

**KĀPITI COAST DISTRICT COUNCIL**

**CODE OF CONDUCT  
FOR ELECTED MEMBERS  
2010-2013 TRIENNUM**

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# KAPITI COAST DISTRICT COUNCIL ELECTED MEMBER CODE OF CONDUCT 2010-2013 TRIENNIUM

## 1.0 INTRODUCTION

This Code has been adopted by the Kapiti Coast District Council to comply with section 40(1)(e) and clause 15 of Schedule 7 of the Local Government Act 2002.

The Code of Conduct complements the Kapiti Coast District Council's Standing Orders.

The Code of Conduct provides guidance on the standards of behaviour that are expected from Elected Members of the Kapiti Coast District Council in their dealings with:

- each other;
- the Chief Executive;
- staff (including contractors);
- the media;
- the community.

## 2.0 PRINCIPLES OF GOVERNANCE

In the exercise of their governance responsibilities Elected Members will observe the following principles:

**Public interest** - Members must serve the interests of the District as a whole in accordance with the public declaration they made on coming into office.

**Honesty and integrity** - Members must not place themselves in situations where their honesty and integrity may be questioned.

**Objectivity** - Members must make decisions on merit, including making appointment, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** - Members must be accountable to the public for their actions and the manner in which they carry out their responsibilities.

**Openness** - Members must be open about their actions and those of the Council, and be prepared to justify their actions.

**Conflicts of Interest.** - Members are responsible for disclosing conflicts of interest.

**Personal judgment** - Members can and will take account of the views of others, but must reach their own conclusions on the matters before them.

**Respect for others** - Members must promote equality by treating people with respect, regardless of ethnicity, nationality, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of Council staff.

**Duty to uphold the law** - Members must uphold the law, and on all occasions act in accordance with the law and the trust the public places in them.

**Stewardship** - Members must ensure that the Council uses its resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations to both present and future generations.

**Leadership** - Members are leaders in their community and must at all times provide leadership by example.

This Code does not necessarily apply to members of Community Boards of the Kapiti Coast District Council who may develop their own Codes of Conduct.

### **3.0 ROLES AND RESPONSIBILITIES**

Detailed descriptions of the roles and responsibilities of Elected Members and the Chief Executive can be found at Appendix A.

In summary, Councillors are responsible for setting the strategic direction of Council, developing and adopting policy and for prudent stewardship of Council resources. The Mayor and Councillors also employ the Chief Executive who in turn is responsible for appointing and managing all Council staff, and the implementation of Council decisions.

### **4.0 DECISION MAKING**

#### **4.1 PREDETERMINATION OR BIAS**

In decision-making – whether by Council, its delegated Committees and Community Boards- the Council must act in a fair and reasonable manner and in accordance with the law.

Elected Members are expected to approach decision making with an open mind (“faithfully and impartially”). This process requires Elected Members to listen carefully to competing advice and to weigh up the pros and cons before making their decision.

Where Council or a Standing Committee is hearing formal submissions at a hearing Elected Members should carefully avoid prior public comments, which may indicate a predetermined bias or non flexible attitude.

#### **4.2 DELEGATION**

Decisions are made at various levels within the Council according to the delegations made to its Committees, Subcommittees and Community Boards at the beginning of each Triennium. The Governance Structure details these delegations. The legal provisions that apply to delegation are set out in Clause 32 of Schedule 7 of Local Government Act 2002.

#### **4.3 REQUIREMENTS IN RELATION TO DECISIONS**

The Local Government Act 2002 sets out the purpose of local government and the role of local authorities. Refer to Appendix B of this Code for details of the legislation.

#### **4.4 CONSULTATION**

The Council is required to make decisions that take into account and balance the various needs and preferences of its residents. Section 82 of the Local Government Act 2002 sets out the principles of consultation, which the Council must undertake in relation to any decision. (See Appendix B of this Code.)

