



Matamata-Piako District Council

Code of Conduct

Adopted by Council on 12 March 2008

MATAMATA-PIAKO DISTRICT COUNCIL CODE OF CONDUCT

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1. INTRODUCTION

1.1. The Local Government Act 2002

Clause 15 of Schedule 7 to the Local Government Act 2002 (“the Act”) requires each Local Authority to adopt a Code of Conduct (“the Code”) for the Elected Members of Council (the Mayor and Councillors). Once adopted, all Elected Members are required to comply with the Code, however a breach of the Code is not an offence under the Act.

A Local Authority may amend or replace its Code but it may not revoke it without a replacement. All changes to the Code require a supporting vote of not less than 75% of the members present.

The Code must set out the understandings and expectations adopted by the Local Authority about the manner in which Elected Members may conduct themselves while acting in their capacity as Elected Members, including behaviour towards one another, staff, and the public and the disclosure of information.

A Code must also include a general explanation of the Local Government Official Information and Meetings Act 1987 (“LGOIMA”) and any other enactment or rule of law that is applicable to Elected Members.

When adopting its Code, a Local Authority must consider whether or not to require Elected Members to declare if they are an undischarged bankrupt.

1.2. The Matamata-Piako District Council Code of Conduct

The Matamata-Piako District Council Code set out the values, understandings and expectations agreed upon by the Mayor and Councillors (“Elected Members”) about the manner in which they conduct themselves while acting as Elected Members of the Matamata-Piako District Council (“Council”).

The objectives of this Code are to:

- facilitate effective working relationships between Elected Members;
- foster mutual trust, respect and tolerance between Elected Members;
- facilitate effective working relationships between Elected Members and Council staff;
- enhance the credibility and accountability of Council with the Community.

This Code applies to Elected Members in their dealings with:

- each other;
- the Chief Executive Officer (“the CEO”);
- all staff employed by the CEO on behalf of Council;
- the Community;
- the Media.

2. ROLES AND RESPONSIBILITIES

This part of the Code describes the roles and responsibilities of Elected Members, the Mayor and the Deputy Mayor.

2.1. The Role of Elected Members of Council

The Local Government Act 2002 sets out the purposes of and principles for the governance of Local Authorities. The Act also provides guidance to the Mayor and Councillors in their role as Elected Members.

Elected Members, acting as the Council are responsible for:

- representing the interests of the residents and ratepayers of the Matamata-Piako District;
- enabling democratic decision-making on behalf of communities by being aware of and have regard to the views of the community;
- the prudent stewardship of Council resources. Elected Members should promote the social, economic, environmental and cultural well-being of communities, for the present and for the future;
- the development and adoption of Council objectives and policy. Elected Member should give effect to identified priorities and desired outcomes in an efficient and effective manner;
- monitoring the performance of the Council against its stated objectives and policies;
- employment of the CEO.

Elected Members, as individuals must comply with:

- the requirements of this Code;
- those enactments and other rules of law applicable to the conduct of Elected Members;
- Standing Orders as adopted by Council.

Unless otherwise provided for in the Local Government Act 2002 or in Standing Orders, the Council can only act by majority decisions at meetings. Each Elected Members has one vote. No individual (including the Mayor) has the authority to act on behalf of Council, unless Council has expressly delegated such authority.

Elected Members are expected to attend the meetings (ordinary and extraordinary) of Council, as well as the meetings of the committees and subcommittees, working parties, and external organisations to which they are appointed.

Elected Members, as individuals, shall take responsibility for advising of their apologies, leaves of absence and other commitments that impact on Council business.

2.2. The Role of the Mayor

The Mayor is elected by the District as a whole and as one of the Elected Members shares the same responsibilities and must follow the same rules as the other Elected Members of Council.

The Mayor also has the following roles:

- as an advocate on behalf of the community. This role may involve promoting the community and representing its interests;

- as the ceremonial head of Council;
- to provide leadership and feedback to other Elected Members on teamwork and chairmanship of committees;
- as the presiding member at Council meetings, ensuring the orderly conduct of business during meetings (as determined in Standing Orders);
- as the spokesperson for Council on policy and decisions;
- as a spokesperson for Council in general.

As a consequence the Mayor is often expected to meet with individuals, community groups and sector representatives.

2.3. The Role of the Deputy Mayor

The Deputy Mayor must be elected by Council at its first meeting. 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.

