

2019-2022 CODE OF CONDUCT

Elected Members

Image credit: Mark Smith



ROTORUA
LAKES COUNCIL

Te Kaunihera o ngā Roto o Rotorua

rotorualakescouncil.nz

ROTORUA LAKES COUNCIL IS THE OPERATING NAME OF ROTORUA DISTRICT COUNCIL

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The Governance Role

The representation role involves 'representing' the views of citizens. The governance role involves making decisions for the overall benefit of the community, not only for the current generations but for generations to come. Councillors essentially wear two hats and it is not unusual for an elected member to strongly state an opinion reflecting the views of his or her constituents and then vote in a different manner on the grounds that they must govern on behalf of all the citizens within the city, district or region...

...this is the essence of leadership.

The governance role is akin to the role of a director on a board. Both councillors and directors are:

- Accountable to third parties for exercising good stewardship over substantial assets'
- Responsible for leading complex organisations, the operation of which requires considerable management and technical skills; and
- Operating in an area where the formal legal and administrative responsibility for handling day-to-day affairs is vested in a chief executive and where the elected member has a largely 'hand off' or 'arms length' monitoring relationship.

However a councillor's role differs from that of a board director in a number of respects, for example;

- In addition to the stewardship/governance role, elected members also have 'quasi judicial' roles delegated to them by Parliament as well as the right to levy a tax;
- Local government tends to be more complex than a commercial enterprise as it has a broad range of functions and objectives involving difficult trade-offs; and
- The democratic mandate which requires members to act as representatives has no equivalent in the commercial world.

Governance is primarily about setting the future direction of organisations and communities and ensuring assets and resources are suitable for achieving that direction. This involves setting priorities and making trade-offs as few organisations can afford to meet all the demands made upon them. Elected members must learn to balance the needs and interests of their voters, residents and interest groups with those of their council.

Key aspects of the governance role are strategic planning; decision making; policy and strategy review; scrutiny of management's performance and community leadership and engagement.

The Difference between Governance and Management

One of the issues that will regularly confront elected members is finding the boundary between their role and the role of management. This will vary according to the size of the council, for example, elected members in small councils may find themselves more intimately involved with the operation of their council than elected members in a large metropolitan authority.

Legislative bodies are most effective and successful when they focus on strategic activities to guide future development of their communities. This includes developing a vision for the community; adopting community goals and objectives; adopting comprehensive plans; making decisions about which programmes and services should be provided and adopting long-term budgets.

The role of elected members is to set the direction of the local authority and make decisions, including the decision to delegate a range of operational decisions to the chief executive who will further delegate many decisions to senior managers.

Principles of Governance for Rotorua Lakes Council

The Code gives effect to the following general principles of good governance with which elected members have agreed to comply

The following are the guiding principles for good governance for the Rotorua Lakes Council:

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Te Arawa/Mana Whenua and Community pride

Decisions made will be in the best interests of the Rotorua community, and will assist in ensuring that the Rotorua district continues to be one where people want to live work and play. Mindful decisions come about when council works alongside Te Arawa and recognises the input from iwi.

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Collective Responsibility

Members should give regard to the agreed view/position of the Council by ensuring they express fairly and in a positive and supportive manner when representing the Council both in written and oral presentations.

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Commitment to leadership

Members should engage enthusiastically and empathetically with the community so as to learn and act upon issues of local concern. (Builds trust by representing all sections of the community).

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Integrity and Honesty (Trust)

Elected Members will be honest and act with integrity. This includes:

- behaving in accordance with the trust that the public places in them.
- being fair and consistent in dealings with others and following through on commitments.
- not making statements or doing anything that will, or is likely to, mislead or deceive.
- not place themselves in situations where their honesty and integrity may be questioned.
- being open to constructive feedback.
- complying with relevant legislation and Council policies and procedures.
- making decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

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Respect

Members will treat everyone with respect and respect other individual's points of view and opinions, beliefs, and rights. This includes:

- recognising and encouraging ideas and contributions from others
- being courteous and approachable;
- not engaging in aggressive, offensive, abusive or bullying behaviour;
- not making personal attacks;
- be open to other points of view and listening to what others have to say;
- not interrupting when others are expressing their point of view;
- ensuring that the Council complies with its obligations under section 39 of the LGA and clause 36 of Schedule 7 of the LGA to be a good employer (Attachment 2)
- not publicly criticising Council staff.