#### **4.5 RESOURCE MANAGEMENT ACT HEARINGS**

Councillors may choose to undergo training to become Accredited Hearings Commissioners. In this role they will be required to hear matters under the Resource Management Act 1991. As a member of a Hearings Panel Councillors are essentially involved in administration of Council policy, as expressed in the District Plan. A resource hearing is considered to be an independent assessment of an application for a resource consent. The conduct of a hearings panel is part of a statutory process under the Resource Management Act and Councillors should at all times act in a manner that respects the principles of fairness and judicial responsibility.

#### **4.6 RELATIONSHIP WITH COMMUNITY BOARDS**

At the beginning of the Triennium Ward Councillors are appointed back to Community Boards and as such they are full members of the Board. However, Councillors who are also Community Board members must be sensitive to the fact that on occasions their role as Community Board member may be in conflict with their duty as a Councillor to represent the interests of the District as a whole.

## **4.7 STAFF REPORTS**

While the Council may hear submissions and deputations, and, within the limits of the legislation, discuss matters raised from the meeting, no decisions should be made unless the matter is accompanied by a written staff report.

While the Council is ultimately accountable, its function is not to make detailed decisions on operational matters which are the responsibility of the Chief Executive.

## **5.0 RELATIONSHIPS AND BEHAVIOURS**

### **5.1 RELATIONSHIPS WITH OTHER MEMBERS**

All Elected Members shall in their dealings with each other, management, the public and the media show respect and behave in a manner consistent with the dignity of their office. Elected Members should act in good faith in the interests of the Kapiti Coast District and the community. Members must 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 conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behaviour (including sexual harassment).

### **5.2 CONDUCT AT MEETINGS**

In order to develop and maintain an atmosphere of mutual respect and facilitate good decision making, members are asked to:

- be punctual so that meetings start on time;
- be prepared to discuss issues at meetings;
- make requests for additional information or clarification of items prior to the meeting so that staff have time to undertake the necessary research and prepare answers;
- direct all discussion and questions through the Chairperson;
- observe silence when someone else is speaking;
- debate policies, not personalities;

- observe the provisions of the Standing Orders and the Code of Conduct;
- vote on every issue unless they have declared a conflict of interest;
- in the event of an interest being declared, abstain from discussing of or voting for the issue;
- seek leave of absence for any meetings in advance.

If any Member's conduct is deemed to be unacceptable, the Chairperson can invoke provisions contained in Standing Orders which enable the Chairperson to ask the member to withdraw from the meeting.

### **5.3 RELATIONSHIPS WITH STAFF**

An effective working relationship between Elected Members and officers is critical to the success of any Council. To ensure the required level of co-operation and trust is maintained Members should:

- recognise that the Chief Executive is the employer (on behalf of Council) of all staff; only the Chief Executive may hire or dismiss, or instruct or censure, an employee;
- understand that employees have a statutory right to a safe work environment free from both physical harm and mental harm caused by work related stress;
- acknowledge that any actions (or statements) by Councillors which may in anyway harm an employee (including mental harm) may result in the Council being liable under the Health and Safety in Employment Act 1992;
- treat all staff with courtesy and respect, avoiding conduct which is aggressive, offensive or abusive or may constitute unlawful or inappropriate harassment;
- avoid personal criticism of a staff member in public in any way that reflects on the competence and/or integrity of the staff member;
- preserve the anonymity of individual officers and not comment publicly on the management of staff of the Kapiti Coast District Council;
- raise concerns about staff only with the Chief Executive;
- raise concerns about the Chief Executive only with the Mayor and/or through the Chief Executive Performance Review Committee.

Failure to observe this portion of the Code may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

Elected Members are supported by the Democratic Services Team. In addition, each Committee and Community Board will have a senior manager supporting it, with whom the Chair should liaise in the first instance.

#### **5.4 RELATIONSHIPS WITH THE COMMUNITY**

Members must act in a manner that encourages and values community involvement in local democracy. The views of members of the public must be accorded respect with members listening to and deliberating on concerns carefully and patiently. Members must avoid aggressive or abusive behaviour towards members of the public.