3. RELATIONSHIPS AND BEHAVIOURS

This part of the Code sets out 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 Council has decided to include of its own initiative.

3.1. Principles of Behaviour

Elected Members represent the public. They are obliged to act in good faith and conscientiously perform their duties in a professional manner with honesty and integrity as well as with reasonable care and diligence.

As such, Elected Members must act in accordance with the following principles of good governance:

- **Public interest:**
Elected 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 or organisation;
- **Honesty and integrity:**
Elected Members should not place themselves in situations where their honesty and integrity may be questioned. They should not behave improperly and should on all occasions avoid the appearance of such behaviour;
- **Objectivity:**
Elected Members should make decisions on merit, including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected Members must ensure that they have been properly informed on the matter requiring a decision;
- **Accountability:**
Elected Members should be accountable to the public for their actions, decisions and the manner in which they carry out their responsibilities;
- **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:**
Elected Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions;
- **Respect for others:**
Elected Members should promote equality by not discriminating unlawfully against any person. They will treat people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability;
- **Duty to uphold the law:**
Elected Members should uphold the law and the principles of natural justice. They must, on all occasions, act in accordance with the trust the public places in them;
- **Stewardship:**
Elected Members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations;
- **Leadership:**
Elected Members should promote and support these principles by example, and should always endeavour to act in the best interests of the community.

3.2. Relationship between 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 establish a working relationship that achieves the best possible outcomes for the community by:

- maintaining public confidence in the office to which they have been elected;
- being open and honest with each other;
- focusing on issues rather than personalities;
- avoiding aggressive, offensive or abusive conduct and language;
- demonstrating courtesy and respect to their fellow Elected Members of Council;
- respecting the diversity of opinion that may exist and the right for different points of view to be heard;
- acting in good faith towards other Elected Members.

Every Elected Member is entitled to be treated with courtesy and respect by their fellow members.

3.3. Relationship with Employees of Council

The effective performance of Council also requires a high level of cooperation and mutual respect between Elected Members and Council employees.

To ensure that level of cooperation and trust is maintained, Elected Members will:

- recognise that the CEO is the employer (on behalf of Council) of all Council employees, and as such only the CEO may hire, dismiss, instruct or censure an employee;
- make themselves aware of the obligations that the Council and the CEO have as employers and observe those requirements at all times;
- treat all employees with courtesy and respect;
- refrain from any action that 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 CEO.

Elected members should be aware that 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.

Every Elected Member is entitled to be treated with courtesy and respect by Council employees.

3.4. Relationship with the Community

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members are expected to be honest and fair in their dealings with individuals and organisations and behave in a manner that facilitates constructive communication between the Council and the community.

Elected Members will achieve this by:

- being equitable, honest and fair when dealing with all members of the community;
- behaving in a courteous and sensitive manner and not discriminating against any person or organisation;
- not soliciting, demanding or requesting any gift or benefit for themselves or anyone else;
- being available to listen and respond to community concerns, but avoiding promising things they cannot deliver;
- acting in a manner that encourages and values community involvement in local democracy.

When representing the Council in the community, Elected Members will:

- provide an accurate and fair representation of Council decisions;
- respect Council decisions and policy directions;
- behave in a manner that maintains and enhances the image of the Council.

3.5. Relationship with the Media

The media plays an important part in local democracy and informing the public of the opinions of Elected Members on issues of public interest. 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.

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

- they must state clearly when they are expressing a majority, collective Council view and when they are expressing a personal, minority opinion;
- media comments must not state or imply that they represent the views of the Council if that is not the case;
- 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 comply with the other requirements of the Code.

3.6. Use of Information

During the course of their business, Elected Members will from time to time, be privy to confidential information which may affect Council activities. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Information obtained by Elected Members in the course of their duties must be respected and used in a careful and prudent manner, therefore:

- information obtained by Elected Members in the course of their duties will not be used for any purpose other than Council business;
- Elected Members will not withhold any information that relates to the ability of Council to meet its obligations under any legislation, however they will respect and maintain confidentiality of the public as and when required;
- the confidentiality of information from a publicly excluded agenda item will be protected and not disclosed until a resolution of Council to release the information is made.

Elected Members should also be aware that the above provisions and all information received by the Council is subject to LGOIMA and the Privacy Act 1993

3.7. 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).

Elected Members should be aware of the requirements of the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns pecuniary interests, and Common Law requirements for non-pecuniary interests.

