



Ref: [REDACTED]

Civic House, 110 Trafalgar Street
PO Box 645, Nelson 7040, New Zealand

4 July 2024

P (03) 546 0200
E LGOIMA@ncc.govt.nz
nelson.govt.nz

Dear [REDACTED]

OFFICIAL INFORMATION REQUEST FOR MEMBER GUIDANCE ON PREDETERMINATION AND BIAS

I refer to your official information request dated 12 June 2024 and the further email in clarification, dated 13 June 2024:

I request any guidance or advice, whether general or on a specific matter, provided to councillors on predetermination and/or bias by council officers or external advisors engaged by council.

I would like to make a couple of clarifications to the request. I apologise for the multiple emails.

- My request is intended to refer to predetermination and bias by councillors and to advice prepared by officers or external advisors engaged by council. It is not intended to refer to predetermination and bias by officers. I apologise as I realise the wording of my original request was unclear in this respect.
- My request is about predetermination and bias in the legal sense as opposed to unconscious bias or similar.
- In terms of general guidance, I would like whatever is the most up-to-date version of this. In terms of advice on specific matters, please only provide this on matters within this term of council (i.e. post the 2022 local government elections).

Please find enclosed:

- Presentation made during the initial induction to members in October 2022 on conflicts of interest – the section of presentation on non-pecuniary interests has been extracted for inclusion here.
- The Elected Members' Induction Booklet (circulated post triennial elections in October 2022) – the section on the register of interests, which includes reference to non-pecuniary interests, has been extracted for inclusion here.
- The guidance section of the Interests Guidance and Declaration Form 2022-25 which members must complete and maintain has been extracted for inclusion here.
- A section of Appendix One to the current Members' Code of Conduct relating to interests has been included. While a Code of Conduct is a behavioural agreement

Internal Document ID:

between members, the Appendix is drawn from a model template Code developed in 2022 by Local Government New Zealand and provides information on key legislation including the Local Authorities (Members' Interests) Act 1968 so forms an instance of advice/ guidance on non-pecuniary interests.

The documents above are followed by four emails on specific matters. Please note, one redaction has been made in one email under section 7(2)(a) Local Government Official Information and Meetings Act 1987 – that the privacy of natural persons be maintained.

Note, for completeness, where advice/guidance has referenced 'non-financial interests' and or 'non-pecuniary interests' rather than or as well as bias or pre-determination, this has been included.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or Freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact LGOIMA@ncc.govt.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'DN' with a large flourish.

Devorah Nícuarta-Smith

Manager Governance and Support Services

Encl: combined documents and emails



Non-financial interests

- Close relationship or involvement with individual or organisation affected by decision
- Prior public statements
- Risk of legal challenge based on common law rules about bias and pre-determination
- Actual or appearance of bias



Examples of non-financial conflicts of interest:

- close relationship or involvement with individual or organisation affected by decisions
- prior public statements.

Rules about bias operate not only to ensure no actual bias – but also to ensure no appearance or possibility of bias.

Public confidence in good process

Managing conflicts involves considering appearances – what an outside observer might reasonably perceive – no black and white lines - requires exercise of judgement



Bias test

Would a fair-minded observer reasonably think that...a member of the decision-making body might not bring an impartial mind to the decision, in the sense that they might unfairly treat someone's case with favour or disfavour?

Saxmere, Supreme Court



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Would a fair-minded observer reasonably think that you won't bring an impartial mind to the decision?

Saxmere facts – commercial litigation between Saxmere and Wool Board – allegation by Saxmere that High Court judge had apparent bias due to business relationship with counsel for the Wool Board. Related to acquisition of property to enlarge a horse stud. Enough to establish apparent bias.

This type of bias could arise in context of local govt decision making if an elected member has a close association or involvement with an individual or group that is affected by a council decision. For example, Council is being asked to decide on making a grant to a community trust and an elected member holds an office or has a close association with that trust.

