

HAWKE'S BAY REGIONAL COUNCIL POLICY HANDBOOK

SECTION 1.10 – CODE OF CONDUCT

HAWKE'S BAY REGIONAL COUNCIL CODE OF CONDUCT

Under Schedule 7 Part 15 of the Local Government Act 2002 Council is required to adopt a Code of Conduct for members of the Council as soon as practicable after the commencement of the Act being 1 July 2003. The below Code of Conduct has been adopted.

Regional Council Resolution: 13 August 2003
Regional Council Resolution: 3 November 2004

1.0 PART ONE: INTRODUCTION

1.1 Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a Code of Conduct. Once adopted, all elected members are required to comply with the code.

This Code of Conduct provides guidance on the standards of behaviour that are expected from the Chairman and elected members of the Hawke's Bay Regional Council. The Code applies to elected members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the Council
- the media
- the general public.

1.2 **The objective of the Code** is to enhance:

- the effectiveness of the Council as an autonomous local authority with statutory responsibilities for the good governance of the Hawke's Bay Region
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance among the elected members as a group and between the elected members and management.

1.3 **This Code of Conduct seeks to achieve its objectives** by establishing:

- an agreed statement of roles and responsibilities (recorded in **Part Two** of the code)
- agreed general principles of conduct (recorded in **Part Three** of the code)
- specific codes of conduct applying to particular circumstances or matters (also recorded in **Part Three** of the code).

1.4 Elected members are primarily accountable to the electors of the Region through the democratic process. Before taking office after election, each declares that he or she will *"faithfully and impartially, and according to my best skill and judgement, execute and perform in the interests of the Hawke's Bay Region the statutory powers,*

authorities and duties vested in or imposed upon me as a member of the Hawke's Bay Regional Council"

However members must note that the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

1.5 GENERAL PRINCIPLES OF GOOD GOVERNANCE:

This Code of Conduct is based on the following ten principles:

- **Public interest.** Members should serve only the interests of the region as a whole and should never improperly confer an advantage or disadvantage on any one person.
- **Honesty and integrity.** 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.** Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that while representing their constituency, once elected their primary duty is to the interests of the entire region.
- **Accountability.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness.** Members should be as open as possible about their actions and those of the Council, and should be prepared to justify their actions.
- **Personal judgment.** 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.** 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.
- **Respect for staff.** Members should respect the impartiality and integrity of the Council staff.
- **Duty to uphold the law.** Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.
- **Stewardship.** 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.** Members should promote and support these proposals by example, and should always endeavour to act in the best interests of the region.

2.0 PART TWO: ROLES AND RESPONSIBILITIES

This part of the Code describes the roles and responsibilities of elected members, the additional roles of the Chairman and Deputy Chairman, and the role of the Chief Executive.

2.1 Elected Members

Elected members, acting as the Council, are responsible for:

- development and adoption of Council policy
- monitoring the performance of the Council against its stated objectives and policies
- prudent stewardship of Council resources
- employment of the Chief Executive
- representing the interests of the residents and ratepayers of the Hawke's Bay Regional Council. (On election, the primary responsibility of members is to the Region as a whole.)

Unless otherwise provided in the Local Government Act 2002 or in standing orders, the Council can act only by majority decisions at meetings. Each member has one vote other than in the situation where there is a deadlock in voting in which case the Chairman can exercise a casting vote if so provided. Any individual member (other than the Chairman who has authority to act on behalf of the Council as reasonable needs require) has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

2.2 Chairman

The Chairman is elected by the members of the Council at the first meeting following the triennial election. The Chairman may be removed from office by resolution of Council.

As one of the elected members the Chairman shares the same responsibilities as other members of Council. In addition to this the Chairman has the following roles as a:

- presiding member at Council meetings. The Chairman is responsible for ensuring the orderly conduct of business during meetings (as determined in standing orders)
- advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council
- ceremonial head of Council
- provider of leadership and feedback to other elected members on teamwork and Chairmanship of committees
- Justice of the Peace (while the Chairman holds office).