Elected Members should also familiarise themselves with the guide lines provided by the Office of the Auditor General on pecuniary and non-pecuniary interests.

3.8. Standing Orders

Council is required by the Local Government Act 2002 to adopt a set of Standing Orders. Standing Orders are a set of rules of debate that provide greater formality 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.

Standing Orders help to regulate Council meetings 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. After the adoption of the first Standing Orders, an amendment to Standing Orders or the adoption of a new set of Standing Orders requires 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.

Council adopted "*New Zealand Model Standing Orders NZS 9202:2003 incorporating Amendment No 1*" with two minor amendments on the 14th of November 2007.

3.9. Undischarged Bankrupts

If a newly elected member is an undischarged bankrupt he or she must notify the CEO and the Mayor of this prior to the first meeting of the new Council. If a Member is adjudicated bankrupt during the course of their term, he or she must notify the CEO and the Mayor of this as soon as reasonably practicable.

These Members must also provide the CEO and the Mayor with a brief explanatory statement of the circumstances surrounding the member's adjudication as a bankrupt and the likely outcome of the bankruptcy.

4. LAWS THAT APPLY TO ELECTED MEMBERS

Clause 15 of Schedule 7 to the Local Government Act 2002 requires the Code to include a general explanation of LGOIMA and any other enactment or rule of law that is applicable to Elected Members.

The following explanations are provided solely as a guide for Elected Members. Elected Members are encouraged to seek independent legal advice if they require any further information.

4.1. Local Government Act 2002

This Act is the primary piece of legislation that governs Local Authorities. While Elected Members must have regard for the whole Act, their attention is drawn to 4.1.1, 4.1.2 and 4.1.3 below.

4.1.1. Indemnity of Elected Members

Part 4 of the Act contains provisions for the liability of members of a Local Authority. In certain cases, under Section 43 of the Act, members are indemnified by the Local Authority.

In general, the indemnity covers:

- costs and damages for any civil liability from any action brought by a third party if the member was acting in good faith and in carrying out the responsibilities or powers of the Local Authority;
- costs arising from any successfully defended criminal action relating to acts or omissions of a Elected Member in their capacity as a Elected Member.

This indemnity does not extend to directors of Council Controlled Organisations, nor does this indemnity extend to liability for loss under Section 46 of the Act.

4.1.2. Liability of Elected Members

Under Sections 44, 45 and 46 of the Act a Local Authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the Local Authority has not been fully compensated for the action or omission concerned:

- money belonging to, or administrable by, a Local Authority has been unlawfully expended;
- an asset has been unlawfully sold or otherwise disposed of by the Local Authority;
- a liability has been unlawfully incurred by the Local Authority;
- a Local Authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Following a report from the Auditor General and response from the Local Authority, the loss may be recoverable as a debt due to the Crown from each member of the Local Authority jointly and severally. Section 46 provides statutory defences for Elected Member to such proceedings.

Section 47 of the Act applies if, in a proceeding commenced by the Attorney-General, the Local Authority is:

- held to have:

- disposed of or dealt with, any of its property wrongfully or illegally;
- applied its property to any unlawful purpose;
- permitted the reserves that it must manage to be used for purposes not authorised by law;
- restrained from acting in the ways referred to above.

The costs and other expenses arising out of the proceeding must not be paid out of general revenues by the Local Authority and must be paid, by order of the Court, by the members of the Local Authority who, by voting or otherwise, assented to the acts concerned.

4.1.3. Disqualification of Members from Office

Pursuant to Schedule 7 of the Local Government Act 2002, 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 (see section 80 Electoral Act 1993) or for certain breaches of the Local Authorities (Members' Interests) Act 1968.

4.2. Local Government Official Information and Meeting Act 1987 ("LGOIMA")

4.2.1. Official Information

LGOIMA contains rules relating to the disclosure of information held by a Local Authority to the public. The underlying principle of the Act is that information should be made available unless there is good reason to withhold it.

In general, sections 6 and 7 of LGOIMA provide the following reasons for withholding information:

- making it available would be likely to prejudice the maintenance of the law, or endanger safety;
- withholding the information is necessary to:
 - protect the privacy of natural persons;
 - protect information where its release would disclose a trade secret or would prejudice the commercial position of the person who supplied, or who is the subject of, the information;
 - avoid offence to tikanga Maori or avoid disclosure of wahi tapu locations;
 - protect an obligation of confidentiality where making it available would affect the future supply of information or would otherwise damage the public interest;
 - maintain free and frank discussion or protect officers and members from harassment;
 - maintain litigation or legal professional privilege;
 - enable the council to carry out without prejudice or disadvantage commercial activities or negotiations;
 - prevent the use of information for improper gain.

