Investigation into conflicts of interest of four councillors at Environment Canterbury

This is the report of an investigation we carried out under the Local Authorities (Members' Interests) Act 1968.

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Contents

Auditor-General's overview

In July 2009, we received a complaint that three councillors at Environment Canterbury (the Council) had breached section 6(1) of the Local Authorities (Members' Interests) Act 1968 (the Act), by discussing and voting on a proposal to recover the costs of managing water resources in Canterbury (the proposal). In October 2009, the complainant told us that a fourth councillor might have breached the Act.

Section 6(1) of the Act prohibits members of a local authority from discussing or voting on a matter if they have a financial (or "pecuniary") interest in it. Section 6(4) enables the Auditor-General to give a declaration that this prohibition will not apply if its application impedes the business of the local authority or is against the interests of electors.

The Auditor-General is also responsible for taking enforcement action when the requirements of the Act are breached. A breach of section 6(1) is a criminal offence and the Auditor-General is the sole prosecuting authority.

Therefore, we investigated the complaints made to us about the potential breaches of the Act. This report sets out our findings and conclusions.

We have concluded that the four councillors have breached section 6(1) by participating in a decision when they had a financial interest in it. However, we have decided that a prosecution would be unlikely to result in a conviction and that it would not be appropriate in these circumstances to seek to have the councillors prosecuted.

We consulted the Crown Law Office before finalising our view. That Office agreed that the Act had been breached and that a prosecution was not warranted.

We are concerned at the lack of awareness of the Act and of guidance on conflicts of interest that has been evident in this case. We intend to work with the Council and the individual councillors as necessary to help them deal more appropriately with any conflicts of interest in future decisions on water management issues. In particular, we are continuing to discuss with them whether it would be appropriate to grant a declaration to enable these councillors to participate in future decisions on water management issues.

I am conscious that decisions on water management are very significant for the Canterbury region. All those in the region need to be able to have confidence in the decisions of their elected decision-makers. It is important that procedural

matters such as possible conflicts of interest are carefully and openly managed in advance, to avoid procedural issues distracting the debate from the substance of these important and difficult questions.

I thank the councillors and Council staff involved in this investigation for their co-operation.

Lyn Provost
Controller and Auditor-General

22 December 2009

Part 1
Background

The proposal

1.1 Environment Canterbury (the Council) incurs costs in investigating and monitoring work associated with managing the region's water resources, including state-of-environment monitoring. In this report, we refer to these as water management costs. Water management costs are costs over and above the direct costs associated with individual water-related resource consents (for example, processing applications and compliance monitoring) that are separately paid for by consent holders. The Council's draft long-term council community plan (LTCCP) for 2009-19 estimated the water management costs to be $7.1 million a year. These costs have previously been met from general rates.

1.2 The Council has been considering since early 2005 the use of funding sources other than general rates to meet these water management costs (for example, using uniform annual charges or "user pays" charges). When consulting on the 2006-16 LTCCP, the Council sought views on the concept of charging resource consent holders directly for the costs of managing water resources in Canterbury. The Council told us that there were 191 responses, with 132 (69%) supporting such charges, 57 (30%) opposing them, and two (1%) with no preference. Since the 2007 local authority elections, the Council has further considered the idea of recovering a portion of the water management costs directly from holders of certain types of consents issued under the Resource Management Act 1991 (the RMA).

1.3 In the draft 2009-19 LTCCP, the Council included a proposal to recover $2.2 million (31%) of its water management costs from holders of certain types of consents through charges applied under section 36 of the RMA. The costs were to be recovered from the holders of permits to take ground water and surface water, and from holders of permits to discharge contaminants either to land or water. In this report, we refer to them as consent holders.

1.4 The remaining $4.9 million (69%) of the Council's water management costs would be paid for out of general rates. Previously, the Council's water management costs had been paid for entirely out of general rates.

1.5 The proposal was quite complex. The Council proposed that the charges payable by consent holders would differ depending on the:

- location of the consent;
- type of consent held; and
- amount of water taken and/or type of contaminant discharged to land or water.

1.6 The proposal presented a number of different options for differential charges. For example, it proposed different methods for levying the charge on water permit holders:

- a standard charge for each consent; or
- a charge based on the rate of water take; or
- a charge based on both a standard charge for each consent and on the rate of water take.

