



Te Kaunihera-ā-Rohe o Ngāmotu

NEW PLYMOUTH DISTRICT COUNCIL

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Code of Conduct

New Plymouth District Council **(Adopted 5 July 2016)**

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PART ONE: INTRODUCTION

Schedule 7 of the Local Government Act 2002 (the Act) requires the Council 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 elected members of the New Plymouth District Council. For clarity, reference to elected members in this document relates only to the Mayor and councillors and does not include community board members.

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 New Plymouth 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.

Elected members are committed to achieving the highest standards of conduct and behaviour at all times and will carry out their role to the best of their skill and judgement.

Elected members will:

- Take responsibility for ensuring that they understand their roles and responsibilities and the Code of Conduct;
- Prepare for and attend relevant meetings workshops and any appropriate training opportunities provided by the Council
- Dress appropriately (ie wear professional dress at all civic functions and meetings that are open to the public)



PART TWO: 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.

Relationships with other elected members (Mayor and councillors)

Teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members.

Elected members will:

- Maintain public confidence in the office to which they have been elected
- Be honest and act with integrity
- Focus on issues and not on personalities
- Not engage in aggressive, offensive or abusive conduct (whether verbal or in writing)
- Respect each other's individual points of view, opinions, beliefs and rights.

Relationships with Staff

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

- Recognise that the Chief Executive is the employer (on behalf of the Council) of Council employees and only the Chief Executive may hire, instruct, discipline or dismiss 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
- Observe any guidelines that the Chief Executive puts in place regarding contact with employees
- Treat employees with courtesy and respect avoiding conduct which is aggressive, offensive or abusive conduct or may constitute unlawful or inappropriate harassment.
- Avoid public criticism of any employee (or group of employees) in any way that reflects on the competence and/or integrity of employees.
- Not attempt to influence the impartiality of Council staff
- Raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor.



- Raise concerns regarding the quality of a report with the Chief Executive before the meeting at which the report is to be considered takes place.

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

Elected members will:

- Treat everyone with respect, ensuring that concerns are listened to, and considered in accordance with the requirements of the Local Government Act and any other statutory obligations
- Allow others to express their point of view.
- Be courteous and approachable
- Not make personal attacks
- Not engage in aggressive, offensive, abusive or bullying behaviour (whether verbal or written)
- Respect other's individual or group points of view, opinions, beliefs and rights
- Act in a manner that encourages and values involvement in local democracy



PART THREE – MISCELLANEOUS

Communication

Communication includes but is not limited to face to face, letters, emails, instant messaging and social media such as Facebook (whether open or closed pages).

Content of electronic communications, in particular emails, are archived and recoverable. The content may be made public under the provisions of the Local Government Official Information and Meetings Act 1987.

Elected members communication will:

- Show respect and avoid offensive, discriminatory or abusive language
- Not bring the Council into disrepute (for example through making derogatory remarks about people or organisations)
- Not distribute or attempt to distribute electronic or hard copy communication that includes potentially offensive or discriminatory material.

Confidential Information

Elected members receive information that is confidential in nature. Confidential information is typically (though not always) commercially sensitive or personal to a particular individual or organisation. Confidential information may be received in a number of formats including information from a third party.

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. This includes the names (or identifying information) of individuals and organisations involved.

Releasing confidential information can be detrimental to the Council's performance and reputation by inhibiting information flows and undermining public confidence. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Conflicts of Interest

People who fill positions of authority must undertake their duties free from real or perceived bias. Elected members must maintain a clear separation between their personal interests and their duties as an elected member. Failure to do so could invalidate a Council decision and leave the elected member open to prosecution and ouster from office.

An elected member is entitled to interact with the Council as a private citizen. However, they cannot use their position as an elected member to gain an advantage not available to the general public.



Elected members will:

- Declare any interest whether pecuniary or non-pecuniary at a meeting where the interest is relevant to an item on that agenda.
- Exclude themselves from any informal discussions with elected members relating to a matter they have an interest in.
- Seek guidance from the Chief Executive if they are unclear of the extent of any interest.
- Seek guidance or exemption from the Office of the Auditor General if necessary.

