



# HAURAKI DISTRICT COUNCIL: 2010 CODE OF CONDUCT

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## PART ONE: INTRODUCTION

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 behavior that are expected from the Mayor and elected members of the Hauraki District 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.

The objectives of this code of conduct are to enhance:

- the effectiveness of the council as the autonomous local authority with statutory responsibilities for the good local governance of the Hauraki District
- 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, management and staff.

This code of conduct seeks to achieve its objectives by recording:

- 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).

Elected members are primarily accountable to the electors of the district through the democratic process. 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.

The code of conduct that follows is based on the following general principles of good governance:

- **Public interest.** Members should serve only the interests of the district 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, once elected, their primary duty is to the interests of the entire district, not the ward that elected them.
- **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. They 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 endeavor to act in the best interests of the community.

## **PART TWO: ROLES AND RESPONSIBILITIES**

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

### **Elected Members**

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

- the 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 Hauraki District Council. (On election, the members' first responsibility is to the district as a whole.)

Unless otherwise provided in the Local Government Act 2002 or in standing orders, the council can only act by majority decisions at meetings. Each member has one deliberative vote, additionally the chairperson at any meeting, in the case of equality of votes, has a casting vote. Any individual member (including the Mayor) has no authority to act on behalf of the council unless the council has expressly delegated such authority.

### **Mayor**

The Mayor is elected by the district as a whole and as one of the elected members shares the same responsibilities as other members of council. The Mayor also has the following roles as a:

- presiding member at council meetings. The Mayor 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;
- providing leadership and feedback to other elected members on teamwork and chairmanship of committees; and
- Justice of the Peace (while the Mayor holds office).

The Mayor must follow the same rules as other elected members about making public statements and committing the council to a particular course of action.

### **Deputy Mayor**

The Deputy Mayor must be elected by the members of council, at the first meeting of the council. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of council.

### **Committee Chairpersons**

The council may create one or more committees of council. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by council. Committee chairpersons may be called on to act as an official spokesperson on a particular issue. They may be removed from office by resolution of council.

### **Chief Executive**

The Chief Executive is appointed by the council in accordance with section 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
- 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 local authority effectively and efficiently
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- providing leadership for the staff of the local authority
- employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

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

## **PART THREE: RELATIONSHIPS AND BEHAVIOURS**

This part of the code sets out the council's agreed standards of behavior. 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 of its own initiative.

### **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.

### **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 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 only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive Performance Assessment 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.

### **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, 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**

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. 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. This part of the code deals with the rights and duties of councilors when speaking to the media on behalf of council, or in their own right.

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

- the Mayor is the first point of contact for the official view on any issue. Where the Mayor is absent, any matters will be referred to the Deputy Mayor or relevant committee chairperson
- the Mayor 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 Mayor or Deputy Mayor in the Mayor's absence.

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 the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of staff.

### **Confidential Information**

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.

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.

### **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 local authority 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 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 spouse for profit or gain
- any company, trust, partnership etc for which the member or their 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 Hauraki District Council boundaries
- the address of any land where the landlord is the Hauraki District Council and:
  - *the member or their spouse is a tenant, or*
  - *the land is tenanted by a firm in which the member 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 their 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 from the Audit Office 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. Members must also seek approval from the Audit Office for contractual payments to themselves, their spouses or their companies that exceed the \$25,000 annual limit. The Chief Executive can assist the Member with this if requested.

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 ousted from office.

### **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.

### **Ethics**

Hauraki District 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
- notify the Chief Executive if any gifts are accepted
- where a gift to the value of \$200 or more is offered to a member, immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

### **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 an elector or 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 an undischarged bankrupt. Hauraki District Council believes that bankruptcy does raise questions about the soundness of a person's financial management skills and their judgment 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.

## **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.

### **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. Short explanations of 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 Councillor Conduct Review Committee. This committee will comprise of the membership of the Mayor, deputy mayor, and chairpersons of the Ward Committees.

### **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 Mayor or Chair of a committee.

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

### **Complaints**

Any member of the public may make a complaint about an elected member of an alleged breach of the code of conduct. A complaint made about an elected member on any matter subject to another Statute will be subject to the provisions of that Statute and not the code of conduct.

Complaints should be addressed to the Chief Executive and must:

- Be in writing.
- Include the name and contact details of the complainant
- Specify the Elected Member about whom the complaint is being made.
- Specify the alleged breach of the Code.
- Contain corroborating evidence to support the allegation of a breach.

On receipt of a complaint the Chief Executive must refer the complaint to the Councillor Conduct Review Committee to investigate the complaint. The Chief Executive must at this time send acknowledgement to the Complainant and a letter to the Elected Member concerned, notifying them that the Councillor Conduct Review Committee has been informed of the complaint and explaining the process that is to be followed.

The Councillor Conduct Review Committee must make a decision as to the validity of the complaint and on how to proceed with the matter. This decision must be based on an initial investigation of the complaint. If the complaint is not to be investigated further, the Councillor Conduct Review Committee must advise the complainant and the concerned Elected Member about the decision.

Reasons for refusing to continue with the investigation include:

- That the complaint is frivolous or vexatious,
- That the complaint concerns a matter outside the scope of the code of conduct,
- That the matter is already being dealt with under the code of conduct or another process,
- That there has been undue delay in making the complaint,
- Any other reason that leads the Councillor Conduct Review Committee to believe the complaint can not be upheld.

If the complaint is to be investigated further, the Councillor Conduct Review Committee must conduct investigations and prepare a report which makes findings

on matters of fact and provides the Committee decision on whether or not the code of conduct has been breached as alleged.

The Chief Executive must then make the report available on the agenda for the first Council meeting that is scheduled from the date on which he or she received the report which will be an 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.

The Chief Executive must ensure all reasonable assistance that is necessary in the circumstances is provided to enable a person who wishes to make a complaint, to put their complaint in writing.

The Chief Executive must also forward a copy of the report to both the Complainant and the Elected Member concerned.

### **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 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. The results of that review will be presented to council for their consideration and vote.

### **Document management and control**

This should include:-

- Sponsor: Chief Executive
- Approved By: Hauraki District Council
- Date Confirmed: 10 November 2010
- Review Date: November 2013
- Previous reviews: 1<sup>st</sup> March 2007; 19 December 2007,
- File Ref: 656359-v2
- Property of Hauraki District Council

## **APPENDIX TO THE CODE: 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 can be found in the council library or in the office of the Chief Executive.

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

This Act<sup>1</sup> regulates situations where a member's 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 rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office 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 Member must also seek approval from the Audit Office for contractual payments to themselves, their spouses or their companies that exceed the \$25,000 annual limit.

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**

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements to be followed. 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. No elected member should:

- create a disturbance or a distraction while another councillor is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the council, other councillors, any employee of the council or any member of the public.

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<sup>1</sup> The Audit Office publication *Financial Conflicts of Interests of Members of Governing Bodies* (2001) provides further guidance on this Act.

**Secret Commissions Act 1910**

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.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fined up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

**Crimes Act 1961**

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.

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.