1.7 If the proposal had been adopted, consent holders would have paid $2.2 million of the Council's total water management costs of $7.1 million and $4.9 million would have been met from general rates. Therefore, ratepayers who were not consent holders would have paid less in regional council rates. Ratepayers who were consent holders would have paid less in regional council rates, but would have also had to pay the charges under section 36 of the RMA.

The councillors and their interests

1.8 The four councillors who held consents and were affected by the proposal were Cr Pat Harrow, Cr Angus McKay, Cr Mark Oldfield, and Cr Bronwen Murray. The councillors or their spouses held consents either in their own name or through companies in which they were shareholders:

- Cr Oldfield holds two permits to take ground water and a permit to discharge dairy effluent to land. He holds two of these consents jointly with his wife and the other jointly with his father. A property for which one of the consents is held is leased.
- Cr Harrow is a shareholder in Berry Fields Limited, which holds a permit to take ground water.
- Cr McKay is a shareholder in Kanuka Syndicate Limited, which holds a permit to discharge dairy effluent to land. Cr McKay also holds shares in companies or schemes that have consents to take water and those shareholdings entitle him to certain amounts of water to irrigate his land. He told us that these companies would be likely to pass on the water consent charges to him and to other shareholders.
- Cr Murray's husband is the sole shareholder in The Wolds Station Limited, which holds two permits to take surface water. Cr Murray was a shareholder and director of that company until November 2008.

Discussions on the risk of conflicts of interest

1.9 The Council considered the proposal at meetings during 2008 and 2009. The issue of whether Cr Murray may have a conflict of interest in the proposed charges was raised at a meeting of the Council's Finance and Audit Committee in February 2008.

1.10 At that meeting, the Committee considered a paper that showed the potential effect of water management charges on the 20 consent holders that would be most affected by the proposed charges, and the 20 consent holders that would be least affected. The list of the 20 consent holders most affected by a water management charge included The Wolds Station Limited, with a possible charge of $13,675.[1] At that time, Cr Murray was a director and shareholder in that company, along with her husband.

1.11 The minutes of that meeting note that:

- Cr Murray asked if identifying her property as one of the most affected would compromise her role as a councillor in the decision-making process on this issue.
- It was suggested that Cr Murray's interest was no more than an interest in common with the public, but she should seek advice on this matter.

1.12 In October 2008, the then Chairperson of the Council, Sir Kerry Burke, emailed Cr Oldfield suggesting that he may have a conflict of interest in relation to the proposal. He also raised the issue with Cr Murray at a briefing meeting of the Council's water portfolio group on 5 November 2008.

1.13 On 31 October 2008, Sir Kerry contacted us for guidance about whether councillors who were consent holders had an interest in common with the public in a proposal to recover a share of water management costs directly from consent holders rather than through general rates. He did not provide details about the number of councillors potentially affected or their interests, but sought general guidance only. He told us that consent holders were likely to make up about 1% of the population of any region in New Zealand,[2] and asked if we thought the interests of councillors with water consents were likely to be "in common with the public".

1.14 We replied to Sir Kerry on 14 November 2008. We advised him that the interests of councillors who are consent holders in a "user pays" charging regime is of a different nature and size to most members of the public. We said that such councillors would, therefore, be prohibited from participating in discussion or

1 As the proposal was further developed, the financial effect on The Wolds Station Limited was significantly less than this.

2 The Council has told us that 4.2% of its ratepayers are consent holders. Based on Council data on water and discharge consents, we calculate that 2.7% of Canterbury ratepayers are water or discharge consent holders.

voting on a proposal of that nature. We also noted the ability of the Auditor-General to make a declaration under Local Authorities (Members' Interests) Act 1968 (the Act) to enable a member with a financial interest to participate in the discussion and vote on a proposal where Council business would otherwise be impeded (for example, where several councillors were affected) or where it would be in the public interest that all members take part.

1.15 Sir Kerry wrote to Crs Harrow, Oldfield, and Murray on 27 February 2009 about their conflicts of interest in relation to the proposal. He also sent them a paper that cited part of our advice, and then gave this paper to all councillors. In the paper, Sir Kerry advised that Council staff could arrange for the three councillors to receive legal advice on the matter at the Council's expense if they wished. However, Sir Kerry did not provide a full copy of our November 2008 advice to him to the councillors, and nor did he advise the three councillors at that time about the option of seeking a declaration from the Auditor-General to enable them to participate.