Ethics

New Plymouth District Council promotes the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- Claim only for legitimate expenses as determined by the Remuneration Authority or statute.
- 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.
- Ensure Council resources are used prudently and solely in the public interest.
- 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 \$75 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, if they cease to be or lose their status as an elector or for certain breaches of the Local Authorities (Members' Interests) Act 1968.

Bankruptcy

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. Elected members who are undischarged bankrupts must advise the Mayor and Chief Executive as soon as practicable.

Standing Orders

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



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.

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)).

Compliance

Elected members are expected to resolve minor issues between themselves through informal discussion. Councillors can ask that the Mayor, Deputy Mayor and/or Chief Executive assist with any discussions.

Matters that cannot be resolved through informal discussion or are of a more substantial nature must be submitted in writing as an allegation of a breach of a code of conduct. All allegations must make a specific allegation of a breach of the code of conduct, and provide corroborating evidence. Allegations must be addressed to the Mayor, or if the complaint is about or from the Mayor, to the Chief Executive.

Allegations of a breach of the Code of Conduct may only be made by the Mayor or Councillors or CE. The Mayor, a Councillor or the Chief Executive may, on behalf of themselves, a community board member, a member of staff or a member of the public, initiate the procedures set out in this section of the Code.

Upon receipt of a formal written complaint, the Mayor, Deputy Mayor and Chief Executive will jointly consider the complaint and may undertake one or more of the following actions:

- Discuss the matter informally with the subject of the complaint.
- Seek any advice deemed necessary including legal advice.
- Initiate an investigation into the matter which may include discussions with third parties prior to reaching a determination.
- Refer the matter to a suitably qualified mediator.
- Establish an Independent Resolutions Panel to consider and investigate the complaint and assess the options available to the Council to resolve the complaint. The panel will determine and facilitate its own process and make recommendations to resolve the complaint to the Council.
- Refer the matter for formal determination by the Council.
- Issue written confirmation of the expected standards of behaviour.
- Request the elected member concerned apologise to the appropriate party(s).



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- Request the elected member concerned undertake appropriate training.
 - Refer the elected member for counselling
 - Determine that no further action to be undertaken

Where the Mayor or Deputy Mayor are the subject of a complaint, are the complainant or have a conflict of interest, they shall be replaced by a councillor. The seconded member shall be chosen by the remaining members.

The Mayor and Deputy Mayor may appoint a member of the Executive Leadership Team in place of the Chief Executive if the Chief Executive is unavailable, is the complainant or has a conflict of interest.

Where a complaint is to be considered by a meeting of the Council:

- The meeting shall be held in public unless good reason exists to hold the meeting with the public excluded.
- Elected members who make a breach of the code of conduct allegation, or who are subject to an allegation must not take part in the debate and deliberation of the matter.

Responses to Major 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 the following statutory provisions apply, the Council may refer an issue to the relevant body. A member of the public may make a complaint of its own initiative.

- 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.

Where there are no statutory provisions, the Council may take one or more of the following actions. Action may only be taken as a result of a Council resolution.

- Censure.
- Removal of the elected member from Council committees and/or other representative type bodies.



- Dismissal of the elected member from an appointed position (for example Deputy Mayor or Chair of a committee).

Review

The Council may by resolution of 75 percent or more, change the Code at any time.



SCHEDULE ONE

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 obtained from Democratic Services.

Local Authority (Members' Interests) Act 1968

This Act¹ 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 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 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 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 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 the Council.

If convicted of any offence under this Act a person can be imprisoned for up to two 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 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 the 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 seven 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 the 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.



SCHEDULE TWO

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 New Plymouth 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. 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 the Council.

The Mayor is able to appoint their own deputy mayor, determine the structure of committees and appoint committee chairs. The Mayor is responsible for driving the setting of major plans and budgets, including the Long Term and Annual Plans.

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 the Council;



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- 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, 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 is appointed by the Mayor. Should the Mayor decline to make an appointment, the Deputy Mayor, must be elected by the members of the 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 the Council.

Committee Chairpersons

The Council may create one or more committees of the Council. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the 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 the 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) in accordance with any remuneration and employment policy.

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



SCHEDULE THREE

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 the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. 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.

The following rules apply for media contact on behalf of the 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 officially on behalf of the 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 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 staff.