Stricter approach when making decisions that affect people's rights and interests or acting in quasi-judicial capacity – such as decision making on applications for resource consent or alcohol licences



Pre-determination

- Statements or conduct suggest that you have already made up your mind

There is nothing objectionable about councillors holding preliminary or "in principle" views on decisions, provided when it comes to making the actual decision, they do so with an open mind to other alternatives

Save Chamberlain Park Incorporated v ACC, High Court



Pre-determination is a form of apparent bias. This where a decision maker's prior statements or conduct may indicate that they have already made up their mind on a matter. In local govt context it is anticipated that elected representatives may have pre-existing views on a matter. You may have campaigned on an issue. The key test is whether you have an open mind and remain open to persuasion when the matter comes to you for final decision.

Local govt case – *Save Chamberlain v Auckland Council* [2018] – judicial review of decisions by Auckland council to redevelop a Golf Course into a multi use facility for the community. One of the grounds for review was pre-determination by the decision-making Board. The *Save Chamberlain Park* group alleged that earlier investigation and option development work indicated that the Board had already made up its mind on its preferred option. The Court found no pretermination stating that...

Predetermination:

East Pier Developments v Napier City Council

Council leased land and lessee sought permission to use land for different purpose

Member involved in negotiations/meetings from early stage and overall conduct indicated determined that council should reject application

Another member "single minded" in opposition, not properly open to persuasion

No predetermination:

Whakatane District Council v Bay of Plenty regional Council

Proposal to relocate regional council offices

Prior comments, including letters to the editor, made in support of proposal did not mean that some members were “irretrievably committed” to the proposal

Critical factor that you remain and are seen to remain open to persuasion

Avoid expressing views in a way that implies you are unwilling to listen fairly to new arguments or give the matter full consideration when it comes before Council

Stricter approach where decision involves peoples’ legal rights and interests.



Non-financial interests - what you need to do

- Include non-financial interests in declaration of interests
- Declare interest to meeting
- Abstain from voting and discussion
- Seek advice if unsure before the meeting



Individual decision for member

But bias of one person can invalidate council decision (as outcome of successful judicial review)



Conclusion

- Be alert for conflicts between personal interests and official role
- Appearances matter
- Declare interests
- If in doubt, stay out



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Extract – Elected Members Induction Booklet (October 2022)

Section 19

Register of Members' Interests

You are required to declare any interests you have under both the Local Authorities (Members' Interests) Act 1968, and the Local Government (Pecuniary Interests Register) Amendment Act 2022.

Nelson City Council maintains a Members' Interests Register. There are two versions of the Interests Register, the public facing document, and a more detailed internal document. The purpose of the Interests Register is to maintain up to date information on interests that elected members have in the course of conducting Council business. To provide transparency for elected members, Council staff, and the public, an Interests Register is published on Council's website. There are two types of interests that you may have as an elected member, pecuniary (financial) and non-pecuniary (non-financial).

Detailed guidance on managing interests is given by the Office of the Auditor General. Please see details below:

- [Guidance for members of local authorities about the Local Authorities \(Members' Interests\) Act 1968](#)
- [Managing Conflicts of Interest: Guidance for public entities](#)

A Declaration of Interests form with guidance notes will be provided to you for completion and return to the Governance Advisers governance.advisers@ncc.govt.nz or 03 546 0436 by Friday 4 November 2022.

Please note that the legislated due date for any updates under the Local Government (Pecuniary Interests Register) Amendment Act 2022 will be calculated following the publication of the official results and advised to you as soon as possible. We would encourage you to provide this information by 4 November 2022 as well as the Local Authorities (Members' Interests) Act 1968 interests where you can, as the information required under the two Acts - while not exactly the same - is largely aligned.

It is your responsibility to keep your declarations up to date and it is advisable do this every time your interests change, by emailing an updated entry for the Interests Register to the Governance Advisers governance.advisers@ncc.govt.nz. However, you will be sent a reminder every six months to prompt you to consider your interests. You can also update your entry in the Interests Register at any stage by making a declaration during the Interests item at each Council meeting.