#### **5.5 CONTACT WITH THE MEDIA**

The media plays an important role in the effective operation of local government. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council. The following rules apply for media contact on behalf of Council:

- Elected Members are free to express a personal view in the media at anytime but any comments made must state that:
  - (a) the comments represent a personal view only; and
  - (b) (if the comment is contrary to a Council decision or Council policy) the comment is a minority view;
- Comments must not result in a disclosure of confidential information (ie such as provided in public excluded agendas and reports unless these have been released into the public arena by majority vote at the meeting concerned).
- the Mayor is the first point of contact for the Council view on any policy issue. The Mayor is authorised to make statements accurately reporting decisions of Council meetings. If the Mayor is absent, or unable to act, the matter may be referred to the Deputy Mayor or to the relevant Committee Chairperson for a response;
- the Mayor may refer any matter to the relevant committee chairperson, a member or to the Chief Executive for comment;
- Committee Chairpersons and Ward Councillors are authorised to make statements accurately reporting decisions of their respective committees or Wards;
- The Chief Executive is responsible for reporting to the media on policy implementation and operational matters.

Elected Members public statements expressing their opinion on matters before the Council shall not criticise the behaviour of the Council, other Elected Members or officers of the Council.

## **5.6 CONFIDENTIAL INFORMATION**

In the course of their duties Members will receive information that is confidential (eg agendas and reports for public excluded meetings or embargoed information). This will generally be Council information that is either commercially sensitive or is personal to a particular individual or organisation. Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Member. Failure to observe these provisions may expose the Council to prosecution under the Privacy Act 1993 or civil litigation, and may expose individual members to responsibility for loss under s.46 of the Local Government Act (2002).

## **6.0 GENERAL PROTOCOLS**

### **6.1 ACCEPTING GIFTS/HOSPITALITY/EXPENSES**

There is the possibility that the acceptance of gifts, favours or hospitality could be construed as a bribe or perceived as undue influence. Elected Members need to treat with caution any offer, gift, favour or hospitality made to them personally, to avoid the risk of damage to public confidence in local government.

Offers of hospitality received by the Mayor and/or Councillors that have a value less than \$50 and are not intended to influence that person around a specific decision or outcome, may be accepted.

Gifts are sometimes received by Elected Members in the course of their duties and these shall be retained by the Council. These should be reported to the Chief Executive for recording in the Gift Register held in the Democratic Services office.

### **6.2 EXPENSES AND ALLOWANCES**

An Elected Member is entitled to claim expenses and allowances in connection with their duties. Rules for reimbursement of Elected Members' expenses are as approved by the Remuneration Authority; reimbursement will be made upon the provision of the relevant receipts. Elected Members have been separately briefed regarding their remuneration process.

### **6.3 DRESS CODE**

Elected Members should maintain a standard of dress at meetings of Committees and Council which is in keeping with the formality and public nature of such meetings. Some principles for guidance are:

- casual dress is appropriate at workshops or briefings;
- no jeans or jandals for either men or women;

- no standard of dress/costume will be accepted where such a level of dressing may offend members of the community.

#### **6.4 USE OF FACILITIES**

Photocopying in relation to Council business will be provided by the Democratic Services staff on request.

Elected Members may use the telephones in the Democratic Services office.

Members may not use Council resources for any personal business (including campaigning at election time).

#### **6.5 PROCEDURES FOR RAISING OPERATIONAL MATTERS**

Elected Members may be contacted by the community regarding routine service requests, eg, leaking water tobsies. These need to be referred to the customer service centres in the first instance for action for logging as Service Requests.

While Elected Members should refrain from getting involved in the "hands on" role of staff, they should approach the Chief Executive if they have concerns that matters they have drawn to staff attention are not attended to promptly or properly.

#### **6.6 PROCEDURES FOR RAISING POLICY MATTERS**

The options for raising a policy matter for consideration by the Council are as follows:

(a) liaise with the Mayor or with the Chairperson of the appropriate committee. If it is agreed that the matter is one for political consideration, then the Mayor or Chairperson will request the Chief Executive to have the appropriate report compiled.

