



Rangitikei District Council - Code of Conduct

1 Preamble

- 1.1 The Code of Conduct has been prepared in accordance with clause 15, Schedule 7, of the Local Government Act 2002.
- 1.2 The Code of Conduct applies to all Rangitikei District Councillors, including the Mayor for their respective term of Office. It does not apply to the Taihape and Ratana Community Boards unless the Community Boards choose to adopt it.
- 1.3 The Code of Conduct is available for viewing to any member of the public.

2 Behavioural Conduct

Councillors will maintain public confidence in the office to which they have been elected through leading with the following behaviours when interacting with fellow councillors, Council officers and Community Members:

- 2.1 *Acting with honesty and integrity*, taking steps to avoid any behaviour or situations that may call this into question.
- 2.2 *Being respectful towards others* by treating people equitably, and with respect, regardless of their race, age, religion, gender, sexual orientation or disability. Councillors will respect the impartiality and integrity of Council staff.
- 2.3 *Acting in the public interest*, serving the interests of the District as a whole and ensuring that an advantage or disadvantage is not improperly conferred on any one person.
- 2.4 *Being accountable to the public* for their actions and the manner in which they are carrying out their responsibilities. Councillors will respond to public scrutiny appropriate to their elected position and the office to which they have been elected.
- 2.5 *Being objective in decision-making* and ensuring that their decisions are not directly or indirectly influenced by rewards or benefits for certain individuals or businesses.
- 2.6 *Exercising personal judgement* and approaching issues with an open mind, reaching their own conclusions on the issues before them and acting in accordance with those conclusions. This does not preclude taking account of the views of others, but should not rely solely on the advice of others.
- 2.7 *Always upholding the law* and acting in accordance with the trust that the public places in them.

- 2.8 *Exercising effective stewardship*, so that the Council uses all resources prudently and for lawful purposes, and maintains sufficient resources to meet its statutory obligations.
- 2.9 *Using appropriate authority* when carrying out Council business, and ensuring that the protocols set by Council and the Chief Executive are observed, particularly when engaging with Council staff or responding to members of the community.

3 Information for Public Administration

Councillors will maintain public confidence in the office to which they have been elected through ensuring the following practices are observed when dealing with information for the purposes of administration of public office:

- 3.1 Confidential information will only be used or disclosed for the purpose for which the information was supplied to the Councillor. Information gained in the course of holding office will not be used for the conduct of personal business, or to solicit, demand or request any gift or reward.
- 3.2 Councillors who, in their capacity as an elected member, are offered information that relates to administration of the Local Government Act 2002 (or other relevant legislation for which Council is responsible for) will share the information with other councillors and the Chief Executive. Where the provider of information insists upon complete confidentiality, councillors may decline to accept the information.
- 3.3 Councillors who, in their capacity as an elected member, have access to information in which they may have a pecuniary or non-pecuniary interest (that gives rise to a conflict between interest and duty), will disclose that interest as a conflict, and take appropriate steps to manage that conflict accordingly.
- 3.4 The Mayor is the first point of contact for the official view on any issue. Where the Mayor is absent, the Deputy Mayor or relevant Committee Chairperson will respond. No other councillor will comment on behalf of Council, or release confidential or sensitive information, without having explicit Council approval.

4 Legislation Applicable to Elected Members

- 4.1 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 are:
- the limitations around dealing with an item not on the agenda of a meeting
 - the grounds by which the Council may exercise its right to exclude the public from all or part of the proceedings
 - the privileged status accorded to an oral statement made by an elected member in accordance with Council's adopted Standing Orders (unless in any proceedings for defamation it is proved that the elected member was predominantly

motivated by ill-will or otherwise took improper advantage of the occasion of its publication).

- 4.2 Councillors 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 general explanation provided at the first Council meeting of the triennium is attached as Appendix 1.
- 4.3 Councillors also need to be aware of the Privacy Act 1993 and its relevance when dealing with personal or sensitive information.

5 Breaches of the Code

- 5.1 A breach of the Code of Conduct does not constitute an offence under the Local Government Act 2002.
- 5.2 When an alleged breach of the Code occurs, Council will appoint a working party of three councillors to investigate matters and provide the findings and any recommendations back to Council. The councillor alleged of breaching the code will be notified in writing of any allegations that have been received prior to investigation.
- 5.3 Where it has been established that a breach of the code has occurred, Council may consider the following actions:
 - Remedy to resolve the matter, which may or may not include censure
 - Resolve to remove the councillor from Council Committees and or other representative bodies
 - Resolve to remove the councillor from a position as Deputy Mayor or Chair of a Committee
- 5.4 Any alleged breaches of a criminal nature must be reported to the Chief Executive, and be referred to the Police.

