal, implementation - financial interest not necessarily at every stage
- In common with public
- Does matter affect member in different way than most other people
 - Dog registration fees (+)
 - General rates (+)
 - Targeted rate (-)
- Most other people / public – is group big enough?



OAG declaration

- Exemption/ declaration to participate despite financial interest not interest not in common with the public
- In the interest of community that non- participation rule should not should not apply and/ or applying the rule impedes on transaction transaction of business
- Criteria
 - Relationship between financial interest and decision
 - Significance of financial interest re possible influence (outside (outside observer look)
 - Beneficial for community if member participates?
 - Matter justifies involvement of all members?
 - Loss of expertise/views if not allowed to participate?



Part 2: Public Service

Kirsty Millard



Conflicts of Interest

Integrally linked to Core Public Service Values:
Values:

- Integrity – to treat all people fairly, without personal favour or bias
- Accountable
- Trustworthy – to act with integrity and be open and transparent
- Respectful
- Responsive



“Rules” for managing Conflicts of Interest are generally stricter than for private sector as the public needs to have confidence that public decisions are:

- Made impartially and for the right reason
- Not influenced by personal interests or ulterior motives

When Conflicts Can Arise



- **Employment** and contractors – including strong political affiliations/views, personal connections, financial interests, secondary employment etc
- **Procurement** of goods and services – Government Procurement Rules
- **Appointment** to Boards or Advisory Bodies (eg ss 31 and 62 Crown Entities Act)
- **Advice** to Decision Makers and Making Decisions

When Conflicts Can Arise – Contd.

- **Making public decisions** or exercise public functions
- NB – **Protected Disclosure** (Protection of Whistleblowers) Act includes as serious wrongdoing:
 - an unlawful, corrupt or irregular use of public resources
 - oppressive, unlawfully discriminatory or grossly negligent or gross mismanagement that is done by an employee (if the organisation is public sector organisation) or person performing a function or power on behalf of a public sector organisation or Government



Managing Conflicts

Practises:

- Register of conflicts and gifts/hospitality and record management plan - ensure regularly updated and deliberately considered
- Check at beginning of meeting or decision process
- Consideration of how participate in public or political processes
- Wise heads group/independent check
- Have a way to raise concerns, including Whistleblower policy



Some Possible Mitigations:

- Withdraw from relevant part of meeting or decision process
- Impose additional oversight or review
- Re-assign person other tasks or area
- Re-assign to another decision maker
- Information barriers
- Relinquish the private interest or other position (including on voluntary committees)

Where to Find Guidance

- Public Service Commission/Te Kawa Mataaho:
 - Model Standards - Conflicts of Interest
 - Model Standards – Speaking up
 - Guidance for Statutory Crown Entities – Resource for Preparation of Governance Manuals
- Cabinet Office Manual
- Controller and Auditor-General - Managing Conflicts of Interest for the Public Service (and Integrity Town Interactive Quiz)
- New Zealand Government Procurement – Managing Conflicts of Interest and Confidentiality



Part 3: Private Sector

Benjamin Jacobs





When can conflicts arise?

- Directors:
 - Other directorships
 - Investments in counterparties
 - Personal exposure to risk/reward e.g. litigation where a director is exposed or director rem
 - Significant shareholding in the company (e.g. on takeover or dilutive cap raise)
 - Other employment arrangements
- Other situations:
 - Employees
 - Joint Ventures
 - Commercial arrangements e.g. procurement
 - Romantic relationships
 - Involvement with competitors

The Law as it applies to Companies

S.139 CA 1993 – declaration of interests

- Applies to interests in transactions
- Impact of materiality
- Consequences of disclosing an interest
 - Largely permissive
- Other Considerations
 - Other sources of conflicts rules
- Consequences of **not** disclosing



Discussion and Q&A

