



7 June 2023

Auckland Council
Meredith Webb
Manager, Public Law

Tēnā koe Meredith

AUCKLAND COUNCIL – URGENT APPLICATION FOR DECLARATION UNDER LOCAL AUTHORITIES (MEMBERS’ INTERESTS) ACT

In a letter received earlier today you made an urgent application on behalf of all elected members for declarations under section 6 of the Local Authorities (Members’ Interests) Act 1968 to enable them to participate in the Annual Budget 2023/24 decision-making scheduled for tomorrow and the final budget decisions later this month¹. You consider that the declaration sought is in the interests of the people of Auckland.

As part of its decision on the Annual Budget 2023/2024 tomorrow the Council will decide whether or not to sell all or part of its 18.09% shareholding in Auckland International Airport Limited (AIAL) and amend the 2021-31 long-term plan accordingly.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

You have not identified the members in your application.

¹ As you are aware, the Auditor-General’s role under the Act only applies to financial conflicts of interest.

The purpose of the Act is to help protect the integrity of local government decision-making by ensuring that members cannot take advantage of their official position for financial gain. The Act provides that members cannot participate in or vote on matters in which they have a financial interest.

The Auditor-General can grant a declaration that would allow the members with financial interests in a matter before the Council to participate and vote on the matter if:

- it would be in the interests of the people in the local authority's area that the non-participation rule should not apply; or
- applying the non-participation rule would impede the transaction of business by the local authority.

The Act does not define financial interest. Our interpretation, drawn from case law in New Zealand and overseas, is that a financial interest is "a reasonable expectation of financial loss or gain" from the particular decision.

You have told us that, in the Council's view, there is no relevant financial interest that would preclude participation because "the financial impact of the decision to sell on the price of shares is highly speculative, and there is no certainty what will happen to the share price following the Council's decision".

You have explained that the Council's view is based on statements made by Flagstaff (a specialist consultancy firm that has been advising the Council on the proposal to sell the shares) to elected members at a workshop on the Annual Budget 2023/2024 on Wednesday 31 May 2023. At that workshop, Flagstaff advised that "given the public nature of the Council's proposal it is likely that, to a degree a decision to sell has already been factored into the share price. It is therefore difficult and speculative to determine what impact a decision to sell or not sell might have on the share price".

In addition, earlier today Flagstaff advised the Council in writing that:

- A. Auckland Council's consideration to potentially amend the AIAL Airport Shareholding Policy has been well telegraphed to the market and has been the subject of considerable press coverage.
- B. Any potential share price movement in AIAL following a decision to amend or not amend the Airport Shareholding Policy is uncertain and difficult to quantify.
- C. AIAL's share price will also be impacted by broader equities market conditions on the day of the decision.

You also told us that the Council's Group Treasurer considers that any impact of the Council's decision to fully or partially sell-down the Council's share on the AIAL share price is speculative and uncertain. In his view there are a range of scenarios that could play out in the market, investors will all take different views (and may already have taken different views and positions) and this means that the impact of any decision on the share price is uncertain. The Treasurer also advises that "much of what happens to the share price will likely turn on **how** the Council chooses to divest itself of any shares which are decisions which would be taken by the Chief Executive and Chief Financial Officer under delegation and not by elected members".

On the basis of the specialist advice the Council has received, you have formed the view that the elected members could not reasonably expect a financial gain or loss as a result of how the Council decides to deal with its AIAL shares. Accordingly, you do not consider that there is a relevant financial interest that would preclude participation. We accept that this is a reasonable position to take in the circumstances. As a result, the Act does not prevent them from participating and no declaration from the Auditor-General is required.

As an aside, we note that any interests in AIAL shares held by members in KiwiSaver managed funds or other retirement funds are likely to be an interest in common with the public, and therefore the non-participation rule would not apply.

Ngā mihi nui

A handwritten signature in blue ink, appearing to read 'Melanie Webb', with a stylized flourish at the end.

Melanie Webb

Assistant Auditor-General - Legal, Policy and Inquiries