

# Code of Conduct for Marlborough District Council

## PART ONE: INTRODUCTION

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. The purpose of this Code of Conduct is to assist the elected members of the Marlborough District Council in exercising their own judgment in the achievement of these ends, to make decisions that serve the best interests of the Marlborough community, and to help guide behaviour towards other members, staff, and the public.

The Code takes as granted that members are people of integrity and honour, that they have good judgment, and that they respect the rights and feelings of other people. The purpose of the Code is not to displace or override these qualities, but to affirm them, and to enable members to work in productive partnership with each other, with staff, and with their community.

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 Council. The code applies to elected 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
- the credibility and accountability of the council within the community
- community trust and respect for the council
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

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

- an agreed statement of roles and responsibilities (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 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.

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 should never improperly confer an advantage or disadvantage on any one person.
- **Honesty and integrity.** Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of improper behaviour.
- **Objectivity.** Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire district, not the ward that elected them.
- **Accountability.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness.** Members should be as open as possible about their actions and those of the council, and should be prepared to justify their actions.
- **Personal judgment.** Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
- **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.

- **Impartiality of staff.** Members should respect the impartiality and integrity of the council staff, and the need for staff to maintain the confidence of successive councils.
- **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 proposals by example, and should 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, and the role of the Chief Executive.

### **Elected Members**

Elected members, acting as the council, are responsible for:

- the development and adoption of council policy
- monitoring the performance of the council against its stated objectives and policies
- prudent stewardship of council resources
- employment of the Chief Executive
- representing the interests of the residents and ratepayers of the Marlborough 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. Any individual member (including the Mayor) has no authority to act on behalf of the council unless the council has expressly delegated such authority.

### **Mayor**

The Mayor is elected by the district as a whole and as one of the elected members shares the same responsibilities as other members of council. The Mayor is the ceremonial head of council, and while in office is a Justice of the Peace. The Mayor is also responsible for:

- presiding at council meetings
- ensuring the orderly conduct of business during meetings (as determined in standing orders);
- advocacy on behalf of the community (with the knowledge and support of the council);
- providing leadership and feedback to other elected members on teamwork and chairmanship of committees.

The Mayor follows the same rules as other elected members regarding the making of public statements and/or committing the council to a particular course of action, and must act in accordance with the rules for media contact.

### **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 roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of council.

### **Committee Chairpersons**

The council may create one or more committees of council. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by council, and as set out in the council's *Delegations Manual*. Committee chairpersons are a first point of media contact for issues relevant to their committee, and may be called on by the Mayor to act as an official spokesperson on any issue. They may be removed from office by resolution of council.

### **Chief Executive**

The Chief Executive is appointed by the council in accordance with sections 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**

This part of the code sets out the council's agreed standards of behaviour. Some of the matters described in this part of the code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968.

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

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

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct.

#### **Relationships with Staff**

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

- recognise that the Chief Executive is the employer (on behalf of council) of all council employees, and as such only the Chief Executive may hire, dismiss or instruct or censure an employee
- make themselves aware of the obligations that the council and the Chief Executive have as employers and observe those requirements at all times
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
- observe any guidelines that the Chief Executive puts in place regarding contact with employees
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive Review Committee.

Elected members should be aware that failure to observe this portion of the code of conduct may compromise the council's obligations to act as a good employer and may expose the council to civil litigation and audit sanctions.

Members should be aware that Council staff have their own Code of Conduct, which complements this code by providing equivalent guidance on relationships between staff and colleagues, Councillors, and the public. One of the guiding principles for the staff code is the need to maintain political neutrality, and to serve successive councils with impartiality. Councillors should respect the need for staff to maintain their impartiality and integrity, and avoid any behaviour that may jeopardise this. Copies of the staff code are available from the Chief Executive.

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

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

Members should act in a manner that encourages and values community involvement in local democracy and should ensure that individual citizens are:

- accorded respect in their dealings with the council,
- have their concerns listened to, and deliberated on in accordance with the requirements of the Act.

#### **Contact with the Media**

The media plays an important part in local democracy. In order to fulfil this role the media needs access to accurate, timely information about the affairs of council. From time to time, individual members will be approached to comment on a particular issue either on behalf of council, or as an elected member in their own right. This part of the code deals with the rights and duties of councillors when speaking to the media on behalf of council, or in their own right.

The following rules apply for media contact *on behalf of council*:

- according to the matter at hand, the Mayor or the relevant committee chairperson will provide the first point of contact for the official view on any issue. Where the Mayor is absent, matters will be referred to the Deputy Mayor
- the Mayor may refer any matter to a relevant committee chairperson or to the Chief Executive for their comment
- no other member may comment *on behalf of council* without having first obtained the approval of the Mayor.

