

Code of Conduct for Elected Members Policy

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1.0 Purpose

This code of conduct provides guidance on the standards of behaviour that are expected from the Mayor and elected members of Timaru District Council. The code applies to elected members in their dealings with:

- each other
- Council staff
- the general public
- the media.

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 governance of the Timaru 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 and management.

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

- an agreed statement of roles and responsibilities
- agreed general principles of conduct
- specific codes of conduct applying to particular circumstances or matters.

2.0 Background

Legislative Requirements

The Local Government Act 2002 (the Act) includes a requirement that each local authority adopt a code of conduct. Schedule 7, clause 15 of the Act is repeated as follows:

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
 - (a) is received by, or 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.

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 conduct require a resolution supported by 75 per cent or more of the members of the council present.

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.

Legislative Summary

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members.

Local Authority (Members' Interests) Act 1968

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

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. Approval must be from the Office of the Auditor General for contractual payments to members, 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. 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.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected member, or officers, 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 fines 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 officers 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. Elected members convicted of these offences will also be automatically ousted from office.

Financial Markets Conduct Act 2013

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 contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

3.0 Key Definitions

Elected Member – all those members elected to the Timaru District Council and Community Boards.

4.0 Policy

4.1 General Principles

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

- **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.
- **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.
- **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.
- **Leadership**
Members should promote and support these principles by example, and should always endeavour to act in the best interests of the community.
- **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.
- **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.
- **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.
- **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 council staff.
- **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.

4.2 Roles and Responsibilities

This part of the code describes the roles and responsibilities of elected members, the additional roles of the Mayor, Deputy Mayor and Chairpersons, 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 Timaru 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 vote, provided however that the Mayor shall also have a casting vote if such vote is specifically authorised by Council's legally adopted and approved Standing Orders. 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. Under section 41A of the Local Government Act, the Mayor also has powers regarding leading the development of Council plans, policies and budgets, appointing a Deputy Mayor, establishing committees and appoint chairperson's to each committee.

The Mayor also has the following roles:

- A presiding member at council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings, as determined in standing orders;
- An 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;
- A ceremonial head of council;
- A Justice of the Peace, while the Mayor holds office; and
- To provide leadership and feedback to other elected members on teamwork and chairmanship of committees

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, unless acting in accordance with the rules for media contact on behalf of the council under a delegation of authority from the council.

Deputy Mayor

The Deputy Mayor must either be appointed by the Mayor or 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, and as set out in the council's Delegations Manual.

Committee chairpersons may be called on to act as 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 and community boards
- 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.

4.3 Relationships and Behaviours

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 of its own initiative.

Relationships with Other Elected 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.

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 Office of the Auditor General 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 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. This part of the code deals with the rights and duties of councillors 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.

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 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 is about financial interests, and 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 Timaru District
- the address of any land where the landlord is the Timaru 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 Office of the Auditor General 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. Approval must be sought from the Office of the Auditor General 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 ousted from office.

Standing Orders

Elected members must adhere to the standing orders adopted by council under the Local Government Act 2002.

Ethics

Timaru 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
- not solicit, demand, or request any gift, reward or benefit by virtue of their position
- notify the Chief Executive if gifts are accepted
- where a gift to the value of \$50.00 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.

Undischarged Bankrupt

The Council requires a member, or newly elected member who is an undischarged bankrupt to declare that fact to the Chief Executive.

4.4 Compliance with Elected Members Code of Conduct

Compliance

Elected members must note that they are bound to comply with the provisions of this code of conduct, as stated in the 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 Financial Markets Conduct Act 2013.

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.

Responses to Breaches of the Code

All alleged breaches of the code will be reported to the Mayor or Chief Executive. Any allegation of a breach of a code of conduct must be in writing, make a specific allegation of a breach of the code of conduct, and provide corroborating evidence.

The Mayor or Chief Executive will investigate the alleged breach and prepare a report for the consideration of council. Before beginning any investigation, the Mayor and Chief Executive 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.

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 as a results of the elected member committing 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 an authorised 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 Chairperson of a committee.

5.0 Delegations, References and Revision History					
<i>5.1 Delegations - Identify here any delegations related to the policy for it to be operative or required as a result of the policy</i>					
<i>5.2 Related Documents - Include here reference to any documents related to the policy (e.g. operating guidelines, procedures)</i>					
<i>5.3 Revision History – Summary of the development and review of the policy</i>					
5.1 Delegations					
Delegation					Delegations Register Reference
None					
5.2 References					
Title					Document Reference
5.3 Revision History					
Revision #	Policy Owner	Date Approved	Approval by	Date of next review	Document Reference
1	Group Manager Corporate Services		Council	November 2019	#829872