

# GBWCT POLICY



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## CONFLICT OF INTEREST POLICY (TRUSTEES)

This document seeks to ensure that in decision-making there is no conflict between the personal or professional interests, or duties of trust or obligations of the Golden Bay Workcentre Trust Trustees in relation to their obligations to or with the Golden Bay Workcentre Trust.

### 1.0 Purpose

The purpose of this document is to set out the Golden Bay Workcentre Trust's expectations for its Trustees to ensure compliance with the provisions of the following legislation and good practice guidelines:

- Section 175, Education Act 1989 (New Zealand Legislation website).

This document should be read in conjunction with related Golden Bay Workcentre Trust policies, including the following:

- BoT Code of Ethics
- BoT Code of Practice

### 2.0 Principles

A number of principles should guide and underpin the management of conflicts of interest in the organisation environment.

1. A conflict of interest may take a number of forms. It may be financial or non-financial. It may be direct or indirect. It may be professional or family-related. A conflict of interest may arise from:

- Directorships or other employment;
- Interests in business enterprises or professional practices;
- Share ownership;
- Beneficial interests in trusts;
- Existing professional or personal associations with the Crown body concerned or with other tertiary education providers;
- Professional associations or relationships with other organisations;
- Personal associations with other groups or organisations;
- The holding of multiple roles within the Golden Bay Workcentre Trust; or

- Family relationships.
2. A conflict of interest may be more perceived than actual. Perception is a very important factor in the public sector. Processes must be fair and ethical, and must be very clearly seen to be so.
  3. The determination about a perceived or actual conflict of interest may include legal, ethical, and/or good practice requirements – see Appendix B “Ethical Expectations”.
  4. Conflicts of interest cannot always be avoided. Unavoidable conflicts of interest need to be identified, disclosed and effectively managed.
  5. Managing conflicts of interest well is not only good practice, but it also protects the public entity and the Trustee or official involved. A conflict of interest that is hidden, or that is poorly managed, creates a risk of allegations or perceptions of misconduct, or of other adverse consequences such as litigation. Ensuring that the public interest is not compromised should be an overriding objective in any management strategy for conflicts of interest.
  6. Conflicts of interest must be seen to be managed fairly and effectively. To achieve this, the processes for identifying, disclosing and managing conflicts of interest must be transparent – that is, the processes should be open to scrutiny and should help maintain accountability.
  7. All Trustees are individually responsible for arranging their private affairs as far as reasonably possible to prevent conflicts of interest arising.
  8. Just because a Trustee has an interest outside work, it does not necessarily follow that there is a conflict of interest. A conflict of interest only occurs if something arises at work that overlaps with the other interest.
  9. Conflicts of interest may be discovered and may still have an impact after a Trustee has left the Golden Bay Workcentre Trust.
  10. The Golden Bay Workcentre Trust will facilitate education and training opportunities for all Trustees in respect of conflicts of interest.

## 3.0 Definitions

### **Conflict of Interest**

A conflict of interest can occur when the activities of a Trustee outside their involvement with the Golden Bay Workcentre Trust leads, or could lead, to material benefit for the Trustee concerned, either directly or indirectly. This can also occur when the Trustee has competing internal interests due to them holding different roles within the Golden Bay

Workcentre Trust. A conflict of interest may also relate to activities which interfere, or could interfere, with a Trustee's fulfilment of their employment obligations. Any reference to a conflict is a reference to a real, perceived or potential conflict.

### **Determining an Interest**

In determining whether a Trustee has an "interest" in a "matter" requires consideration of two issues, namely:

1. Is there a "relevant matter" in which there may be an "interest"?
2. Does the Trustee have an "interest in" the matter?

The scope of "relevant matters" is considered to encompass:

- The exercise or performance of a function or duty of the Trust
- An arrangement, agreement or contract to which the Golden Bay Workcentre is a party
- A proposal that the Golden Bay Workcentre Trust enters into an arrangement, agreement or contract.