Council's Registrar for the purposes of the Local Government (Pecuniary Interests Register) Amendment Act 2022 is the Manager Governance and Support Services devorah.nicuartasmith@ncc.govt.nz

Nelson City Council

Declaration of Interests Form

GUIDANCE NOTES

All members of Nelson City Council are expected to keep a clear separation between their personal interests and their duties as a member of Council.

Declarations must be made under two separate pieces of legislation

There are two particular pieces of legislation that outline requirements that must be met in relation to interests. All members have obligations under the Local Authorities (Members' Interests) Act 1968 – referred to as “LAMIA” from here on. Elected members have further obligations under the Local Government (Pecuniary Interest Register) Amendment Act 2022 - referred to as the “Pecuniary Interests Act” from here on - which appointed members do not.

Each Act’s requirements are similar but not the same so two forms are provided

For clarity, while some declaration requirements appear similar under both Acts, the obligations under the Pecuniary Interests Act are in addition to any obligations under, and do not affect the application of, LAMIA; a pecuniary interest that a member has declared under the Pecuniary Interests Act is not necessarily an interest for the purposes of LAMIA.

To support you in meeting your obligations under each of the two Acts, the declaration forms below separate out each Act and the types of interests you must declare under each.

The declaration forms below are intended to be filled out electronically. Further rows should be added to each table if required so all interests can be included.

Reminder: The Local Government (Pecuniary Interest Register) Amendment Act 2022 does not apply to appointed members. The second form only needs to be completed by elected members.

Members are responsible for their own interest management

Members must declare, monitor and manage their own interests. It is important to be as thorough as possible in completing the declaration form to protect yourself and the decision-making of Council. Failure to manage interests appropriately can expose a member and Council decision-making to unnecessary risk. The specific consequences of not declaring or managing interests well are different under each Act but can include a fine of up to \$5,000 or loss of position.

Updates to the declared interests must be made at least annually, and as soon as anything changes, or an omission or mistake is identified, to keep the information current.

Non-financial interests must be managed as well as financial ones, as they can also impact (or can be perceived as impacting) on decision-making, such as through predetermination or bias in relation to the position taken during debate and voting on a matter.

INTERESTS REGISTER

Council is required to prepare and maintain an Interests Register.

The purpose of the Register "is to record members' interests so as to provide transparency and to strengthen public trust and confidence in local government processes and decision-making".

The information declared under the Pecuniary Interests Act must be retained for seven years after the date on which the member provides the information, following which it is removed from the Register.

A summary of the Register must be made publicly available and is accessible through Council's website; the whole register is not required to be published, to balance the purpose of the Register against members' privacy. 'Summary' is not defined in the applicable statute but is as full as possible while maintaining the balance of transparency and privacy.

REGISTRAR

Under the Pecuniary Interests Act, a Registrar must be appointed to

- compile and maintain the register of members' pecuniary interests; and
- provide advice and guidance to members in connection with their obligations.

A Registrar is not required to

- notify a member that they have failed to provide a return by the due date,
- advise a member that their return has an error or omission, or
- obtain any pecuniary interest declaration for a member.

Council's Registrar is the Manager Governance and Support Services.

The Local Authorities (Members' Interests) Act 1968

Pecuniary interests

The LAMIA provides rules about members discussing or voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAMIA) and the participation rule (in section 6 of the LAMIA).

- The **contracting rule** prevents a member from having interests in contracts with the council that are worth more than \$25,000 in any financial year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office.
- The **participation rule** prevents a member from voting or taking part in the discussion of any matter in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence, and conviction results in automatic disqualification from office.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs.

