



# Elected Members

## **CODE OF CONDUCT**





## Introduction

1. The *Local Government Act 2002* (the Act) came into force on 1 July 2003. One of the provisions required of the Taranaki Regional Council (the Council) under this Act is the adoption of a Code of Conduct for Elected Members (the Code).
2. Schedule 7, Clause 15 of the Act details what the Code must contain. It is important to note that once adopted, the Code can only be amended or replaced at a full meeting of the Council, provided that the motion is supported by 75% of the members present. The Code cannot be revoked without replacement.
3. Once adopted all elected members of the Council are required to comply with the Code.
4. The Code promotes effective local governance by helping elected members establish and maintain working relationships built on trust and respect. The Code sets out the principles of good conduct and standards of behaviour for elected members of the Taranaki Regional Council in their dealings with:
  - each other
  - the Chief Executive of the Council
  - the staff of the Council
  - the media
  - the general public.
5. The Code **does not apply** where specific legislation governs a matter.
6. The objective of the Code is to enhance:
  - the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local government of the Taranaki region
  - the credibility and accountability of the Council within its community
  - mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

## Legislative Requirements

7. Schedule 7, clause 15 of the Local Government Act 2002 states the following:
  - 15 *Code of conduct*
    - (1) *A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.*
    - (2) *The code of conduct must set out—*
      - (a) *understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—*
        - (i) *behaviour toward one another, staff, and the public; and*
        - (ii) *disclosure of information, including (but not limited to) the provision of any document, to elected members that—*
          - (A) *is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and*
          - (B) *relates to the ability of the local authority to give effect to any provision of this Act; and*

- (b) a general explanation of—
- (i) the Local Government Official Information and Meetings Act 1987; and
  - (ii) any other enactment or rule of law applicable to members.
- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.
- (4) A member of a local authority must comply with the code of conduct of that local authority.
- (5) A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.
- (6) After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.
- (7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

## Principles of the Code of Conduct for Elected Members

The Code is based on the following principles of good governance:

### Public Interest

8. Members should serve only the interests of the region as a whole and should not improperly confer an advantage or disadvantage on any one person.

### Honesty and Integrity

9. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

### Objectivity

10. Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire region and not just the constituency they represent.

### Accountability

11. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with the scrutiny appropriate to their particular office.

### Openness

12. Members should be as open as possible about their actions and those of the Council, and should be prepared to justify their actions.

### Personal Judgement

13. Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.

### Respect for Others

14. Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of the Council staff.

### Duty to Uphold the Law

15. Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.

### Stewardship

16. Members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.

### Leadership

17. Members should promote and support these proposals by example, and should always endeavour to act in the best interests of the region.

## Relationship and Behaviours

This part of the Code sets out the Council's agreed standards of behaviour for elected members.

### Relationships with Other Members

18. Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. With this in mind elected members will conduct their dealings with each other in ways that:
  - maintain public confidence in the Council
  - are open and honest
  - focus on issues rather than personalities
  - avoid aggressive, offensive or abusive conduct.

### Relationships with Staff

19. The effective performance of the Council requires a high level of co-operation and mutual respect between elected members and staff. To ensure that level of co-operation and trust is maintained, elected members will:
  - recognise that the Chief Executive is the employer of all Council employees, and as such only the Chief Executive may hire, dismiss or instruct or censure an employee
  - make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
  - treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
  - observe any guidelines that the Chief Executive puts in place regarding contact with employees
  - not do anything which compromises, or could be seen as compromising, the impartiality of an employee
  - avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee
  - raise concerns about employees with the Chief Executive only, and concerns about the Chief Executive with the Chairperson only.

20. Elected members should be aware that failure to observe this portion of the code of conduct might compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation.

#### Relationships with the Community

21. Effective council decision-making depends on productive relationships between elected members and the community at large.
22. Members should ensure that individual citizens are accorded respect in their dealings with the Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Act. Members should act in a manner that encourages and values community involvement in local democracy.

#### Contact with the Media

23. The media plays an important part in local democracy. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of Council, or as an elected member in their own right.
24. This part of the code deals with the rights and duties of elected members when speaking to the media on behalf of the Council, or in their own right.
25. The following rules apply for media contact **on behalf of Council**:
  - the Chairperson is the first point of contact for the official view on any issue. Where the Chairperson is absent, any matters are to be referred to the Deputy Chairperson or relevant Committee Chairperson
  - the Chairperson may refer any matter to the relevant Committee Chairperson or to the Chief Executive for their comment
  - no other member may comment **on behalf of Council** without having first obtained the approval of the Chairperson.
26. Members are free to express a **personal view** in the media, at any time, provided the following is observed:
  - media comments must not state or imply that they represent the views of the Council
  - where an elected member is making a statement that is contrary to a Council decision or Council policy, the member must not state or imply that his or her statements represent a majority view
  - media comments must observe the other requirements of the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of Council staff.

#### Confidential Information

27. In the course of their duties members will occasionally receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.
28. Elected members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the elected member.
29. Disclosing confidential information could expose the Council to prosecution under the *Privacy Act 1993* and/or civil litigation.

