



# **Tasman District Council Code of Conduct**

# CODE OF CONDUCT

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## **PART ONE: INTRODUCTION**

### **1.1 Introduction**

Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code.

This code of conduct provides guidance on the standards of behaviour that are expected from the Mayor and elected members of the Tasman District Council. The code extends to all elected and appointed members of Council committees and sub-committees.

The code applies to the Mayor and elected and appointed members in their dealings with:

- Each other
- The Chief Executive
- All staff employed by the Chief Executive on behalf of the Council
- The media
- The general public

The objective of the code is to enhance:

- The effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local governance of Tasman District
- The credibility and accountability of the Council within its community
- Mutual trust, respect and tolerance between the elected and appointed members as a group and between the elected and appointed members and management

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

- An agreed statement of roles and responsibilities (recorded in Part Two of the code)
- Agreed general principles of conduct (recorded in Part Three of the code)
- Specific codes of conduct applying to particular circumstances or matters (also recorded in Part Three of the Code)

Elected members are primarily accountable to the electors of the District through the democratic process. However both elected and appointed members must note that the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

## 1.2 General Principles

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

- **Public Interest:** Members should serve only the interests of the District as a whole and never improperly confer an advantage or disadvantage on any one person.
- **Honesty and Integrity:** Members should act with honesty and integrity and not place themselves in situations where those qualities may be questioned, nor behave improperly and on all occasions avoid the appearance of such behaviour.
- **Objectivity:** Members should impartially make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire District.
- **Accountability:** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness:** Members should be as open as possible about their actions and those of the Council, and be prepared to justify their actions.
- **Personal Judgment:** Members can and will take account of the view of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
- **Respect for Others:** Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of the Council staff.
- **Duty to Uphold the Law:** Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.
- **Stewardship:** Members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.
- **Leadership:** Members should promote and support these principles by example, and always endeavour to act in the best interests of the community.

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

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

### **2.1 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 Tasman District - 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, except that in the case of an equality of votes, the Chairperson has a casting vote. Any individual member has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

### **2.2 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 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. Mayoral advocacy will be most effective where it is carried out with the knowledge and support of the Council. The Mayor has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.
- Ceremonial head of the Council.
- Providing leadership and feedback to other elected members on teamwork and chairpersonship of committees.
- Justice of the Peace during the period 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.

### **2.3 Deputy Mayor**

The Deputy Mayor must be elected by the members of the Council, at the first meeting of the Council. The Deputy Mayor generally exercises the same roles as other elected members. If the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the Mayor's powers. The Deputy Mayor may be removed from office by resolution of the Council.

### **2.4 Committee Chairperson**

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, and as set out in the Council's Delegations Manual. 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.

### **2.5 Appointed Members**

The Council may appoint members of the public to any of its committees or sub-committees if it believes they have a significant contribution to make to the work of the committee or sub-committee. Appointed members are subject to this code of conduct, and may be dismissed at any time by resolution of the Council, or the committee which appointed them.

### **2.6 Chief Executive**

The Chief Executive is appointed by the Council in accordance with section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 42 of the Act, the responsibilities of the Chief Executive are:

- Implementing the decisions of the Council
- Providing advice to the Council
- Ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised.
- Managing the activities of the local authority effectively and efficiently
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority

- Providing leadership for the staff of the local authority
- Employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority)

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

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

### **3.1 Relationships with Other Members**

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. To achieve this objective elected and appointed members should conduct their dealings with each other in ways that:

- Maintain public confidence in the office to which they have been elected.
- Are open and honest.
- Focus on issues rather than personalities.
- Avoid aggressive, offensive or abusive conduct.

### **3.2 Relationships with Staff**

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

- Recognise that the Chief Executive, (on behalf of the Council), is the employer of all Council employees. Only the Chief Executive may hire, dismiss, instruct or censure any employee.
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times.
- Treat all employees with courtesy and respect, including the avoidance of aggressive, offensive or abusive conduct towards employees.
- Observe any guidelines that the Chief Executive puts in place regarding contact with employees.
- Not do anything which compromises, or could be seen as compromising, the impartiality of an employee.
- Avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee.
- Raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive's Performance Appraisal Committee.

Elected members should be aware that failure to observe this section 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.



### **3.3 Relationships with the Community**

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

Members should ensure that individual citizens are accorded respect in their dealings with the Council and have their concerns heard and deliberated on in accordance with the requirements of the Act.

Members should act in a manner that encourages and values community involvement in local democracy.

### **3.4 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 Councillors 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 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 the statement represents 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.
- Appointed members may express their own personal view but must not state or imply that they represent the Council or a majority view of the Council, and must observe the other requirements of the code of conduct.