These are broadly where:

- a person’s spouse or partner is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
- a person or their spouse or 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.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the member’s family trust and the council.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider this question: 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. This is in line with the principle that justice should not only be done but should be seen to be done. Whether or not a member believes they are not biased is irrelevant. The focus should be on the nature of any 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:

- statements or conduct indicate that a member has predetermined the decision before hearing all relevant information (that is, they have a “closed mind”), or
- a member has close relationship or involvement with an individual or organisation affected by the decision.

Seeking exemption from the Auditor-General

Members who have a financial conflict of interest that is covered by section 6 of the LAMIA, may apply to the Auditor-General for approval to participate. The Auditor-General can approve participation in two ways.

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when voting or taking part in the discussion.
2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
 - a. the application of the rule would impede the transaction of business by the council; or
 - b. it would be in the interests of the electors or residents of the district/region that the rule should not apply.

More information on non-pecuniary conflicts of interest and how to manage them can be found in the Auditor-General’s Guidance for members of councils about the law on conflicts of interest.

Protected Disclosures (Protection of Whistleblowers) Act 2022

The Protected Disclosures (Protection of Whistleblowers) Act 2022 is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, **serious wrongdoing** in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has a specified relationship with the organisation they are disclosing about, including members of boards and governing bodies. Serious wrongdoing includes:

Devorah Nicuarta-Smith

From: Devorah Nicuarta-Smith
Sent: Tuesday, 22 November 2022 9:51 am
To: Governance Advisers
Cc: James Hodgson
Subject: FW: Declaration of interests form
Attachments: James Hodgson - Interests guidance and declaration form 2022-25.docx

Hi team – for the register please.

I have just spoken to James re the Unite Church/ Habitat development.

Capturing my notes here for the record.

Unite provide the land (I believe without charge but am unsure of the terms of the MOU), and may retain two of the cabins for their use.

Habitat are responsible for the build and ongoing management of the development, including all financial aspects

Habitat made the application to the Housing reserve fund – Unite (incl James) were not involved in the application.

The allocation of \$1M from the fund occurred about August, well before James was elected. Possibly before he was a candidate.

It is not expected that there will be any more applications for funding.

While he will remain a Church trustee, James will not be involved in the project.

He is currently involved in Council's community housing taskforce. This taskforce has no decision making power or financial delegation but he is aware of perception risk, however low, and will manage any conflict should they arise in future through either of his roles.

As it stand however he has been completely divorced from any decision making and the links are very indirect

Devorah Nícuarta-Smith

Manager Governance and Support Services | Kaiwhakahaere Mana / Ratonga Tautoko

Nelson City Council | Te Kaunihera o Whakatū

P 03 546 0391 | M 022 013 1588

nelson.govt.nz



From: James Hodgson <james.hodgson@ncc.govt.nz>

Sent: Monday, 21 November 2022 1:32 pm

To: Devorah Nicuarta-Smith <devorah.nicuartasmith@ncc.govt.nz>

Subject: RE: Declaration of interests form

Hi Devi,

Please see form attached.

I wasn't entirely sure where to note my involvement with the Unite Church/Habitat development and the \$1mil allocation from the housing reserve.

It is a very indirect interest, and I am unsure if it should be noted under 'contracts'. I have noted here for now but haven't immediately alerted the chief executive...please advise if you think I should do so.

Thanks!

James Hodgson

Councillor
Kaikaunihera

Nelson City Council | Te Kaunihera o Whakatū
P 022 064 8433
nelson.govt.nz

From: Devorah Nicuarta-Smith <devorah.nicuartasmith@ncc.govt.nz>

Sent: Thursday, 3 November 2022 5:23 pm

To: Councillors <Councillors@ncc.govt.nz>

Cc: Alec Louverdis <alec.louverdis@ncc.govt.nz>; Nicky McDonald <nicky.mcdonald@ncc.govt.nz>; Fiona McLeod <Fiona.McLeod@ncc.govt.nz>; Governance Advisers <governance.advisers@ncc.govt.nz>

Subject: Declaration of interests form

Kia ora koutou

Please find **attached** the form to use for declaring your interests under the Local Authorities (Members' Interests) Act 1968 and the new Local Government (Pecuniary Interest Register) Amendment Act 2022.