Relationships and behaviours

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of the Council's decisions. This section of the code describes the roles and responsibilities of elected members, the Mayor, Deputy Mayor, committee chairpersons, and chief executive.

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:

- properly represent the citizens of the Rotorua district
 - are open and honest
 - focus on issues rather than personalities
 - avoid aggressive, offensive or abusive conduct.
-

Relationship with Chief Executive

The relationship of elected members and the management of the Council requires a high level of cooperation and mutual respect. To ensure that level of cooperation and respect is maintained at the highest level the relationship of members with the chief executive will be based on:

- a commitment to governance as a team
- spending time together to be an effective governance unit
- openness and understanding about difference of opinion
- continued commitment to understanding the complexities that face Council
- ensuring sufficient time and effort is given to responding to the challenges of changing local government environments
- working together to ensure policies are developed in an orderly, efficient, and effective manner
- sincere, but not unquestioning, support for the office of the chief executive and management.

Relationships with Staff

Effective performance of the Council requires a high level of co-operation and mutual respect between elected members and staff. Elected members will:

- recognise the Chief Executive is the employer (on behalf of the Council) of Council employees and only the CE may hire, dismiss, instruct or discipline an employee;
- treat employees with courtesy and respect;
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
- observe any guidelines that are in place regarding contact with employees
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- avoid public criticism of Council employees
- not direct or influence, or attempt to direct or influence, Council staff (other than through the CE);
- observe the guidelines the CE puts in place regarding contact with employees;
- raise concerns about employees only with the CE, and concerns about the CE only with the Mayor

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, could result in action under the Employment Relations Act 2002.

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, have their concerns listened to, 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
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Contact with 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 elected members 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 or subcommittee chairperson;
- the relevant committee chairperson, portfolio lead or the CE may also make comment;
- no other member may comment officially 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 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.

Confidentiality

To enable elected members to properly discharge their duties, members are entitled to, and receive, a broad range of information which is publicly accessible. In the course of their duties, elected members will also receive information that may be classified as confidential. This includes information received at meetings which are closed to the public or information that is identified as confidential. Elected members may also be provided with, or have the ability to access, confidential information held by Council.

Confidential information includes information that staff have determined there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 ('LGOIMA'). This will often be information that is either commercially sensitive or is personal to a particular individual. The Council's Privacy Officer is responsible for the release of information under LGOIMA. 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 relating to confidential information will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. They may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation. A breach of confidentiality could also indicate a lack of good faith which may be relevant to the assessment of personal liability

Information received in capacity as an Elected Member

Members will disclose to other members and, where appropriate the CE, any information received in their capacity as an Elected Member that concerns the Council's ability to give effect to its responsibilities. Members who are offered information on the condition that it remains confidential will inform the provider of the information that is the member's duty to disclose the information and will decline the offer if that duty is likely to be compromised. Elected Members are accountable to the public.

- All official information held by them personally, whether on Council equipment or their own personal equipment is subject to the LGOIMA.
- Official information, if sought as part of a request, must be made available immediately to the CE (or nominee) so that it can be assessed in terms of the requirements of the LGOIMA

Gifts and hospitality

A person in a position of trust, such as an Elected Member, should not make a profit through his or her office. The Crimes Act 1961 and the Secret Commissions Act 1910 deals with corruption and the obtaining of gifts as an inducement or reward for acts in relation to the Council's affairs. Gifts can include discounts, commissions, bonus or deductions. Acceptance of gifts, services or hospitality may be considered as a bribe or perceived as undue influence. Elected members must notify the Governance Manager (or delegate) if any gifts are accepted for inclusion in the Gifts Register maintained by the Council. Where a gift to the value of \$150 or more is offered to a member, it will also be included in the Register of Members Interests maintained by the Council. As guidance:

- The cumulative value of recurring gifts received each financial year from the same donor must be disclosed. For example, if someone provides a member with concert tickets at different times through the year, the total value of those tickets over the relevant financial year is to be disclosed.
- A member is not required to disclose tickets to events for which that member is required to attend as the Council's representative (as recorded in the Council's Governance Structure)
- Working lunches and social occasions should be undertaken with a recognition of the public perception regarding undue influence one elected members.

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).

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.