1.16 Sir Kerry told us that councillors were aware of the declaration option, and showed us some notes on managing conflicts of interest that he prepared and gave to councillors in late September 2008 that referred to the declaration provisions in the Act.

1.17 Cr Oldfield took up the Council's offer to get legal advice about whether he had a conflict of interest. He received legal advice that he was not prohibited from voting or discussing the proposal at Council meetings. The legal advice considered that the exceptions in section 6(1A) and section 6(3)(f) of the Act applied. It argued that the prohibition on voting and discussing did not apply when the matter being considered was one of policy. It also said that, provided Cr Oldfield did not have an improper motive in voting or discussing the matter, the prohibition did not apply.

1.18 Cr Oldfield circulated his legal advice to the other councillors on 4 March 2009, before the Council met on 5 March 2009 to consider the draft 2009-19 LTCCP that contained the proposal. Sir Kerry considered that the legal advice was unsound, and tabled a paper setting out his concerns at the Council meeting on 5 March. He advised councillors that he did not consider that the legal advice provided a secure foundation for consent-holding councillors to participate in voting or discussion on the proposal. In this paper, he noted that the Auditor-General could make declarations to enable councillors with pecuniary interests to participate in discussing or voting on a matter. The legal advice, and Sir Kerry's letter of 27 February 2009 (see paragraph 1.15), were tabled at the 5 March meeting at Cr Oldfield's request.

1.19 Cr Oldfield told us that he got verbal assurance from his lawyers at the lunch break during the 5 March meeting that they stood by their advice, despite Sir Kerry's criticism of it. On 13 March 2009, the legal advisors reconfirmed in writing their earlier advice that Cr Oldfield had no conflict of interest. Cr Oldfield circulated this advice to the other councillors at their next meeting on 24 March 2009.

1.20 Crs Murray and Harrow told us that they saw the legal advice to Cr Oldfield and that they relied on it, believing that they were in a similar position to Cr Oldfield and that the legal advice applied to them. Cr McKay notes that the issue of his financial interest in the proposal was not raised with him until the complaint to our Office in October 2009, but that in hindsight he should have considered the financial effect of the proposal on him.

The Council meetings where the proposal was considered

1.21 The proposal came before the Council at two meetings in 2009. The first meeting was on 5 March 2009, when the Council – as part of the draft LTCCP process – was required to vote on whether to approve the draft fees and charges for 2009/10 for consultation. The proposed fees and charges included the proposal to recover water management costs.

1.22 Crs Oldfield and Harrow declared that they were irrigators, but took part in discussion and voting. Crs Oldfield and Murray voted against approving the fees and charges for consultation, Cr Harrow voted in favour of consulting on them, and Cr McKay abstained from voting.

1.23 The Council then received and heard submissions on the draft LTCCP, including the proposal to recover water management costs. There were 360 submissions made on the proposal, of which 320 were opposed. This was in contrast to a Council survey of 380 households in February 2009, on views on the water charges, during the LTCCP consultation programme. The Council told us that 73% of those surveyed agreed that a proportion of costs should be borne by consent holders and 21% disagreed.

1.24 The Council met on 4 June 2009 to consider submissions on the draft LTCCP and to adopt the LTCCP. There were a number of motions put at the meeting about the proposal. Voting was split seven for and seven against the proposal to adopt the water management charges, and the motions that sought to introduce it six months into the 2009/10 financial year or introduce the charges from 1 July 2010.

1.25 All four councillors voted against the various motions that sought to adopt the proposal. A final motion was put that the charges under section 36 of the RMA be deferred for 12 months, to allow a working party to be established to discuss

charging options with major stakeholders. All four councillors voted against that motion. However, there were sufficient votes from other councillors for the motion to be carried.

The effect of the proposal on the four councillors

1.26 The proposal was complex, and it was difficult for consent holders to determine from the draft LTCCP the exact financial effect of the proposal on them. However, the broad principle that consent holders would be directly affected by having to pay charges under section 36 of the RMA was clear.

1.27 The Council gave us information about the likely financial effect of the proposal on the four councillors. All four councillors owned high-value properties, and so would benefit significantly from the reduction in general rates that would accompany the new charges under section 36.

1.28 For two of the councillors, the charges under section 36 would have been very low and would have been outweighed by the reduction in their general rates. There would have been an overall financial benefit of around $134 for one councillor and $391 for the other.[3]

1.29 However, for the other two councillors, the charges under section 36 would have been reasonably significant despite their savings in general rates. The overall net effect would have been a cost of around $977 to one councillor and $1,628 for the other.