We recognise it's a fairly hefty form!

The two Acts ask for similar but not exactly the same items to be declared, and thorough checks are undertaken on your behalf as requested by our Auditor.

As Mayor Nick touched on briefly today, holding the right tension between expertise and interests is an important part of the role of a governor, and we want to support you in managing your interests as far as we can with information and advice.

My colleague Fiona McLeod, Council's General Counsel, will be leading the induction session tomorrow on interests and the two Acts.

I am the Registrar for Council under the Pecuniary Interest Amendment Act – please feel free to set up a time with me to go through the form and answer any questions you may have on either of the declarations.

The declaration under the new Local Government (Pecuniary Interest Register) Amendment Act is due 12 February 2023, but we would actively encourage you to complete the information well in advance of this if you are able.

Have a great evening

Ngā mihi

Devorah Nícuarta-Smith

Manager Governance and Support Services | Kaiwhakahaere Mana / Ratonga Tautoko
Nelson City Council | Te Kaunihera o Whakatū
P 03 546 0391 | M 022 013 1588
nelson.govt.nz



Devorah Nicuarta-Smith

From: Devorah Nicuarta-Smith
Sent: Tuesday, 4 July 2023 10:41 am
To: Governance Advisers; Matty Anderson
Subject: RE: Pukapuka talks

Thanks both – nothing further to add to Helgard's advice
Appreciate you raising it Matty, let us know if on review of the guidance you have anything to confirm more formally

Devorah Nícuarta-Smith

Manager Governance and Support Services | Kaiwhakahaere Mana / Ratonga Tautoko
Nelson City Council | Te Kaunihera o Whakatū
P 03 546 0391 | M 022 013 1588
nelson.govt.nz



From: Governance Advisers <governance.advisers@ncc.govt.nz>
Sent: Tuesday, 4 July 2023 8:57 am
To: Matty Anderson <matty.anderson@ncc.govt.nz>; Governance Advisers <governance.advisers@ncc.govt.nz>; Devorah Nicuarta-Smith <devorah.nicuartasmith@ncc.govt.nz>
Cc: Mayor Nick Smith <MayorNick@ncc.govt.nz>
Subject: RE: Pukapuka talks

Ata marie Councillor Anderson
Thank you for checking up on this.

It may be worth your while to have a quick look at the Members Interests information on LGHub – depending on the circumstances you may have to add a pecuniary or non-pecuniary interest. On the information you have provided there should not be any concerns, but it is the responsibility of the elected member to check if they need to disclose an interest.

The guidance on LGHub entitled Members Interests guidance document is on the Resources for Induction tab.

I'm also including Devorah in this response as she may be able to add anything I have missed.

Regards | Ngā mihi

Helgard Wagener

Senior Governance Advisor | Kaitohutohu Matua
Nelson City Council | Te Kaunihera o Whakatū
P 03 546 8308
nelson.govt.nz



From: Matty Anderson <matty.anderson@ncc.govt.nz>
Sent: Monday, 3 July 2023 10:23 pm
To: Governance Advisers <governance.advisers@ncc.govt.nz>
Cc: Mayor Nick Smith <MayorNick@ncc.govt.nz>
Subject: Pukapuka talks

Kia ora. I've been asked to facilitate a book talk labour weekend as part of Arts Festival. s7(2)(a) to protect the privacy of natural persons
s7(2)(a) to protect the privacy of natural persons book. I don't see any issue but was told should check Nelson City Council policy and thought I'd keep you in the loop.