The Chairman is obliged to follow the same rules as other elected members in regard to making public statements and committing the Council to any particular course of action, unless acting in accordance with the rules for media contact on behalf of the Council under a delegation of authority from the Council.

2.3 Deputy Chairman

The Deputy Chairman must be elected by the members of Council, at the first meeting following the triennial election. The Deputy Chairman may be removed from office by resolution of Council.

The Deputy Chairman exercises the same roles as other elected members. In addition he or she must perform all the responsibilities and duties and may exercise all the powers of the Chairman (as summarised above), if the Chairman is temporarily absent, or is prevented by illness or other causes from performing duties, or while there is a vacancy in the office of Chairman.

2.4 Committee Chairman

The Council may create one or more committees of Council. A Committee Chairman presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by Council, as set out in the Council's *Policy Handbook*. A Committee Chairman may be called on to act as an official spokesperson on a particular issue. A Committee Chairman may be removed from office by resolution of Council.

2.5 Chief Executive

The Chief Executive is appointed by the Council in accordance with sections 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 42 of the Act, the responsibilities of the Chief Executive are:

- implementing the decisions of the Council
- providing advice to the Council and committees
- ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- managing the activities of the Regional Council effectively and efficiently
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Regional Council
- providing leadership for the staff of the Regional Council
- employing staff on behalf of the Regional Council (including negotiation of the terms of employment for the staff of the Regional Council).

Under section 42 of the Local Government Act 2002 the Chief Executive employs all other staff on behalf of the Regional Council.

3.0 PART THREE: ETHICS, RELATIONSHIPS AND BEHAVIOUR

This part of the Code sets out the Council's agreed standards of behaviour. Some of the matters described in this part of the Code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968. The majority of the Code is material that the Council has decided to include on its own initiative.

3.1 Ethics

Hawke's Bay Regional Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of Council developed in accordance with that determination
- 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
- where a gift to the value of \$100 or more is offered to a member, immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

- be respectful when referring to each other or to other people
- not use offensive or derogatory language when referring to the Council, other Councillors, any employee of the Council or any member of the public.

3.2 Relationships with Other Members

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 office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct.

3.3 Relationships with Staff

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss, 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
- do nothing 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 only with the Chief Executive, and concerns about the Chief Executive only with the Chairman or the Executive Committee.

Elected members should be aware that failure to observe this portion of the Code of Conduct may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

3.4 Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure that individual citizens are accorded respect in their dealings with the Council, and 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.

3.5 Contact with the Media

The media plays an important part in local democracy. In order to fulfill this role the media needs access to accurate, timely information about the affairs of Council. The Hawke's Bay Regional Council will continue to be proactive in disseminating accurate and informative information through the Chief Executive to the media. From time to time, however, an individual member might be approached to comment on a particular issue either on behalf of Council, or as an elected member in his or her own right. This part of the Code deals with the rights and duties of Councillors when speaking to the media on behalf of Council, or in his or her own right.

The following rules apply for media contact ***on behalf of Council***:

The Chairman of the Council or of any Committee of the Council, is able to make media releases on behalf of the Council or the Council Committees. In order to ensure that:

- i) these are factually correct;
- ii) they send a consistent message so there is no confusion in the eyes of the public;
- iii) they reflect Council policy, or are sufficiently qualified where the Council may not have considered the matter;

all press releases and comments should be co-ordinated and developed through the Council's Communications Co-ordinator who will ensure the appropriate staff input is obtained and where appropriate the Chief Executive has input into the process.

Where the Communications Co-ordinator is not available, the Executive Assistant should be the point of contact.

The Councillor spokesman for the Committees of the Council should be the Chairman of the Committee concerned.

Elected members are free to express a ***personal view*** in the media, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of 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 this Code of Conduct. For example, they should not disclose confidential information, or compromise the impartiality or integrity of staff, and at all times should demonstrate respect for fellow Councillors and their views, opinions and lawful actions, and should not use language which might be deemed offensive, derogatory or embarrassing to the Council, other Councillors, any employee of the Council or any member of the public.