The effect of the proposal on other ratepayers

1.30 Had the proposal been adopted, the Council would have raised $2.2 million from consent holders who were subject to the charges under section 36 of the RMA rather than from other regional council ratepayers.

1.31 The Council has told us that:

- the effect of introducing the charges under section 36 of the RMA on rates would have been an average reduction in general rates of $2.04 for every $100,000 of capital value; and
- the average capital value for each rateable assessment for the region is $478,000, so the effect on the average property would have been a reduction of $9.75 a year in general rates.

3 This councillor told us that his benefit would be reduced by $165-202 if irrigation companies supplying him with water passed on water consent charges.

Part 2
Have the councillors breached the Act?

2.1 Section 6(1) of the Act prohibits a councillor from discussing or voting on any matter at a council meeting in which they have, directly or indirectly, any pecuniary interest other than an interest in common with the public.

Did the councillors have a pecuniary interest in the proposal?

2.2 The term "pecuniary interest" is not defined in the Act. However, the definition that we use is:

> *... 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.*[4]

2.3 Section 6 of the Act also deems a councillor to have a pecuniary interest in a matter when their spouse, or a company in which they (or their spouse) holds 10% or more of the shares, has a pecuniary interest in the matter. All four councillors held consents either in their own name or in the name of their spouse or through companies in which they or their spouses had shareholdings of more than 10%.

2.4 The effect of the proposal was that consent holders would be liable to pay charges under section 36 of the RMA to the Council, but that this would be offset to some extent by decreased general rates, depending on the value of their properties. Therefore, all four councillors (or their spouse or companies) as consent holders would be liable to pay these charges under section 36. The proposal would have a direct financial effect on them, so they did have a pecuniary interest in it.

2.5 The definition of pecuniary interest that we use requires a councillor to have a reasonable expectation of gain or loss of money at the time they discuss or vote on a matter. In practice, it is common for debate on issues of this kind to progress from broad consideration of a problem, to options for addressing it, through to a developed proposal being recommended for adoption.

2.6 It can be hard to determine at which point a general discussion becomes firm enough for an individual councillor to have a "reasonable expectation" of being financially affected. For the purposes of the Act, we usually draw a distinction between a council approving proposals as a basis for consulting with the community, when we consider that there is often still uncertainty about the shape of the final proposal, and later stages when the council is deciding to adopt the final proposal.

2.7 At the meeting of 5 March 2009, the councillors voted on whether to approve the draft fees and charges for public consultation. At this point, it was uncertain

4 Office of the Auditor-General, *Guidance for members of local authorities about the law on conflicts of interest*, June 2007, paragraph 3.5.

whether the proposal would be adopted in its proposed form by the Council, because it might change significantly as a result of public submissions. There were also still several different options being put forward, with different financial effects. Therefore, at the meeting of 5 March 2009, we do not consider that the councillors could have had a reasonable expectation of loss or gain of money because there was still some uncertainty about the shape of the final proposal.

2.8 However, at the meeting of 4 June 2009, the councillors were required to vote on whether to adopt a final proposal for including in the final LTCCP and to take effect during the 2009/10 financial year or the next financial year. We consider that, at this meeting, the councillors did have a reasonable expectation that the proposal would affect them financially. Therefore, they had a pecuniary interest in the decision at the June meeting.

2.9 We do not agree with the legal advice provided to Cr Oldfield, which he shared with the other councillors, that the prohibition in the Act does not apply to policy decisions of this kind.

Do any of the exceptions or defences in the Act apply?

2.10 There are some exceptions to the prohibition in section 6(1) of the Act, and also some defences. We do not consider that any of the exceptions or defences apply to these councillors. We have set out our reasons for this in paragraphs 2.11-2.21.

Section 6(1) – interest in common with the public

2.11 The prohibition on discussing and voting in section 6(1) of the Act does not apply where the pecuniary interest held by a councillor in the matter under discussion is one in common with the public. There is no guidance given in the Act about when this exception applies.

2.12 The issue of whether a councillor's pecuniary interest is an interest in common with the public will always depend on the circumstances of the case, and is always a question of degree. We consider that a pecuniary interest does not need to be shared by the entire public for the exception to apply. In our view, it is enough that a councillor is part of a large group of people affected in a similar way.