Nga mihi mahana

Matty Anderson (He/Him)
Councillor | Kaikaunihera
Nelson City Council | Te Kaunihera o Whakatū
M 021 08530968
nelson.govt.nz



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Devorah Nicuarta-Smith

From: Mandy Bishop
Sent: Wednesday, 9 August 2023 3:26 pm
To: Mayor Nick Smith
Subject: FW: Dep Mayor comments on intensification and position on the hearings panel

Importance: High

Kia ora

I have spoken with Rohan and he has helpfully sent through his past comments captured on this topic after a Google search, see below.

There is always some risk of challenge to any part of the decision process for a plan change. Should a challenge on Rohan's position on the hearings panel occur I believe Council would successfully defend that decision due to the following:

- a. Cllr O'Neill Stephens would be one member of a 3 person panel (the Chair being independent) which will hear submissions and make recommendations to the decision maker, not a sole decision maker
- b. The hearings panel decisions on recommendations are not judicial or quasi-judicial decisions which require decision makers to be held to an exacting standard of impartiality and objectivity. Rather the decisions (including Council decision to follow) are being made by an elected body (which may choose to delegate preliminary steps). It is implicit that the relevant decisions are political in nature.
- c. Decision makers in this context are expected to have an open mind, not an empty mind
- d. While what has already been said cannot be unsaid, care can be taken with future conduct to ensure that it is consistent with bringing an open mind to the decision making
- e. A court would need to consider any allegation of pre-determination in light of all relevant evidence up to and including the hearings – not just statements already made

Mitigating this risk of challenge could happen if there is another suitably qualified elected member who has never commented on housing intensification and they replace Rohan on the panel. However those who want to challenge this plan change will find another avenue to do this so this will not totally remove the risk of a challenge.

A way forward to acknowledge the concerns raised and be transparent about it is to put this perceived conflict of interest to the independent and experienced Commissioner to decide if this might prevent Rohan from being open minded for the hearing process.

Happy to discuss further if needed.

Ngā mihi
Mandy

From: Rohan O'Neill-Stevens <rohan.oneillstevens@ncc.govt.nz>
Sent: Wednesday, 9 August 2023 9:05 am
To: Mandy Bishop <mandy.bishop@ncc.govt.nz>
Subject: Re:

Just to round out that convo - did a quick google search for my comments and here's the ones I found. Hope that's helpful!

Councillor Rohan O'Neill-Stevens said the intensification plan was "a step towards addressing ... a stain on New Zealand, and that is our subpar and unaffordable housing".

"Housing must be an absolute priority, and right now frankly housing serves as a luxury when it should be a fundamental human right.

"As a council, we need to be doing all that we can to accelerate development, and development that is delivering just outcomes, and I believe that this plan goes a step towards that."

O'Neill-Stevens lives in in town, and sees great potential to revive the city and boost housing provision generally through downtown apartment growth. "While we've got these housing challenges, like the rest of the country, when you look at the absolute number of houses that we need to supply, it's much lower than in, say, Wellington or Auckland. It's by no means an insurmountable task to bring those houses online and do that relatively quickly, then position ourselves as a regional centre that is affordable and has all these other great aspects, like the sun."

"Airbnb, as has been mentioned many times, does negatively impact on local housing, affordability and communities. The commodification of housing has led to disastrous outcomes for people," he said.

His environment priorities include de-carbonising the region's transport network, creating a compact, walkable city through urban design and intensification and resiliency planning for climate change.

(On the FDS):

We've missed the opportunity to truly change direction from the road we've been slowly trundling along for the past 50 years," O'Neill-Stevens said. "I believe that we can do better."

He added that the climate change and the housing crisis were issues that could be addressed simultaneously.

“We’ve lowballed our intensification,” he said. “Climate action and providing enough housing for our people are not contradictory.”

Rohan O’Neill-Stevens
Koromatua Tuarua | Deputy Mayor

Te Kaunihera o Whakatū | Nelson City Council
P 021 026 84778
nelson.govt.nz

From: Mandy Bishop <mandy.bishop@ncc.govt.nz>
Sent: Wednesday, August 9, 2023 8:51:26 AM
To: Rohan O'Neill-Stevens <rohan.oneillstevens@ncc.govt.nz>
Subject:

Morena Rohan,
Just need to chat about comments you may have already made re intensification and whether that might prevent you having an open mind as part of the hearing panel for PC29. I have a few meetings today but please send me a couple of times I can contact you today and I'll make it work!