3.6 Representing the Council

Elected members who are invited or wish to represent the Council at an event such as a Seminar or Conference which will have a charge for attendance, must meet the following conditions:-

- The Chairman must approve the request.

- Following their attendance and upon request from the Chairman, the member must present a report to the Council, summarising the event, and including the Councillor's opinion of its potential significance to the Hawke's Bay Regional Council.

3.7 Confidential Information

Elected members have the responsibility to see whenever possible that business is conducted in "open" meeting. Powers to exclude the public should be used only when absolutely necessary and for the reasons permitted by law. Business conducted where the public is excluded remains confidential and should not be disclosed to the public until either the Council decides by resolution to make it public or the Chief Executive determines in response to a request under the Local Government Official Information and Meetings Act 1987, or the Privacy Act 1993 that there is no longer good reason to withhold the information.

In addition during 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.

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.

Elected members should be aware that failure to observe these provisions will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.

3.8 Conflicts of Interest

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore 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.

The Act 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.

Additionally, 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 rules also apply where the member's partner or spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

Members shall annually make a general declaration of interest as soon as practicable after becoming aware of any such interests. These declarations are recorded in a register of interests maintained by Council. The declaration must notify the Council of the nature and extent of any interest, including:

- any employment, trade or profession carried on by the member or the member's partner or spouse for profit or gain

- any company, trust, partnership etc for which the member or their partner or spouse is a director, partner, trustee or beneficiary
- the address of any land in which the member has a beneficial interest and which is in the Regional Council's area.
- the address of any land where the landlord is the Hawke's Bay Regional Council and:
 - the member or their partner or spouse is a tenant, or
 - the land is tenanted by a firm in which the member or partner or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary

any other matters which the public might reasonably regard as likely to influence the member's actions during the course of his or her duties as a member.

If the member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member 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 Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be removed from office.

3.9 Standing Orders

Elected members must adhere to any standing orders adopted by Council under the Local Government Act 2002. These standing orders are subject to the same legal requirements as a Code of Conduct with regard to their adoption and amendment.

3.10 Disqualification of Members from Office

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 a parliamentary elector or if they are convicted of certain breaches of the Local Authorities (Members' Interests) Act 1968.

Under the Local Government Act 2002, local authorities, when adopting a Code of Conduct, must consider whether or not they will require members to declare whether they are undischarged bankrupts. This Council believes that it should not require a member or newly elected member to decide whether or not the member or newly elected member is an undischarged bankrupt.

4.0 PART FOUR: COMPLIANCE AND REVIEW

This part deals with ensuring that elected members adhere to the Code of Conduct and mechanisms for the review of the Code of Conduct.

4.1 Compliance

Elected members must note that they are bound to comply with the provisions of this Code of Conduct (Local Government Act 2002, Schedule 7, section 15(4)).

Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is made at the first meeting after each triennial election and that copies of these Acts are freely available to elected members. A brief explanation about the obligations that each of these has with respect to conduct of elected members is attached in the Appendix to this code.

Compliance will be monitored by the Council as a whole. All alleged breaches of the Code will be reported to the Chairman. Any allegation of a breach of this Code of Conduct must be in writing, make a specific allegation of a breach of the Code of Conduct, and provide corroborating evidence.

The Chairman will investigate the alleged breach and prepare a report for the consideration of Council. Before beginning any investigation, the Chairman will write to the elected member(s) involved, advising about the complaint and will explain when and how there will be an opportunity to respond to the complaint.

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 an elected member, member of staff or of the general public.

4.2 Responses to Breaches of the Code

The exact nature of the action the Council may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.

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.

In these cases the Council may refer an issue to the relevant body, any member of the public may make a complaint, or the body itself may take action of its own initiative.

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 Chairman or Chairman of a committee.

A decision to apply one or more of these actions requires a Council resolution to that effect.

4.3 Review

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 of the

Conduct require a resolution supported by at least 75 per cent of the members of the Council present.

Council will formally review the Code prior to the end of each three year term and any suggestions for improvement and recommended amendments will be noted and referred to the new Council. As soon as practicable after the triennial election, results of that review will be presented to the new Council for consideration and adoption.