(b) follow the procedure for submitting a Notice of Motion. The procedure is outlined in the Council's Standing Orders.

#### **6.7 RESPONDING TO RATEPAYER APPROACHES REGARDING POTENTIAL OR ACTUAL LITIGATION AGAINST THE COUNCIL**

When responding to approaches from citizens or the media on such matters, Elected Members should:

- listen to concerns;

- seek clarification;
- refer the person to the appropriate external agency;
- relay information to the Chief Executive of the Council;
- notify the Chief Executive where notice of intention to make a claim against the Council is given, or there are facts present that involve the assertion of action against the Council.

Elected Members should take care not to:

- admit liability;
- settle or make or promise any payment;
- do anything that may prejudice the insurers' defence of litigation;
- disclose any information that the Elected Member has received by way of confidential briefings on the litigation matter.

## **7.0 LEGISLATIVE RESPONSIBILITIES**

### **7.1 LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968**

The phrase "Conflicts of Interest" is used to describe three distinct and separate circumstances where there is or may be a conflict between the personal interests, or the conduct of a member, and that member's duties as an Elected Member. The statutory and common law rules relating to conflicts of interest are part of the rules of natural justice. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision. Members performing their duties will on occasion be making political decisions (for example when making policy or adopting planning documents) and on other occasions be acting in a judicial or quasi judicial capacity (for example when considering resource consent applications). There is some limited scope for flexibility in respect of political decisions, but absolutely no scope for flexibility in relation to judicial or quasi judicial decisions.

The three classes of conflict of interest are:

(a) a pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss;

(b) non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage,

domestic relationships, wider family relationships, employment or membership of community organizations;

(c) demonstrated bias that is the circumstances where a member by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that the member may approach the consideration of a decision on that issue with an open mind.

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 they should seek guidance from the Chief Executive immediately.

Members may also contact the Office of the Controller and 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. Contact details for the Office of the Controller and Auditor General - Phone (04) 917 1500 for the Assistant Auditor-General, Legal.

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.

In a case of doubt, a member should refrain from discussing or voting on the matter in question. The minutes of the meeting will record the members' declaration of interest.

### *7.1.1 Register of Interests*

The Council has adopted the suggestion of the Office of the Controller and Auditor General and requested all Elected Members to make a written declaration of their personal and financial interests that may at times conflict with their roles. This information will be kept in a "Register of Interests". Every six months Members will be asked to complete a Declaration of Interests form. The Register is kept in the Democratic Services office.

## **7.2 STANDING ORDERS**

Standing Orders are a set of rules of debate that provide greater consistency in the way that a Council conducts its meetings. Standing Orders are also a means of recording the Council's agreed principles of behaviour within meetings. Using Standing Orders as a guide to the way that the Council conducts its meetings helps to promote teamwork by:

- allowing structured discussion of topics;

- ensuring respect for the opinions of others;
- ensuring tact and appropriate language is used in resolving conflict;
- promoting the use of persuasion and influencing skills to gain a team outcome.

Members must abide by the Standing Orders adopted by Council. A copy of the Standing Orders is provided to each member and after the adoption of the first Standing Orders, an amendment of the Standing Orders or the adoption of a new set of Standing Orders requires in every case a vote of not less than 75% of the members present.

The Council or Committee may temporarily suspend Standing Orders during a meeting by a vote of not less than 75% of the members present and voting, and the reason for the suspension must be stated in the resolution of suspension.

### **7.3 DISQUALIFICATION OF MEMBERS FROM OFFICE**

The Local Government Act 2002 and Standing Orders provide for disqualification of Members from office for example, if they:

- are convicted of a criminal offence punishable by two or more years imprisonment;
- cease to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993;
- breach the Local Authorities (Members' Interests) Act 1968
- are absent without leave from the Council from four consecutive ordinary meetings of the Council.

### **7.4 DECLARATION OF BANKRUPTCY**

When adopting a code of conduct, Elected Members must consider whether or not they will require members to declare whether they are an undischarged bankrupt. Council believes that bankruptcy raises questions about the soundness of a person's financial management skills and their judgment in general. The Council requires Elected Members who are undischarged bankrupts when elected or are declared bankrupt during the term of office, to notify the Mayor and the Chief Executive as soon as practicable after being declared bankrupt and record the fact in the Register of Interests.