Cheers M

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Devorah Nicuarta-Smith

From: Mandy Bishop
Sent: Friday, 11 August 2023 1:36 pm
To: Rohan O'Neill-Stevens
Subject: RE:

Thanks Rohan

FYI the advice I have received on this is summarised below:

There is always some risk of challenge to any part of the decision process for a plan change. Should a challenge on your position on the hearings panel occur I believe Council would successfully defend that decision due to the following:

- a. You would be one member of a 3 person panel (the Chair being independent) which will hear submissions and make recommendations to the decision maker, not a sole decision maker
- b. The hearings panel decisions on recommendations are not judicial or quasi-judicial decisions which require decision makers to be held to an exacting standard of impartiality and objectivity. Rather the decisions (including Council decision to follow) are being made by an elected body (which may choose to delegate preliminary steps). It is implicit that the relevant decisions are political in nature.
- c. Decision makers in this context are expected to have an open mind, not an empty mind
- d. While what has already been said cannot be unsaid, care can be taken with future conduct to ensure that it is consistent with bringing an open mind to the decision making
- e. A court would need to consider any allegation of pre-determination in light of all relevant evidence up to and including the hearings – not just statements already made

Mitigating this risk of challenge could happen if there is another suitably qualified elected member who has never commented on housing intensification and they replace you on the panel. However those who want to challenge this plan change will find another avenue to do this so this will not totally remove the risk of a challenge.

Happy to discuss further if needed.

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Mandy

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Sent: Wednesday, 9 August 2023 9:05 am
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Councillor Rohan O'Neill-Stevens said the intensification plan was "a step towards addressing ... a stain on New Zealand, and that is our subpar and unaffordable housing".

"Housing must be an absolute priority, and right now frankly housing serves as a luxury when it should be a fundamental human right.

"As a council, we need to be doing all that we can to accelerate development, and development that is delivering just outcomes, and I believe that this plan goes a step towards that."

O'Neill-Stevens lives in in town, and sees great potential to revive the city and boost housing provision generally through downtown apartment growth. "While we've got these housing challenges, like the rest of the country, when you look at the absolute number of houses that we need to supply, it's much lower than in, say, Wellington or Auckland. It's by no means an insurmountable task to bring those houses online and do that relatively quickly, then position ourselves as a regional centre that is affordable and has all these other great aspects, like the sun."

"Airbnb, as has been mentioned many times, does negatively impact on local housing, affordability and communities. The commodification of housing has led to disastrous outcomes for people," he said.

His environment priorities include de-carbonising the region's transport network, creating a compact, walkable city through urban design and intensification and resiliency planning for climate change.

(On the FDS):

"We've missed the opportunity to truly change direction from the road we've been slowly trundling along for the past 50 years," O'Neill-Stevens said. "I believe that we can do better."

He added that the climate change and the housing crisis were issues that could be addressed simultaneously.

"We've lowballed our intensification," he said. "Climate action and providing enough housing for our people are not contradictory."

Rohan O'Neill-Stevens
Koromatua Tuarua | Deputy Mayor

Te Kaunihera o Whakatū | Nelson City Council
P 021 026 84778
nelson.govt.nz

From: Mandy Bishop <mandy.bishop@ncc.govt.nz>
Sent: Wednesday, August 9, 2023 8:51:26 AM
To: Rohan O'Neill-Stevens <rohan.oneillstevens@ncc.govt.nz>
Subject:

Morena Rohan,
Just need to chat about comments you may have already made re intensification and whether that might prevent you having an open mind as part of the hearing panel for PC29. I have a few meetings today but please send me a couple of times I can contact you today and I'll make it work!

Cheers M

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