As a guideline, a Golden Bay Workcentre Trust Trustee could be considered as having an "interest" in a matter when the Trustee:

- Is a party to or will derive financial benefit from the matter;
- Has a financial interest in another party to the matter;
- Is a director, Trustee, official, partner or trustee of another party or person who will or may derive a financial or some other non-pecuniary benefit from the matter;
- Is the parent, child, spouse or partner of another person who will or may derive a financial or some other non-pecuniary benefit from the matter;
- Is involved with a political organisation for whom the matter is politically significant;
- Is otherwise directly or indirectly interested in the matter.

It is important that Trustees remember that the question of whether one has an interest in a matter can be highly subjective, and whilst this policy, and the legislation referred to above can help provide a Trustee with a feel for when a conflict might arise, this is not an area where a Trustee should assume that hard and fast rules apply. Conflicts of interest involve judgement calls, and if a Trustee considers that they may have an interest in a matter, they should take steps to declare and resolve the possible conflict.

### **Materiality**

The materiality of a concern or interest depends on the context and is a matter of judgement. The amount of financial benefit or loss involved, the level of involvement as a percentage of the total operation of the company or organisation, and the degree to

which the person is able to make or influence a Golden Bay Workcentre Trust Trustee's decision are relevant. Everyone covered by this policy should opt for disclosure if in doubt.

### **Pecuniary Interest**

A Trustee has a direct pecuniary interest in a discussion from which that Trustee would receive income should they provide those services. They have an indirect pecuniary interest if their partner, close relative or friends would receive income or other benefits from the services.

### **Involvement in a Company**

A Trustee has an interest which must be declared if they are employed by a company, or are a director or owner or controller, or have shares in a company or their family trust, partner, or close relative or friend has such shares in a company which is seeking to do business with the Golden Bay Workcentre Trust.

### **Family Interest**

A Trustee has a family interest in a matter if their partner or another person in their family is employed by a company, or they or their family or family trusts are a director or owner of a company which is seeking to do business with the Golden Bay Workcentre Trust.

This means, for example, that a disclosure of interest is required when:

- a) The Trustee becomes involved with a matter which relates to duties undertaken as a Golden Bay Workcentre Trust employee, contractor or consultant or in the exercise of rights of private professional practice;
- b) The Trustee is a consultant, director, shareholder or an employee of or to a third party in some current or proposed relationship with the Golden Bay Workcentre Trust;
- c) The Trustee is providing professional advice or services to a third party in some current or proposed relationship with the Golden Bay Workcentre Trust;
- d) A decision of the Golden Bay Workcentre Trust Trustee might affect a consulting or other relationship (e.g. Board Trusteeship, directorship) of a Trustee with a third party;
- e) A Trustee is involved in a third party which is active in the same sphere of activity as the Golden Bay Workcentre Trust or one of its subsidiaries;
- f) A Trustee has a close relationship with a person who in their own right or through a company is transacting business with the Golden Bay Workcentre Trust;
- g) A Trustee has accepted gifts (including loans of money or property) from a party seeking to do business with the Golden Bay Workcentre Trust, or that party provides services which compete with those provided by the Golden Bay Workcentre Trust;

- h) A Trustee is on a committee which is to consider an appointment, scholarship or other matter for which a person in their family, or a person with whom the Trustee has (or has had) a close relationship, is an applicant or candidate;
- i) A Trustee is on a non-Golden Bay Workcentre Trust committee, government board or similar where there is, for example, control over allocation or awarding of research funding, receivable by the Golden Bay Workcentre Trust or any other benefit income or consequences flowing to the Golden Bay Workcentre Trust.

### **Non-pecuniary Interest**

A Trustee has a non-pecuniary interest if they have publicly stated, or are well known as having, a view on a particular issue and where participation in a decision touching or concerning that view, might suggest the Trustee's or staff member's mind is made up (bias). Also included would be cases where a Trustee showed an unwillingness to fairly consider the view of others, or was not prepared to be persuaded by evidence or argument, or took a fixed view where that view precluded a balanced consideration.

### **Third Party Interests**

A conflict of interest will arise when a Trustee is associated with a party which takes actions that affect the Golden Bay Workcentre Trust through the various agreements, including purchase agreements and alliances; the Golden Bay Workcentre Trust Trustee has with third parties. It is crucial that a Trustee which such an interest in a matter is not perceived to be representing the interests of the Golden Bay Workcentre Trust and that a Trustee's outside activities do not compromise the integrity of their governance or employment as a Trustee. Trustees should not take any actions which might be perceived as promoting the interests of the third party in a matter of themselves.