2.13 The Council told us that there are around 10,919 RMA consent holders and 260,000 ratepayers, so around 4.2% of ratepayers are consent holders. However, not all of these consents are subject to the proposed water charges. The Council told us that 6950 water and discharge consent holders would be subject to the charges under section 36 of the RMA. So, about 2.7% of ratepayers hold consents that would be subject to the water charges.

2.14 We considered whether the fact that the proposal could indirectly affect ratepayers was relevant to the "interest in common with the public" exception. Possible indirect effects include:

- costs passed on to ratepayers by territorial authorities, who are among the water consent holders most affected by the proposed water charges; and
- costs passed on to ratepayers, as consumers or shareholders, by large companies and organisations that hold water consents.

2.15 However, we consider that the pecuniary interest of the councillors who held consents was different to the public generally. Although the proposal affected all ratepayers through the reduction in general rates, and some ratepayers could be indirectly affected if large entities that became subject to the charges passed them on, it affected the relevant consent holders differently because they became liable to pay charges under section 36 of the RMA. This would be a direct effect that is different in kind and extent to the effect on the public generally. As noted in paragraph 1.31, the reduction in general rates for the average property would have been just under $10.

2.16 Although many consent holders would have been affected by the proposal, we consider that they do not make up a large enough group of the public for the exception in section 6(1) to apply. There is no formula that can be applied to determine whether this exception applies; it requires judgement. However, in our view, consent holders are in a small and clearly-identified subset that is affected differently by this proposal, compared to the rest of the rate-paying population in the region.

Section 6(1A) – elected to represent a particular group

2.17 Crs Murray and Oldfield argued that the exception in section 6(1A) of the Act applied. Section 6(1A) provides that the prohibition in section 6(1) does not apply where the councillor has been elected by, or is appointed to represent, any activity, industry, business, organisation, or group of persons, and their pecuniary interest is not different in kind from the interests of other persons in the activity, industry, business, organisation, or group by which the councillor is elected, or in respect of which they are appointed. The councillors argued that they had been elected to represent South Canterbury, that the rural sector is a major part of South Canterbury, and that irrigation was a major issue for those within the rural sector. They argued that they had been elected by rural sector voters and that their pecuniary interest was the same as other members of the rural sector.

2.18 In our view, section 6(1A) does not apply to local authority elections for general constituencies or wards. Rather, it applies when a person is explicitly elected or appointed to represent a particular group. An example is a student representative on a University Council. Even if section 6(1A) were to apply to local authority elections, because the vote is by secret ballot, a councillor could rarely if ever prove that they had been elected by particular voters. Therefore, we do not consider that Crs Murray and Oldfield are covered by the exception in section 6(1A).

Section 7(2) – member did not know they had a pecuniary interest

2.19 Under section 7(2) of the Act, it is a defence in proceedings under the Act if a member can prove that they did not know, or had no reasonable opportunity of knowing, that they had a financial interest other than an interest in common with the public. None of the councillors have argued that this defence applies, but we deal with it for completeness.

2.20 All four councillors are experienced councillors and they had previously been given information about conflicts of interest. The issue of whether Cr Murray had a conflict was raised directly with her at meetings, and with Crs Oldfield and Harrow by the then Chairperson, Sir Kerry Burke, by email. These three councillors were also given information on conflicts of interest in relation to the proposal by the then Chairperson in February 2009, and that advice was then given to all councillors. In particular, they were given material on deemed pecuniary interests (that is, where a councillor's spouse, or a company in which a councillor or their spouse is a shareholder, has a pecuniary interest).

2.21 The councillors could have asked Council staff for advice on how the proposal would affect them financially. None did so before the June 2009 meeting. We appreciate that they may have been relying on legal advice that said they were not barred from participating at that time.

Conclusion on breach of the Act

2.22 In our view, each of the four councillors had a pecuniary interest in the proposal when it was considered at the Council meeting on 4 June 2009. Their pecuniary interest was not one that was in common with the public, and none of the other exceptions or defences in the Act applies. Therefore, all four councillors breached section 6(1) of the Act by voting on the proposal at that meeting.

Part 3
Consequences of participating in the decision

3.1 If a member of a local authority breaches section 6(1) of the Act, the Auditor-General has the discretion to seek to have that person prosecuted if the circumstances warrant taking that step. That discretion needs to be exercised in keeping with the Solicitor-General's *Prosecution Guidelines* issued by the Crown Law Office. These guidelines have been in place since 1992 and are the accepted and authoritative description of how any prosecuting agency should exercise its discretion.