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

- media comments must not state or imply that they represent the views of council

- where an elected member is making a statement that is contrary to a council decision or council policy, the member must not state or imply that his or her statements represent a majority view
- media comments must observe the other requirements of the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of staff.

### **Confidential Information**

In the course of their duties members will 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 members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the elected member. Elected members should be aware that failure to observe these provisions will impede the performance of council by inhibiting information flows and undermining public confidence in the council. Failure to observe these provisions may also expose council to prosecution under the Privacy Act 1993 and/or civil litigation.

### **Conflicts of Interest**

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which 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 members are prohibited from participating in any council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at council meetings where matters in which they have a pecuniary interest arise.

Members shall annually make a general declaration of any interest that they consider could be reasonably regarded as likely to influence their actions during the course of their duties as a member. These declarations will be recorded in a register of interests maintained by council. Examples of interests that a member may wish to consider for declaration include:

- 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
- any land in which the member has a beneficial interest and which is in the Marlborough District
- any land where the landlord is the Marlborough District Council and:
  - the member or their spouse is a tenant, or
  - the land is tenanted by a firm in which the member or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary
- any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member.

If the member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive *immediately*.

Members may also contact the 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 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.

### **Abuses of Office**

Marlborough District Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will avoid any situation that might represent an abuse of their office, or that might compromise, or be seen to compromise their integrity or the integrity of Council as a whole. Members should:

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

- not use council resources for personal business (including campaigning)
- not solicit, demand, or request any gift, reward or benefit by virtue of their position
- notify the Chief Executive if any gifts are accepted
- where a gift to the value of \$100 is offered to a member, immediately disclose this to the Chief Executive for possible inclusion in the publicly available register of interests.

### **Standing Orders**

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

### **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.

Under the Local Government Act 2002, local authorities, when adopting a code of conduct, must consider whether or not they will require members to declare whether they are an undischarged bankrupt. This council believes that bankruptcy does raise questions about the soundness of a person's financial management skills and their judgment in general. The council therefore requires elected members who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt.

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

This part deals with ensuring that elected members adhere to the code of conduct and mechanisms for the review of the code of conduct.

### **Compliance**

Elected members must note that they are bound to comply with the provisions of this code of conduct (Local Government Act 2002, Schedule 7, section 15(4)). Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the 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 freely available to elected members. Short explanations of the obligations that each of these has with respect to conduct of elected members is attached in the Appendix to this code.

### **Conduct Review Committee**

Compliance with this Code, and with relevant statutory obligations, will be managed by a Conduct Review Committee. This committee will be constituted by Council at the first meeting after triennial elections, and will comprise three members of Council, a suitably qualified member of the public, and the Mayor ex-officio. The schedule of meeting, and any specific terms of reference, will be set at that same time.

All alleged breaches of the code will be reported to the above committee. Should an alleged breach concern a member of the committee, that member shall stand down and be replaced by a nominee of Council. Any allegation of a breach of a code of conduct must be in writing, make a specific allegation of a breach of the code of conduct, and provide corroborating evidence. The committee will investigate the alleged breach and prepare a report for the consideration of council. Before beginning any investigation, the committee will notify the elected member(s) in writing of the complaint and explaining when and how they will get the opportunity to put their version of events. A member may have their case supported by an advocate of their choosing, but no costs will be provided.

The council will consider the report in open meeting of council, except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a member of staff or of the general public.

### **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 Authority (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 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.

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 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
- an invitation for a member to consider their resignation from Council.

A decision to apply one or more of these actions requires a council resolution to that effect.

### **Assistance and advice**

Local Government New Zealand provides a range of advocacy and support services for elected members. In the event that a breach of conduct is disputed, affected member(s) may wish to seek advice from Local Government New Zealand, or to seek legal advice.

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

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 council for their consideration and vote.

## **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. Copies of these statutes can be found in the council library or in the office of the Chief Executive.

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

This Act 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 contact the Audit Office for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authority (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

The Audit Office publication Financial Conflicts of Interests of Members of Governing Bodies (2001) provides further guidance on this Act.

### **Local Government Official Information and Meetings Act 1987**

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another councillor is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the council, other councillors, any employee of the council or any member of the public.

### **Secret Commissions Act 1910**

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to council.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fines up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

**Crimes Act 1961**

Under this Act it is unlawful for an elected member (or 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 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 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 Act are not met.