## **4.0 Policy Statements**

### Obligations Applying to any Golden Bay Workcentre Trust Trustee

- Every Golden Bay Workcentre Trust Trustee has an obligation to declare any material interests relevant to any Golden Bay Workcentre Trust activities and to ensure that any conflict arising from the material interests is noted and managed appropriately.
- Every Trustee who has a material interest as described in this document must declare that interest in writing and ensure that any conflict arising from the declared interest is managed appropriately.
- No Trustee may take part in discussions, deliberations, decision-making or voting on a matter in which he/she has a material interest.
- The Golden Bay Workcentre Trust maintains both a Register of Interest and a Conflict of Interest Register which are updated. Declarations can be made to the Chairperson or Manager at any time by any Trustee or staff member for inclusion in these registers; see Appendices C and D.

## Requirements specific to Various Subcommittees of the Golden Bay Workcentre Trust Trustees

### Financial

- The Trustee will advise the Chair immediately of any circumstances, conflicts of interest, or perceived conflicts of interest that may prevent the Trustee or staff member from performing his/her role in a fair and impartial way, in the best interests of the Trust.
- As a mechanism for recording conflicts of interest or the types of ongoing interests that may give rise to a conflict of interest, the Golden Bay Workcentre Trust maintains Registers, as outlined above.
- As part of the induction process, new Trustees will receive advice on how to identify, report, and manage conflicts of interest.
- Trust agendas will include a 'standing' item for the disclosure of any interest relating to any agenda item.

### Staff

Unless otherwise authorised in writing, Golden Bay Workcentre Trustees are prohibited from the following:

- Being involved in a decision to appoint or employ a relative;
- Conducting business on behalf of the Golden Bay Workcentre Trust with a relative's company;
- Owning shares in (or working for) any organisation that has dealings with (or that are in competition with) the Golden Bay Workcentre Trust;
- Being involved in any public consultation process on behalf of the Golden Bay Workcentre Trust where the Trust member is involved in the same process on behalf of him/herself or another entity;
- Accepting gifts in connection with their official role; or
- Influencing or participating in a decision to award grants or contracts where the Trust member is connected to a person or organisation that submitted an application or tender.
- As a mechanism for recording conflicts of interest or the types of ongoing interests that may give rise to a conflict of interest, the Golden Bay Workcentre maintains Registers (see above).
- Consulting work by Trustees must not create any conflict of interest with their Golden Bay Workcentre Trust duties; where this may arise; it must be disclosed to the appropriate Chairperson or manager.

### **Contractors/Consultants/Providers**

Conflicts of interest in relation to consultants, contractors and goods/service providers may arise as a result of:

- The contractor or service provider also being a Trustee of the Golden Bay Workcentre Trust;
- A Golden Bay Workcentre Trust Trustee having an “interest” in a contractor or service provider and having the opportunity to be involved in discussions and/or decision making with respect to that consultant, contractor or service provider about any potential agreement or contract;
- The consultant, contractor or service provider having an “interest in” or relationship with a third party outside of the Golden Bay Workcentre Trust which could influence their relationship with the Golden Bay Workcentre Trust.
- Consultants, contractors, and providers of goods and services are required to disclose to the Golden Bay Workcentre Trust at the time of their engagement any potential conflicts of interest with their engagement. As an outcome of this disclosure, the Golden Bay Workcentre Trust may insert an appropriate clause into any formal agreement/contract to manage the disclosed situation should that be possible. In some cases, the Golden Bay Workcentre Trust will reserve the right to terminate agreements or contracts which are compromised as a result of a conflict of interest.

### **Joint Ventures/Partnerships/Companies**

Prior to commencing any involvement in a joint venture, partnership or company, the Golden Bay Workcentre Trust will obtain assurances about the policies and practices to be adopted by those entities around conflicts of interest.

Golden Bay Workcentre Trust appointments to any governance Board of such entities will be provided with advice and education to ensure that they are conversant with “good practice” in conflicts of interest and their responsibilities as a director.

