

POLICY STATEMENT

NUMBER:

TITLE:

Code of Conduct for Councillors

SECTION AND POSITION:

Chief Executive Officer

RELEVANT LEGISLATION:

Local Government Act 1993

PURPOSE:

The Code of Conduct for Councillors states requirements for councillor's behaviour in accordance with the *Local Government Act 1993*.

SCOPE:

The Code shall apply to all councillors.

PREAMBLE:

This Code of Conduct for Councillors mirrors the Model Code of Conduct for Councillors gazetted by the Department of Local Government May 2008.

DEFINITIONS:

The **Act** shall mean the Local Government Act 1993.

Councillors shall mean duly elected members of the Central Highlands Regional Council.

POLICY:

Key Ethics Principles

The Act sets out ethics principles for local government councillors (Schedule 1 of the Act) which are:

Integrity of local government

- It is vital that the public has confidence in a local government's ability to ensure the good rule of its area.
- Councillors must conduct themselves in a way that promotes and maintains the public's trust and confidence in the local government and the good rule and government of its area.

Primacy of the public interest

- Councillors are elected to act in the public interest and to make decisions solely in terms of the public interest.

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- Councillors must take steps to avoid, resolve or disclose conflicts of interest.

Appropriate use of information by Councillors

- Councillors, who, in the course of carrying out their duties, receive information that is not available to the general public must not misuse this information, particularly for personal gain.

Transparency and scrutiny

- It is vital that the public has confidence in the integrity of a local government’s decision-making processes.
- To ensure transparency and public scrutiny of, and public confidence in, those processes, councillors must disclose their financial interests.

Appropriate use of entitlements

- Councillors must comply with the requirements about using entitlements provided for under the local government’s policies.

Councillors Statutory Obligations

The Act specifies Councillors’ obligations (statutory obligations) which are grouped below according to the ethics principles in the Act. If a penalty can be imposed under the Act for a breach of the obligation, it is shown below. Councillors must comply with these obligations.

| Obligation | Section | Penalty in Act |
|---|--------------------|--------------------------------------|
| <i>Integrity of local government</i> | | |
| A councillor must not assume any part of the role of mayor without the mayor’s approval (additional roles of the mayor are stated in s.231). | s.230(1) | No |
| A councillor must not direct or attempt to direct staff about the way they perform their duties. | s.230(2) | No |
| A councillor must not direct or attempt to direct staff or other people engaged to provide services for the local government about the way they give advice or make recommendations about the following: <ul style="list-style-type: none"> • grant of a licence or permit under an Act or local law; • grant of a concession, rebate or waiver, • entering a contract with the local government; • disposing of land or assets, or • allocating resources for local government projects | s.230(3) (4) & (5) | Yes – fine of up to 85 penalty units |

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| A councillor should not knowingly agree to make a disbursement that is not provided for in the budget adopted by the local government for that year. If a councillor does knowingly agree to a disbursement that is not provided for in the budget they are liable to repay to the local government the amount of the disbursement plus interest. | s.523 | No |
| A councillor should not knowingly agree to the local government borrowing money in contravention of the Act. If a councillor knowingly agrees to the borrowing of money in contravention of the Act, the councillor is liable to pay to the local government the amount borrowed and all interest and other penalties incurred by the local government. | s.526 | No |
| <i>Primacy of the public interest</i> | | |
| A councillor must serve the public interest of the area and, if a councillor for a division, the interests of the division. The councillor must give preference to the public interest if there is a conflict between the councillor's private interest or that of another person, and the public interest. | s.229(2) | No |
| A councillor must disclose any material personal interest (defined in s.6) in a matter that is to be considered at a meeting and must not take part in or be present in the meeting (the Minister may allow a councillor with a material personal interest to participate in a meeting in certain circumstances; see s.245) | s.244, s.6 s.246 | Yes – fine of up to 200 penalty units if councillor voted, intending to gain an advantage – fine of up to 85 penalty units in other circumstances |
| <i>Independence of action by councillors</i> | | |
| A councillor must ensure there is no conflict, between their private interests and their role of serving the public interest. | s.229(3) | No |
| <i>Appropriate use of information by councillors</i> | | |
| A councillor or person who has been a councillor must not make improper use of information obtained as a councillor to gain a direct or indirect financial advantage, or to harm the local government. | s.250(1) | Yes – fine of up to 100 penalty units |
| A councillor or person who has been a councillor must not release confidential information which was obtained as a councillor. | s.250(2) | Yes – fine of up to 100 penalty units |