3.2 The guidelines issued by the Crown Law Office require both that the facts provide evidence of a breach of the Act and that it is in the public interest to bring a prosecution. Factors relevant to that assessment of the public interest include:

- whether it is more likely than not that a prosecution will result in conviction;
- the size and immediacy of any pecuniary interest, the damage caused, the level of public concern, and the extent to which the member's participation influenced the outcome;
- mitigating and aggravating factors, including any previous misconduct, willingness to co-operate with an investigation, evidence of recklessness or irresponsibility, and previous breaches, cautions, and warnings;
- the effect of a decision not to prosecute on public opinion;
- the availability of proper alternatives to prosecution, such as reporting publicly to the council or the public;
- the prevalence of the offending and need for deterrence;
- whether the consequences of a conviction would be unduly harsh or oppressive; and
- the likely length and expense of the trial.

3.3 Although we consider that all four councillors have breached section 6(1) of the Act, we have decided not to seek to have them prosecuted. We have considered the criteria in the prosecution guidelines, and our overall assessment is that a prosecution would be unlikely to result in a conviction and it is not in the public interest to proceed. Factors relevant to that judgment include:

- the councillors all relied on legal advice that they could participate in discussing and voting on the proposal;
- this is the type of situation where we would have given careful consideration to an application to participate, if one had been made at the right time;
- the councillors co-operated with our investigation;
- there are no aggravating factors in terms of a history of breaches or warnings

from us;

- the potential financial effect of the decision was unlikely to be particularly significant for the councillors concerned;
- previous court decisions have shown that courts are reluctant to impose a conviction in situations of this kind and will consider options such as discharging without conviction; and
- other sanctions are available, in particular the sanction of a public report by the Auditor-General.

3.4 Therefore, we consider that, in this situation, it is enough that we are reporting our findings publicly. We would not necessarily take the same approach if a similar breach occurred again.

3.5 The Crown Law Office has reviewed our approach. It agrees that the councillors breached section 6(1) of the Act, and agrees that seeking to have them prosecuted is unlikely to result in a conviction and is not warranted in the circumstances.

Part 4
Other comments

4.1 The proposal to recover water management costs is an ongoing issue for the Council. The Council has set up a working group that includes Cr McKay, to further consult on the proposal. The issue will come back to the Council in the near future for further decisions. The councillors risk further breaches of the Act, depending on the nature of those decisions.

4.2 The Act contains two possible options for dealing with this situation. Under section 6(4) of the Act, the Auditor-General can grant a declaration to allow a member to participate in a matter in which they have a disqualifying pecuniary interest, in a limited range of circumstances. In particular, the Auditor-General can grant a declaration if the prohibition on discussing and voting would impede the business of the council (for example, if a large number of councillors are affected, or if it would be in the interests of the electors or inhabitants of the district that the prohibition should not apply).

4.3 For a declaration based on the need not to "impede the transaction of business", the Auditor-General considers factors such as whether:

- the pecuniary interest rule would preclude most of the members of the council from participating in the matter;
- the declaration sought is only for minor or procedural decisions; or
- the application of the rule could unduly distort the way in which the council deals with the matter.

4.4 For a declaration based on participation being in the "interests of the electors or inhabitants", relevant considerations include whether:

- the members have any particular expertise in the matter under consideration;
- the views of the people in the area would be inadequately represented if the members were not able to participate; and
- the matter justifies the involvement of all elected members because of its significance to the community as a whole.

4.5 The Auditor-General must weigh the benefits of allowing members to participate against the risk that their pecuniary interests could be seen to unduly influence the outcome. The Auditor-General can grant a declaration on her own motion, or after considering applications from members.

4.6 The other option that may apply to some councillors is section 6(3)(f) of the Act. Under that section, a member can apply to the Auditor-General, before an issue is debated at a meeting, arguing that the prohibition in section 6(1) of the Act should not apply because the member's financial interest is so insignificant that it cannot reasonably be regarded as likely to influence their decision.

4.7 We have been concerned at the lack of awareness of the Act and of general guidance on conflicts of interest that has been evident in this case. We intend to work with the Council and the individual councillors as necessary to help them deal more appropriately with any conflicts of interest in future decisions on water management matters. In particular, we are continuing to discuss with them whether it would be appropriate to grant a declaration to enable these councillors to participate in future decisions on these issues.