A decision to release or withhold information must be made by Council within 20 working days of the request being received. Elected Members must advise the CEO of any requests for information that are made to them as soon as practicable.

The obligations of LGOIMA are binding on Elected Members and apply to the disclosure of information held by an Elected Member, in his or her capacity as an Elected Member, to a member of the public.

4.2.2. Meetings

LGOIMA also sets out the procedural requirements for the meetings of Local Authorities, the publication of agendas, procedures for discussion with the public excluded and access by the public to the agendas and minutes of meetings.

The grounds for excluding the public from a meeting are similar to those for withholding official information. These relate to protection of personal privacy, professionally privileged or commercially sensitive information and the maintenance of public health, safety and order. There are two exceptions to this, firstly the ground of maintaining free and frank expression of opinions by members does not enable exclusion of the public from meetings. Secondly the public may be excluded where a local authority wishes to deliberate in private on a decision against which a right of appeal lies to any court or tribunal.

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 for the maintenance of acceptable standards of address and debate.

4.3. The Local Authorities (Members' Interests) Act 1968

The Local 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, unless prior approval has been obtained from the Auditor General.

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. Elected Members must declare their interests at council meetings where matters in which they have a pecuniary interest arise.

Elected Members shall 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.

Elected 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, Council may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest.

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 disqualified from office.

4.4. Common Law – Non-Pecuniary Interests

Elected Members should be familiar with the common law concerning non-pecuniary conflicts of interest. This includes issues of predetermination and bias (whether real

or perceived) on the part of Elected Members when making a decision as a member of Council.

If an Elected Member decides that they have a non-pecuniary interest they must:

- Declare that they have a non-pecuniary interest when the matter comes up at a meeting;
- Ensure that their declaration is recorded in the minutes;
- Refrain from discussion or voting on the matter.

Failure to observe the common law in this area may result in a judicial review of a Council decision.

4.5. Securities Act 1978

The Securities Act 1978 places Elected Members in the same position as company directors whenever Council offers stock to the public. Elected Members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Securities Act 1978 are not met.

4.6. Crimes Act 1961

Under the Crimes Act 1961 it is unlawful for an Elected Member to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of council;
- use information gained in the course of their duties for their, or another persons, monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected Members convicted of these offences will also be automatically disqualified from office.

4.7. Secret Commissions Act 1910

Under the Secret Commissions Act 1910 it is unlawful for an Elected Member 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, fined up to \$1000, or both. Elected Members convicted of these offences will also be automatically disqualified from office.

5. COMPLIANCE AND REVIEW

This part of the Code deals with ensuring that Elected Members adhere to the Code and provides mechanisms for its review.

5.1. Compliance

The Local Government Act 2002 requires Elected Members to comply with the provisions of this Code. However the Act also states that a breach of the Code does not constitute an offence under that Act (Schedule 7, Clause 15).

5.2. Breaches of the Code

Any allegation of a breach of this Code must be made in a timely manner to the Mayor or the CEO. All allegations must be in writing, make a specific allegation of a breach of the Code and provide corroborating evidence. After this information has been received, the Mayor or the CEO must refer the alleged breach to Council.

Each allegation must be considered in a manner that is fair to all parties involved in the matter. All members named in an allegation must be given sufficient opportunity to consider and respond to allegations that are made against them.

Council will be asked to consider and determine whether a breach of the Code has occurred and if so, what consequences for the Elected Member should arise from that breach.

5.3. Responses to Breaches of the Code

The exact nature of the action 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 the Council may refer an issue to the relevant body: For example:

- 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 the following action:

- education;
- mentoring;
- censure;
- require a public or private apology to be made;
- removal or suspension of the Elected Member from Council committees and/or other representative type bodies;
- removal or suspension of any special status of the Elected Member, such as Chair of a Committee.

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

5.4. Review

Once adopted, the Code continues in force until amended by Council. The Code can be amended at any time but cannot be revoked unless Council replaces it with another Code.

Once adopted, amendments to the Code require a resolution supported by 75 percent or more of the Elected Members of Council.

Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of the review will be presented to Council for its consideration and vote.