## **5.0 Legislation**

In addition to general principles of administrative law and good governance, the Golden Bay Workcentre Trust is also subject to the specific conflict of interest provisions of the:

- Education Act 1989 (New Zealand Legislation website)

In summary, this legislation provides:

- A Trustee who has an interest in a matter being considered (or about to be considered) shall, as soon as possible after the relevant facts have come to the Trustee’s knowledge, disclose the nature of the interest to the Trust, a Trustee, or manager, as appropriate.
- Disclosure should be recorded in the minutes of the Trust.

Unless the Trust Trustees decide otherwise:

- The Trustee shall not be present during any deliberation of the matter;
- The Trustee shall not take part in any discussion relating to the matter.

In applying this legislation, key responsibilities are:

- For individual Trustees to disclose an interest;
- For the Trust to decide how the disclosed interest will be recorded and managed.

## 6.0 Mitigation

There are a broad range of options available to Trustees for avoiding or mitigating a conflict of interest. The options (listed roughly in order of lowest to highest severity) include:

- Acting upon a suspected or possible conflict by disclosing the same to the Chairperson or Manager and requesting guidance; enquiring as to whether all affected parties will consent to the Trustee's official involvement.
- Seeking a formal exemption to allow participation (if such a legal power applies);
- Imposing additional oversight or review over the individual;
- Withdrawing from discussing or voting on a particular item of business at a meeting;
- Exclusion from a committee or working group dealing with the issue;
- Re-assigning certain tasks or duties to another person;
- Agreement or direction not to do something;
- Withholding certain confidential information, or placing restrictions on access to information (this might sometimes include post-employment restrictions, such as those imposed under a restraint of trade agreement);
- Transferring the Trustee (temporarily or permanently) to another position or project;
- Relinquishing the private interest; or
- Resignation or dismissal from one or other position or entity (it might even be necessary to refrain from having further dealings with a person or organisation).

## 7.0 Education/Advice/Training

The Golden Bay Workcentre Trust is committed to the following education and training on conflict of interest matters for its Trustees:

- The Trust will provide new Trustees with an induction about this document, and their personal obligations relating to conflicts of interest.
- The Trust will include in its annual plan, a workshop to provide a Conflict of Interest policy refresher with an opportunity to discuss any issues.



- As part of the induction of new staff to the Golden Bay Workcentre Trust, information will be provided and guidance given on this document.

## 8.0 Disputes Procedures

In the event of any dispute arising in relation to this document, or in relation to any allegation of bias, conflict of interest, or other potential breach of this document, resolution shall be sought in accordance with the following procedure:

- a) The issue should be raised in the first instance with the Trust Chairperson;
- b) If a resolution cannot be reached, the matter should be referred in writing to the Board of Trustees.

### **Breach**

Any breach of this policy by a non-employee of the Golden Bay Workcentre Trust may result in disciplinary procedures, consistent with their relationship with the Golden Bay Workcentre Trust, including the possible termination of their Board membership, as the case may warrant.

### **Ethical Expectations**

Public business ought to be conducted with a spirit of:

- Integrity
- Honesty
- Transparency
- Openness
- Independence
- Good faith; and
- Service to the public

These principles should guide any decision-making about conflicts of interest.

There is no single source of rules or expectations specifying what constitutes ethical behaviour for all situations or all public entities. Any rules or expectations applying to a particular situation, public entity, Trustee, or official may come from a variety of sources, including:

- The entity's founding or constituting document;
- The entity's code of conduct or relevant internal policies and procedures;
- Relevant clauses in an employment agreement or contract for services;
- Rules of conduct or codes of practice applying to Trustees or staff members of a profession or industry;
- General guidance or best practice publications (such as this one);
- Customary practice and behaviour in the public sector or a particular part of it;

- Commonplace understandings of the concepts of integrity, honesty, transparency, openness, independence, good faith, and service to the public; and
- Analogies drawn from legal rules that apply to similar situations.

### Example of a Register of Interests

<b>Register of Interests</b>				
<b>Name</b>	<b>Date Notified</b>	<b>Person and/or Organisation with Interest</b>	<b>Nature of Interest</b>	<b>Reason for its inclusion</b>