## **7.5 LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS**

Refer to Appendix C for a summary of the legislation requirements that has some bearing on the duties and conduct of Elected Members which includes:

- Local Government Official Information and Meetings Act 1987
- Liability of Elected Members under the Public Finance Act 1977
- Secret Commissions Act 1910
- Securities Act 1978
- The Crimes Act 1961
- Health and Safety in Employment Act 1992

## **8.0 COMPLIANCE AND REVIEW**

### **8.1 COMPLIANCE**

Schedule 7 of the Local Government Act 2002 requires each local authority to adopt a Code of Conduct. The Local Government Act 2002 requires Elected Members to comply with the provisions of this Code of Conduct (Schedule 7, Clause 15(4)):

“A member of a local authority must comply with the code of conduct of that local authority.”

However, the Act also states (Schedule 7, Clause 15(7)):

“To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.”

### **8.2 BREACHES OF LEGISLATION**

The exact nature of the action the Council may take depends on the nature of the issue and whether there are statutory provisions dealing with the issue. If there are statutory provisions dealing with the issue then it will be addressed in accordance with the relevant statutory provisions:

- issues relating to members interests render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and if convicted the Member can be removed from office;

- issues 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;
- issues relating to the commission of a criminal offence may leave the Elected Member liable for criminal prosecution.

### **8.3 COMPLIANCE WITH THIS CODE**

All alleged breaches of this Code whether by another Elected Member, or a member of the community must be reported either to the Chief Executive or the Mayor and must be made in writing and provide corroborating evidence. The Council will investigate the alleged breach and have prepared a report for consideration of the Council. In accordance with the principles of natural justice the alleged breach will be notified to the Elected Member, explaining when and where they will have the opportunity to put their version of events. The Council will consider the report in an open meeting of the Council except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a staff member or of the community. In responding the Council may take the following action:

- censure;
- removal of the Elected Member from Council Committees and/or other representative bodies;
- dismissal of the Elected Member from the position of Deputy Mayor or Chair of a Committee.

A decision to apply one or more of these actions requires a Council resolution to that effect (majority vote). A decision by the Council will be final and binding on the member to whom that decision relates and all other members. With the exception only of an allegation of a breach of the rules of natural justice no member shall seek to review or challenge the outcome under Standing Orders, the Local Government Act 2002 or by judicial process.

If it appears that a breach of the Code also constitutes a statutory offence the Council shall refer the circumstances of that breach to the relevant body for further action.

### **8.4 REVIEW OF THIS CODE OF CONDUCT**

Once adopted the 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% or more of the members present.

## **APPENDIX A - ROLES AND RESPONSIBILITIES**

This appendix details the roles and responsibilities of the Elected Members, the Mayor, Deputy Mayor, Committee Chairpersons, Community Board members, and the Chief Executive.

### **3.1 ELECTED MEMBERS**

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 policies and identified community outcomes;
- prudent stewardship of Council resources;
- employment and appraisal of the Chief Executive's performance and monitoring the implementation of policy by him/her;
- representing the interests of the residents and ratepayers of the entire Kapiti Coast District;
- ensuring overall compliance by the Council with its obligations and responsibilities under the Local Government Act 2002 and all other legislation which prescribe statutory duties for territorial authorities;
- promoting good relationships with neighbouring local authorities.

Members, as individuals, must comply with:

- the requirements of the Code of Conduct;
- those enactments and other rules of law applicable to the conduct of members.

### **3.2 THE MAYOR**

The Mayor is elected by the District as a whole and shares the same responsibilities as other members of the Council. In addition to those matters contained in 3.1, the Mayor is the ceremonial head of the Council and is often the first and/or only point of contact for ratepayers and interest groups on political matters. The Mayor is also responsible for:

- presiding at Council meetings and ensuring the conduct of meetings is in accordance with Standing Orders;

- keeping Council informed of matters brought to his/her attention and formally presenting to Council those matters that need to be considered;
- advocacy on behalf of the community;
- providing leadership and feedback to other Elected Members on teamwork, information sharing and chairmanship;
- assuming the role of Justice of the Peace (while the Mayor holds office).