Appendix 1 – Legislation applicable to Elected Members

1 Background

Schedule 7 Clause 21 of the Local Government Act 2002 requires that, at the first meeting of the Council following the triennial general election, the Chief Executive give or arrange a general explanation of the Local Government Official Information and Meetings Act 1987 and other laws affecting members, including –

- the appropriate provisions of the Local Authorities (Members' Interests) Act 1968;
- sections 99, 105 and 105A of the Crimes Act 1961;
- the Secret Commissions Act 1910; and
- the Securities Act 1978.

This section of the Code reproduces this general explanation.

2 Local Government Official Information and Meetings Act

2.1 General Principle

The stated purpose of this Act is to make official information held by local authorities more freely available, to provide for access to that information, to provide access to the meetings of local authorities, and to protect official information held by local authorities consistent with the public interest and preservation of personal privacy.

The Act is very broad. It does not define the word 'information'. It sees official information as any item of information held by a local authority. So official information is not limited to documents like letters, reports, memos, or files, but includes audio and videotapes, computer disks, maps films, photographs and plans.

The heart of the Act is the 'principle of availability' set out in Section 5:

"The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it".

The fundamental principle of the Act is that information must be made available unless there is a 'good reason' (defined by the Act) to withhold it.

2.2 Requests

Anyone can make a request for official information.

If the Council does not hold the information sought, or a Council officer believes the request to be more closely connected with another organisation, then the officer must (within 10 working days) transfer the request.

When the Council holds the information a decision on whether to release the information must be made within 20 working days of receiving the request. Charges can be made for supplying the information.

When the information sought is large or consultations that are necessary for a proper response are needed, the Chief Executive or an authorised officer may extend the time limit for a 'reasonable period'. The requester must be told the period of extension, the reasons for the extension and the fact that the extension can be referred to the Ombudsman.

Every request must be dealt with on its merits and a decision whether to refuse is made on the circumstances of each case.

2.3 Refusals

The Act fixes the responsibility for deciding to accept or refuse a request on the Chief Executive or an officer she authorises. The Act does not prevent the authorised officer from consulting the Council or any other person. The Act sets out approximately 25 'good reasons' why the provision of official information can be refused. If the grounds for refusal do not fall within one of these 'good reasons' the information **must** be released.

'Good reasons' include:

- a. protecting the privacy of natural persons;
- b. maintaining the effective conduct of public affairs through free and frank expressions of opinions by or between elected members and officers;
- c. enabling a local authority to carry out, without prejudice or disadvantage, commercial activities;
- d. enabling a local authority to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and
- e. to maintain professional legal privilege.

All of these reasons are subject to a 'public interest' test, i.e. even if the information sought falls within one of the refusal categories it must be released where the reason for the withholding of the information is outweighed by other considerations rendering it desirable in the public interest that the information be released.

The Act also contains a number of administrative grounds for refusing a request. These include the fact:

- a. the information is or will soon be publicly available;
- b. the information requested cannot be made available without substantial collation and research.

If a request is refused the Council must give the requestor:

- a. the reason for its refusal;
- b. the grounds in support of that refusal;

- c. advice as to the right to apply to the Ombudsman to seek a review of the refusal.

2.4 Ombudsman's investigation

The Ombudsman can investigate any refusal by the Council to provide information and can investigate the charges made by the Council.

If the matter cannot be resolved during the investigation the Ombudsman may make a recommendation to the Council. The Council is under a public duty to observe that recommendation unless it resolves not to accept it within 21 working days of receiving the recommendation.

A decision not to accept an Ombudsman's recommendation must be notified to the applicant and the Ombudsman and published in the New Zealand Gazette together with the Council's reasons for the decision. The applicant may apply to the High Court for a review of the Council's decision. Whatever the result of the High Court hearing, the applicant's costs must be paid by the Council unless the Court is satisfied the application was not reasonably or properly brought.

2.5 Access to Meetings

The Act provides the public and media have a right of access to all meetings of the Council, committees, sub-committees (with power to act) and community boards unless the meeting resolves to exclude the public. Copies of meeting agendas must be available for the public and the media.

The grounds for excluding the public and the media from a meeting can only be those provided in the Act and essentially are the same grounds as for withholding official information (although notably **not** including "free and frank expressions of opinions by or between elected members and officers"). A motion to exclude must state the subject matter of the 'non-public' matter and the specific reason provided in the Act.

Even where a meeting has resolved to exclude the public a person can request a copy of the minutes of the meeting. Such a request must be treated in the same way as a request for official information and is subject to review by an Ombudsman.

2.6 Order Papers

Order papers for meetings must be publicly available at least two working days before the meeting. Supplementary reports cannot be dealt with unless agreed to by the meeting and unless the Chair explains why the report was not in the Order Papers and why the subject cannot wait until the next meeting.

2.7 Qualified Privilege

Sections 52 and 53 of the Act provide that written or oral statements on any matter before a meeting of the Council, committee, or community board is privileged unless the statement is proved to be made with malice. This is known as qualified privilege.

Qualified privilege is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a statement defamatory about another person.

It is established law that meetings of local authorities are privileged occasions (this would include community boards). The reason given by the Courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents.