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| <i>Transparency and scrutiny</i> | | |
|---|---------------------------|--|
| A councillor must give the chief executive officer a return about electoral gifts and make a declaration of office before commencing in office and within 1 month of election or appointment (or a longer period allowed by the Minister). The declaration of office must state that the councillor will faithfully and impartially fulfill their duties and comply with the code of conduct. | s.242 s.427 | Yes - fine of up to 100 penalty units for knowingly giving a false or misleading return - councillor ceases to hold office if they do not complete a return and declaration in the required time |
| A councillor must declare any conflict of interest, or possible conflict, in an issue to be considered at a local government meeting. The local government must record the conflict of interest in the minutes of the meeting. | s.246A | No |
| A councillor must tell the chief executive officer of their interests, corrections to the register of those interests, or the interests of a person related to the councillor, for recording in the register of interests, as required by The Local Government Regulation (2005) (The Regulation). The Regulation requires reporting of gifts valued at \$500 or more. | s.247 Reg. Sch 1, s.10 | Yes – fine of up to 85 penalty units |
| Within 30 days of being informed of a possible omission of information from the register of the councillor's interests, the councillor must establish whether it should be amended to make it factual. If amendment is needed, the councillor must give the chief executive the appropriate information in writing; if no amendment is needed, the councillor must give the chief executive a statutory declaration to that effect. | s.249(3) s.249(4) | No |

Councillors' Additional Ethical and Behavioural Obligations

In addition to their statutory obligations, councillors must comply with the following obligations.

Integrity of local government

Councillors must:

- exhibit high standards of personal behaviour and demonstrate respect for others
- refrain from harassing, bullying or intimidating others
- abide by any staff communication guidelines that have been approved by

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the council's chief executive officer

- follow the letter and the spirit of council policies and procedures, administrative policies endorsed by the chief executive officer, and the law
- respect the democratic process and publicly represent council decisions
- when communicating with the public or media make it clear when they are expressing a personal opinion, and when they are speaking on behalf of council.

Transparency and scrutiny

Councillors should use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.

Appropriate use of entitlements

Councillors should not use council resources for personal benefit and gain, aside from reimbursement of expenses in accordance with council's policy.

Reporting of suspected official misconduct

Councillors must disclose to the chief executive officer any suspected fraud, corruption, maladministration and official misconduct of which they become aware. If the concern relates to the chief executive officer, then a councillor should disclose the concern to the Crime and Misconduct Commission or the Police as appropriate.

Breaches of the Code of Conduct

A breach of the code of conduct may be one of the following:

Meeting Breach

A breach of a councillor's obligations at a meeting of council or a committee of council.

Minor Breach

A breach of the ethical obligations (other than a statutory obligation shown above), or of any additional ethical or behavioural obligations that a council includes in its code of conduct.

Repeat Breach

The fourth and subsequent meeting and/or minor breaches within six months are repeat breaches.

Statutory Breach

A breach of one of the obligations in the Act, which are listed above.

How to Make a Complaint about a Breach of the Code of Conduct

A complaint about a possible minor breach or statutory breach of the code of conduct may be made by anyone, including a councillor. Complaints about a meeting breach may be made only by a councillor.

The procedure to complain about an alleged breach of the code of conduct varies depending on the type of conduct breach. The types of conduct breach

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are defined in the Act (s250M). A complaint may be made in the following ways:

Complaint about a meeting breach

If a councillor breaches an obligation under a code or a local law about behaviour at a meeting of council or a council committee, a complaint may be made by a councillor who is present at the meeting. The complaint must be made to the person chairing the meeting (s.250 O).

Complaint about a minor breach

A complaint about a breach of non-statutory obligations in the code of conduct should be made under the council's general complaints process (s.250M (2), s.250R). A complaint about a possible repeat of a minor breach is made in the same way. A complaint may be made to council by contacting the Chief Executive Officer or officer authorised by the Chief Executive Officer.

Complaint about a repeat breach

A complaint about an alleged repeat breach may only be made by using the procedure outlined herein for meeting and minor breaches. After a complaint is made about a meeting breach or a minor breach, the local government will assess whether the complaint is a repeat breach (s.250Q(3) and S.250S (4)).

Complaint about statutory breach

A complaint about a breach of a councillor's statutory obligations may be made in writing to the chief executive officer of the local government. Making a complaint to the chief executive officer does not prevent a person from making a complaint to the Crime and Misconduct Commission or the Ombudsman (s.250T).

Compliance

As outlined by S243A of the Act, councillors must comply with the obligations stated in the code of conduct. S243 also provides that breaches of the code of conduct are to be dealt with as outlined in the Act and that if the breach of the code of conduct is an offence under the Act, court proceeding may also be taken.

ADOPTED: 01.06.09

AMENDED:

**DUE FOR
REVISION:**