### **3.3 THE 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 role as any other members. If the Mayor is on a leave of absence or incapacitated the Deputy Mayor must perform all of the responsibilities and duties of the Mayor, and may exercise the powers of the Mayor. The Deputy Mayor may be removed from office by resolution of the Council.

### **3.4 COMMITTEE CHAIRPERSONS**

A Committee Chairperson exercises the same role as any other member but has responsibility to preside over all meetings of the relevant Committee and to ensure that the Committee acts within the powers delegated to it by the Council (as set out in the Council's Governance Structure).

### **3.4 COMMUNITY BOARD MEMBERS**

Community Boards provide a level of representation below city and district councils. The role of each Community Board includes:

- representing the interests of its community;
- considering and reporting on matters referred to it by the Council, of interest or concern;
- maintaining an overview of Council services to the community;
- preparing an annual submission to the Council for its Annual Plan;
- communicating with community organizations and special interest groups;
- undertaking any other responsibilities that are delegated to it by the Council.

### **3.6 THE 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 Local Government Act 2002 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 him or her, or to any person employed by the local authority, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;
- managing the Council's activities effectively and efficiently;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- providing leadership for the staff of the Council;
- under section 42 of Local Government Act 2002, employing staff on behalf of the Council.

## **APPENDIX B—LOCAL GOVERNMENT ACT 2002 PURPOSE OF LOCAL GOVERNMENT AND ROLE OF LOCAL AUTHORITIES - DECISION MAKING AND CONSULTATION**

### **1.0 PURPOSE OF LOCAL GOVERNMENT**

The Local Government Act 2002 states the purpose of Local Government is:

- *"to enable democratic local decision-making and action by, and on behalf of, communities; and*
- *to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future."*

### **2.0 ROLE OF LOCAL AUTHORITIES**

The Local Government Act 2002 also states that the role of local authorities is to:

- *"give effect in relation to its district or region, to the purpose of local government; and*
- *perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment."*

The Local Government Act 2002 further states that a local authority should:

- *"conduct its business in an open, transparent, and democratically accountable manner; and*
- *give effect to its identified priorities and desired outcomes in an efficient and effective manner;*
- *make itself aware of and have regard to the views of all its communities;*
- *when making a decision take account of the diversity of the community and the various community's interests; the interests of future as well as current communities and the likely impact of any decision on each of the social, economic, environmental and cultural aspects of well-being of the community;*
- *provide opportunities for Māori to contribute to its decision-making process;*
- *collaborate and cooperate with other local authorities;*
- *undertake commercial transactions in accordance with sound business practices;*

- *ensure prudent stewardship and efficient and effective use of its resources in the interests of the district*
- *take a sustainable development approach".*

### **3.0 DECISION MAKING PROCESS**

Every decision made by a local authority must be made in accordance with sections 77, 78, 80, 81 and 82 of the Local Government Act 2002. Specifically the Council must during the course of the decision making process:

- *"seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*
- *access those options by considering the benefits and costs both present and future in terms of social, economic, environmental and cultural well-being of the Whakatane District;*
- *access those options by considering the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option and assess the impact of each option on the Council's capacity to meet present and future needs in relation to any statutory responsibility of the Council;*
- *identify those options which involve a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wahitapu, valued flora and fauna and other taonga;*
- *give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter;*
- *give consideration to the stage at which problems and objectives are defined; options are assessed as reasonably practicable options and proposals developed and adopted;*
- *determine whether the matter is significant;*
- *identify whether the proposed decision would be significantly inconsistent with any existing policy or plan;*
- *establish and maintain processes to provide opportunities for Māori to contribute to the decision making process;*
- *consider ways in which the Council may foster the development of Māori capacity to contribute to the decision making process; and*