### **3.5 Confidential Information**

In the course of their duties elected and appointed members will occasionally receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Elected and appointed members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

Elected and appointed members should be aware that failure to observe these provisions will impede the performance of the Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

### **3.6 Conflicts of Interest**

Elected and appointed members must be careful that they maintain a clear separation between their personal interests and their duties as a member of the Council, a committee or sub-committee. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarize themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The Act provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected and appointed members are prohibited from participating in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

Elected members must make a general declaration of interest annually and as soon as practicable after becoming aware of any new interests. These declarations are recorded in a register of interests maintained by Council. The declaration must notify the Council of the nature and extent of any interest, including:

- Any employment, trade or profession carried on by the member or the member's spouse for profit or gain.
- Any company, trust, partnership etc for which the member or their spouse is a director, partner, trustee or beneficiary.
- The address of any land in which the member has a beneficial interest and which is in Tasman District.
- The address of any land where the landlord is the Tasman District Council and:
  - The member or their spouse is a tenant; or

- The land is tenanted by a firm in which the member or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary.
- Any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member.

Appointed members are not required to make a declaration but are advised to do so if their business or other activities might reasonably be regarded as likely to influence the member's actions during the course of their duties as a member.

Declarations of interest from elected and appointed members are available for public inspection at any time.

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 immediately seek guidance from the Chief Executive.

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. 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 the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by the 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.

### **3.7 Standing Orders**

Elected and appointed members must adhere to any standing orders adopted by the Council under the Local Government Act 2002. Those standing orders are subject to the same legal requirements as a code of conduct with regard to their adoption and amendment.

### **3.8 Ethics**

Tasman District Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members in relation to Council activities will:

- Claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of the Council developed in accordance with that determination.
- Not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests.

- Not use Council resources for personal business including campaigning for election or promotion of a particular point of view.
- 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 \$250 or more is received by virtue of their position as a member, immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

### **3.9 Dress Code**

Elected members must maintain a reasonable standard of dress when attending Civic Functions, Council meetings and committee meetings.

### **3.10 Disqualification of Members from Office**

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years imprisonment, or if they cease to be or lose their status as an elector or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

The Council requires elected members who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt. The Chief Executive will then notify the Mayor and all other elected members.

## **PART FOUR: COMPLIANCE AND REVIEW**

### **4.1 Compliance**

Elected members must note that they are bound to comply with the provisions of this code of conduct pursuant to the Local Government Act 2002, Schedule 7, clause 15(4). The Council also requires appointed members to comply with this code.

Members are also bound by the other provisions of the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is made at the first meeting after each triennial election and that copies of these Acts are available to elected members. Short explanations of the obligations each of these impose with respect to conduct of elected members is attached in the Appendix to this code.

Alleged breaches of the Code shall be reported to the Chief Executive or Mayor as appropriate. Where it is a minor matter, the Mayor may require a Member to apologise at a subsequent Council meeting. Where it is considered that the matter is of substance, a report shall be submitted for the consideration of the Council.

### **4.2 Responses to Breaches of the Code**

The exact nature of the action the Council may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.

Where there are statutory provisions:

- Breaches relating to members' interests render members liable for prosecution by the Auditor-General under the Local Authorities (Members' 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 an elected member having to make good the loss or damage.
- Breaches relating to the commission of a criminal offence may leave the elected or appointed member liable for criminal prosecution.

In these cases, the Council may refer an issue to the relevant body, any member of the public may make a complaint, or the body itself may take action of its own initiative.

Where there are no statutory provisions, the Council may take the following action:

- Censure
- Removal of the elected or appointed member from Council committees and/or other representative type bodies
- Dismissal of the elected member from a position as Deputy Mayor or chair of a committee
- Dismissal of the appointed member as chair of a committee

A decision to apply one or more of these actions requires a Council resolution in the appropriate terms.

### **4.3 Review**

Once adopted, a code of conduct continues in force until amended by the Council. The code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once adopted, amendments to the code of conduct require a resolution supported by 75 per cent or more of the members of the Council present.

The Council will formally review the code as soon as practicable after the beginning of each triennium. The results of that review will be presented to the Council for its consideration and approval while any amendment will require a resolution supported by 75% or more of the members of the Council present.

## **APPENDIX TO THE CODE: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS**

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

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

This Act<sup>1</sup> regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The 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 Authorities (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 meeting 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**

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

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 2 years, or fined up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

### **Crimes Act 1961**

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of 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 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

### **Securities Act 1978**

The Securities Act 1978 essentially placed 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.