If malice can be established then the privilege is lost. With the question of malice, motive can be crucial. If it is established that the maker of the statement had some other dominant and improper motive then malice will be established.

Generally speaking, for qualified privilege to apply, there should be a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the maker.

3 Local Authorities (Members' Interests) Act 1968

This Act contains provisions relating to contracts between elected members and the Council, and provisions relating to elected members voting on matters where they have a pecuniary interest.

3.1 Contract

The Act provides that no person can be an elected member of the total of all contract payments made or to be made by the Council in which that person is 'concerned or interested' exceeds \$25,000 in any financial year. Contracts include sub-contracts.

There are provisions regarding contracts between the Council and a company in which an elected member or spouse has an interest. Generally a person will be concerned or interested in a contract where that person or spouse holds 10% of the issued capital of the company or a controlling company, or the members or spouse is a shareholder and is either a managing director or general manager.

Certain exclusions are provided for, such as where the member and spouse are living apart, or the member did not know and had no reasonable opportunity of knowing the spouse was a shareholder and managing director/ general manager.

The limit of \$25,000 may be extended by the audit Office in special cases. Such approval can be given retrospectively. Provision is made for contracts entered into by the Council before an election, and for continuing contracts.

If a person breaches the \$25,000 limit that person is disqualified from holding office and an extraordinary vacancy occurs. The disqualification remains until the next triennial election.

3.2 Pecuniary Interest

The Act provides that no elected member shall vote on or take part in the discussion of any matter in which that person has, directly or indirectly, any 'pecuniary interest' other than an interest in common with the public.

The prohibition applies where the member's spouse has a pecuniary interest and where the member or spouse holds 10% or more of the shares in a company or a controlling company, which has a pecuniary interest, or either person is a shareholder and is managing director or general manager.

Members who are prohibited under the Act from voting on or discussing a matter are under a duty to declare to the meeting their pecuniary interest and their abstention from discussion or voting must be recorded in the minutes.

The prohibition against discussing or voting on a matter does not apply in certain situation, such as:

- a. Members' remuneration where the maximum rate has already been fixed;
- b. Election or appointment of any member to a Council or community board office, notwithstanding that remuneration is payable;
- c. The preparation, approval, or review of a district scheme or district plan unless the matter relates to any variation or change or departure from a district scheme or district plan or to the conditional use of land.

The Audit Office has the power to declare that the prohibition shall not apply in respect to any particular matter if the Office is satisfied the prohibition would impede the business of the Council or that it is in the interest of the electors that the prohibition not apply.

A member convicted of contravening the prohibition vacates office and an extraordinary vacancy is created.

4 Crimes Act 1961 – Sections 99, 105, 105A

4.1 Section 99

Section 99 defines, for the purposes of the Crimes Act 1961, an "official" as any member or employee of any local authority. Member includes community board member.

4.2 Section 105

Section 105 provides that it is an offence punishable by up to seven years imprisonment for an "official" to corruptly accept or obtain, or to attempt to obtain, any bribe in respect of anything done or omitted to be done by the official in an official capacity.

A person making or attempting to make the bribe is liable to up to three years imprisonment.

4.3 Section 105A

Section 105A provides that every official is liable to up to seven years imprisonment who corruptly uses any information acquired in an official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for the official or any other person.

5 Secret Commissions Act 1910

5.1 The principle behind this Act is that a person holding a position of trust should not make a profit through their office.

5.2 The Act provides that elected members and officers are “agents” of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or any other person, any gift or consideration as an inducement or reward for doing or not doing any act in relation to the Council’s affairs, or for having shown favour or disfavour to any person in relation to the Council’s affairs.

5.3 Any agent who diverts, obstructs, or interferes with the proper course of the Council’s business, or fails to use due diligence in the prosecution of such business with intent to obtain for themselves or any other person any gift or other consideration shall be deemed to have corruptly solicited a consideration.

5.4 Whilst “gift” is not defined, “consideration” is. It includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, and money (including loans). Generally trade practices or customary gifts do not constitute a defence to a charge under the Act.

5.5 Section 5 of the Act provides that an agent who makes a contract on behalf of the Council must disclose to the Council any pecuniary interest in the contract. This provision is similar to that contained in the Local Authorities (Members’ Interests) Act 1968.

5.6 It is an offence to advise the Council with intent to induce it to enter into a contract with a third person, and receive any gift or consideration from the third person without disclosing the Council the fact of payment. Upon conviction for any offence under the Act an agent is liable to a maximum fine of \$2,000 or two years imprisonment and would vacate their office.

6 Securities Act 1978

6.1 The Securities Act 1978 imposes an obligation on entities that solicit funds from the public to prepare, register, and distribute a prospectus and an accompanying investment statement.

- 6.2 This only applies where there is “an offer of securities to the public”, and offers of securities to financial institutions or “habitual investors” are exempt. This means that there are no Securities Act implications where the Council borrows from institutions on a wholesale basis. This is generally the case even if the institutions on-sell the stock to members of the public.