- *provide relevant information to Māori."*

#### **4.0 CONSULTATION**

The Council is required to make decisions that take into account and balance the various needs and preferences of its residents. Section 82 of the Local Government Act 2002 sets out the principles of consultation, which the Council must undertake in relation to any decision. Section 82 is set out as follows:

*"(1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:*

*(a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons;*

*(b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority;*

*(c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:*

*(d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:*

*(e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:*

*(f) that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.*

*(2) A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1).*

*(3) The principles set out in subsection (1) are, subject to subsection (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.*

*(4) A local authority must, in exercising its discretion under subsection (3), have regard to –*

*(a) the requirements of section 78; and*

*(b) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and*

*(c) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and*

*(d) the provisions of Part I of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and*

*(e) the costs and benefits of any consultation process or procedure.*

*(5) Where a local authority is authorised or required by this Act or other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in sub-section (1) as are inconsistent with specific requirements of the procedures so prescribed are not to be observed by the local authority in respect of that consultation".*

## **APPENDIX C - LEGISLATIVE RESPONSIBILITIES**

### **1.0 LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968**

The Local Authorities (Members' Interests) Act 1968 deals with the positions of Elected Members who may have an interest in contracts to be let by the Council. It also prohibits Elected Members from voting or taking part in any matter in which they have a direct or indirect financial interest.

The essence of the Act is to ensure that Elected Members follow high ethical standards in their public obligations so that the public can have confidence that their decisions are taken entirely properly, without any suspicion of improper interests influencing Elected Members' actions.

Details of these requirements are given in the guide to the legislation published by the Office of the Controller and Auditor General (copies of which have been circulated to Elected Members at the beginning of the Triennium). Elected Members must be careful that they maintain clear separation between their personal interests and their duties as Elected Members. This is also to ensure that people who fill positions of authority carry out their duties free from bias (whether real or perceived). Members therefore need to familiarize themselves with the provisions of the Local Authorities (Member's Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The phrase "Conflicts of Interest" is used to describe three distinct and separate circumstances where there is or may be a conflict between the personal interests, or the conduct of a member, and that member's duties as an Elected Member. The statutory and common law rules relating to conflicts of interest are part of the rules of natural justice. They reflect the expectation of the community that, when making decisions on behalf of the community, members will act impartially and in a manner appropriate to the nature of the decision. Members performing their duties will on occasion be making political decisions (for example when making policy or adopting planning documents) and on other occasions be acting in a judicial or semi judicial capacity (for example when considering resource consent applications). There is some limited scope for flexibility in respect of political decisions, but absolutely no scope for flexibility in relation to judicial or quasi judicial decisions.

The three classes of conflict of interest are:

(1) a pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with the member's duties. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss;

(2) non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family

relationships, employment or membership of community organizations;

(3) demonstrated bias that is the circumstances where a member by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that the member may approach the consideration of a decision on that issue with an open mind.

The Local Government Authorities (Members' Interests) Act 1968 provides that an Elected Member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year. The Chief Executive must seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit. Additionally, Elected Members are prohibited from participating in any Council discussions 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 or partner 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.

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. Contact details for the Office of the Controller and Auditor General - Phone (04) 917 1500.

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.

In a case of doubt a member should refrain from discussion of, or voting on, the matter in question. Members' declarations of interest are recorded in the minutes.

## **2.0 LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987**

The Local Government Official Information and Meetings Act 1987 establishes procedures to provide for the admission of the public to meetings of Councils while providing for the protection of deliberations of Councils to the extent consistent with the public interest and the preservation of personal privacy. All of the Council's meetings are required to be open to the public, unless the public is expressly excluded. The public can

only be excluded from a meeting on the grounds and in the manner outlined in Section 48 of the Local Government Official Information and Meetings Act 1987.

This Act requires Council to make all information relating to their operation public unless there is a good reason for withholding it. Good reasons for withholding information may include privacy of an individual, commercial sensitivity of a company, damage to the public interest, safety of an individual or that the maintenance of law may be prejudiced. The decision on whether to withhold or release such information lies with the Chief Executive. Members of the public may challenge any decision to withhold information, by making an Official Information Request to the Chief Executive. If the Chief Executive declines to release the information, then the member of the public can apply to the Office of the Ombudsman to have the information released.