## Conflicts of Interest

30. Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member to ensure the duties of an elected member are performed free from bias (real or perceived).
31. Members need to familiarise themselves with the provisions of the *Local Authorities (Members' Interests) Act 1968* which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.
32. The *Local Authorities (Members' Interests) Act 1968* provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the Council exceed \$25,000 in any financial year (GST inclusive).
33. Elected members are prohibited from participating in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same also applies where the member's spouse contracts with the authority or has a pecuniary interest. Elected members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.
34. Members shall make a general declaration of interest as soon as practicable after becoming aware of any such interests.
35. If an elected member is in any doubt as to whether or not a particular course of action raises a conflict of interest, then the member should seek guidance from the Chief Executive.
36. Members may also contact the Office of the Auditor-General for guidance as to whether that member has a pecuniary interest.

## Ethics

37. The Taranaki Regional Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:
  - not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests
  - not use Council resources for personal business (including campaigning)
  - not solicit, demand, or request any gift, reward or benefit by virtue of their position
  - notify the Chief Executive if any gifts are offered to a member
  - notify the Chief Executive if any gifts are accepted.

## Disqualification of Elected Members from Office

38. Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years imprisonment, or if they cease to be or lose their status as an elector, or of certain breaches of the *Local Authorities (Members' Interests) Act 1968*.
39. Under the *Local Government Act 2002*, the Council, when adopting a code of conduct, must consider whether they will require members to declare if they are an undischarged bankrupt. The Council believes that bankruptcy does raise questions about the soundness of a person's financial management skills and their judgement in general. The Council therefore requires elected members who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt.

## Compliance and review

### Compliance

40. Elected members are bound to comply with the provisions of this code of conduct as per the *Local Government Act 2002 (Schedule 7, section 15(4))*.
41. A Conduct Review Committee will monitor compliance with the Code. This committee will be constituted when a breach of the Code has been alleged and reported to the Chairperson. The Chairperson will be an ex-officio member. All alleged breaches of the code will be reported to the committee. Any allegation of a breach of a code of conduct must be in writing, must be specific and provide corroborating evidence. The committee will investigate the alleged breach and prepare a report for the consideration of Council. Before beginning any investigation, the committee will notify the elected member(s) in writing of the complaint and explaining when and how they will get the opportunity to put their version of events. The Council will consider the report in open meeting of Council, except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a member of staff or of the general public.

### Responses to Breaches of the Code

42. In response to a breach of the Code, the action the Council may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.
43. Where there are statutory provisions:
  - breaches relating to members' interests render members liable for prosecution by the Auditor-General under the *Local Authority (Member's Interests) Act 1968*
  - breaches which result in the Council suffering financial loss or damage may be reported on by the Auditor-General under the *Local Government Act 2002*, which may result in the member having to make good the loss or damage
  - breaches relating to the commission of a criminal offence may leave the elected member liable for criminal prosecution.
44. In these cases the Council may refer an issue to the relevant body or the body itself may take action of its own initiative.
45. Where there are no statutory provisions, the council may take the following action:
  - censure
  - removal of the elected member from Council committees and/or other representative type bodies
  - dismissal of the elected member from a position as Deputy Mayor or Chair of a committee.
46. A decision to apply one or more of these actions requires a Council resolution to that effect.

### Review

47. Once adopted, a code of conduct continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once adopted, amendments to the Code require a resolution supported by 75 per cent or more of the members of the Council present. Council will formally review the code as soon as practicable after the beginning of each triennium.

## Legislation Bearing on the Role and Conduct of Elected Members

This is a summary of the legislation requirements that has some bearing on the duties and conduct of elected members. Copies of these statutes are available upon request.

### *Local Authority (Members' Interests) Act 1968*

48. This Act regulates situations where members' personal interests impinge, or could be seen as impinging on their duties as an elected member. The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year. Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rule also applies where the member's spouse contracts with the authority or has a pecuniary interest.
49. The Office of the Auditor-General publication *Financial Conflicts of Interests of Members of Governing Bodies (2001)* provides further guidance on this Act.
50. Members may also contact the Office of the Auditor-General for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Office of the Auditor-General for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.
51. Failure to observe these requirements could also leave the elected member open to prosecution under the *Local Authority (Members' Interests) Act 1968*. In the event of a conviction elected members can be ousted from office.

### *Local Government Official Information and Meetings Act 1987*

52. The *Local Government Official Information and Meetings Act 1987* sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate.

### *Secret Commissions Act 1910*

53. Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.
54. If convicted of any offence under this Act, a person can be imprisoned for up to 2 years, or fines up to \$1,000, or both. A conviction therefore would trigger the ouster provisions of the *Local Government Act 2002* and result in the removal of the elected member from office.

### *Crimes Act 1961*

55. Under this Act it is unlawful for an elected member (or officer) to:
  - accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council
  - use information gained in the course of their duties for their, or another persons, monetary gain or advantage.
56. These offences are punishable by a term of imprisonment of 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

### *Securities Act 1978*

- The *Securities Act 1978* essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.