The Act requires Councils to publish a list of all their meetings, their time and place in advance each month. Councils must also make the agendas and reports to be considered available for inspection by the public at least two working days before the meeting.

The Act requires the Chairperson of the meeting to maintain order at the meeting. The Chairperson has the ability to require members of the public to leave the meeting if the Chairperson believes the behaviour of any member of the public is likely to prejudice the orderly conduct of the meeting.

### **3.0 LIABILITY OF ELECTED MEMBERS UNDER THE LOCAL GOVERNMENT ACT 2002**

Section 46 of the Local Government Act 2002 makes Elected Members liable for loss both jointly and severally which is reported by the Auditor General. Section 47 of the Local Government Act 2002 states that members may be required to pay costs of proceedings in certain cases.

### **4.0 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 two years, or fined up to \$1,000, or both. A conviction would therefore trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

### **5.0 SECURITIES ACT 1978**

This legislation governs the raising of money by the offer to the public of the opportunity to invest through shares in an enterprise or to lend money to an organisation. Its application to Council would arise if Council wished to borrow money by public stock issues. In such a case, Council would be required to publish an investment statement and

a prospectus. Where published documents relating to an issue of securities are found to contain untrue statements the directors (in this case Councillors) of the issuer may be held both criminally liable and civilly liable.

## **6.0 THE 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 person's, 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.

## **7.0 HEALTH AND SAFETY IN EMPLOYMENT ACT 1992**

This Act imposes duties and responsibilities on the Council as an employer. The main object of the Act is to promote the prevention of harm to all persons at work. It requires employers to take all practicable steps to safeguard the health of employees. The Act requires employers to protect employees from physical and mental harm caused by work-related stress. This includes identifying potential hazards and monitoring the health of employees.

Should an employer fail to take all practical steps to ensure the safety of its employee, the employer could be found guilty of an offence and is liable on summary conviction to a fine of up to \$250,000 (or \$500,000 if serious harm is caused).

The Council is ultimately accountable for the actions of its Councillors and must ensure they do not behave in a way which is going to result in any of its employees being harmed (either physically or mentally). This could include, for example, any unfair or unwarranted comments or remarks by Councillors about council employee, which could foreseeably result in that employee suffering mental harm which may precipitate a claim by either the Department of Labour or an employee against the Council under this Act. Further the disaffected employee may also be able to bring a personal grievance claim under the Employment Relations Act 2000 if he or she is subjected to an unjustified attack or unjustifiable comments by Councillors. A breach by a Councillor of obligations owed towards employees has serious implications for the Council and for an individual member.

## **8.0 PROTECTED DISCLOSURES ACT 2000 (WHISTLE-BLOWER PROTECTION)**

[CHECK]

The amendment to the Protected Disclosures Act 2000 which came into force on 6 May 2009 expanded the eligibility for protection. Under the Act the definition of an employee of a public sector organization (PSO) includes Elected Members of a local authority.

Under the Act an employee who discloses information about a serious wrongdoing by the PSO is protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the employee. Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources, conduct that risks public health and safety; conduct that risks the maintenance of law; conduct that constitutes an offence; and oppressive, improper discriminatory conduct, gross negligence or gross mismanagement by a public official.

Protection under the Act applies where an employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and desires protection under the Act.

The Act requires disclosure by an employee to follow the internal procedures of the PSO. The Council is required to establish internal procedures to address the receipt of and dealing with information about serious wrongdoing in or by the Council.

Where the Council has not created internal procedures then the provisions of the Act apply by default. The default position requires a disclosure to be made to the head or deputy head of the Council. The matter can also be escalated to an “appropriate authority” if the employee considers the head of the PSO may be involved in serious wrongdoing. Appropriate authorities are defined in the Act and include the Commissioner of Police and the Ombudsmen.