An elected member 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, he/she must seek guidance from the CE or request the CE to seek legal advice. Elected members may also contact the office of the Auditor-General for guidance. Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate a 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 unfortunate event of a conviction elected members can be removed from office. To avoid conflicts of interest an elected must:

- 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.
- disclose conflicts of interests as they arise (both pecuniary and non-pecuniary conflicts of interest);
- notify the CE if any gifts are accepted, and where a gift to the value of \$300 or more is offered to a member, immediately disclose this for inclusion in the register of interests maintained by the Council;
- complete a declaration of interest form every six months for inclusion in the register of interests maintained by Council.

Bankruptcy

Elected Members who are declared an undischarged bankrupt shall notify the CE when elected or as soon as practicable after being so declared. The member will provide the CE with a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.

Disqualification from office

The LGA and Standing Orders provide for disqualification of Elected Members from office for example, if they:

- are convicted of a criminal offence punishable by two or more years imprisonment;
- cease to be an elector or become disqualified for registration as an elector under the Electoral Act 1993;
- breach the LAMIA; or
- are absent without leave from the Council for four consecutive ordinary meetings of the Council.

The Process - Step 1: Informal Discussion

Elected Members are expected to resolve minor issues between themselves through informal discussion and may ask the mayor or CE to assist with that discussion. If the minor issue cannot be resolved through informal discussion, a formal complaint may be made using the form in Attachment 1.

Minor issues raised by the public will be dealt with by the mayor. If the minor issue involves the mayor then the deputy mayor or CE will act in place of the mayor.

The Process - Step 2: Referral to the Audit & Risk Committee

This applies to all formal complaints.

Formal complaints are investigated and resolved by the Audit and Risk Committee. Should a complaint be received then the independent external chair will take the lead in the assessment and outcome of the breach.

The role of the Audit and Risk Committee is to act as a facilitator to facilitate resolution of the complaint.

If the complaint involves any other member(s) of the Audit and Risk Committee, then those members will vacate their position on the committee while it deals with the complaint and the mayor will appoint a replacement elected member(s) for the purpose of dealing with the complaint.

If the complaint involves the mayor, then the mayor will vacate their position on the committee while it deals with the complaint and the deputy mayor will appoint a replacement elected member(s) for the purpose of dealing with the complaint.

The Audit and Risk Committee will convene within 5 days of receiving a formal complaint and will consider the complaint and identify and assess the options that are available to resolve the complaint...

The Audit and Risk Committee has flexibility in deciding which option for resolution of the complaint will apply and may include the following:

- Informal discussion with the elected member/s involved
- Written confirmation of the expected standards of behaviour
- Training
- Counselling
- Mediation

If the complaint is not resolved to the satisfaction of the Audit and Risk Committee, they may recommend to the full Council that a sanction be imposed. The sanctions that may be recommended may include but are not limited to:

- Apology
- Censure
- Removal of elected member from Council committees or subcommittees
- Removal of elected member from a position such as deputy mayor, chair or deputy chair of a committee or subcommittee, portfolio lead etc.

Elected members must comply with all procedural directions of the Audit and Risk Committee.

The Council (excluding the elected member(s) involved in the complaint) will consider the recommendation from the Audit and Risk Committee and make a decision on what (if any) sanctions will be imposed.

The Council (excluding the elected member(s) involved in the complaint) will consider the recommendation from the Independent Resolution Panel and make a decision on what (if any) actions will be taken to resolve the complaint.

The elected member, after consultation with the CE, may elect to go before the Independent Resolution Panel.

Attachment 1 - Notice of Complaint

Notice of complaint (under clause 4 of Rotorua Lakes Council Code of Conduct for Elected Members (Code of Conduct))

To: The Mayor (or CEO if the complaint involves the Mayor)
Rotorua Lakes Council

I,^(full name)....., wish to make a formal complaint under clause 4 of the Code of Conduct.

The details of the complaint are as follows:

(provide full details of the complaint)

The steps that have been taken to resolve the complaint are as follows:

(provide full details of the steps that have already been taken to resolve the complaint)

I attach the following documents to this notice:

(attach any documents to this notice that are relevant to the complaint (the evidence) and list those documents here).

Signed by:

Date:

(sign here)

(date)

Contact details:

(provide your full contact details here)

Attachment 2 - Relevant Legislation

There are a number of pieces of legislation that are binding in respect of the conduct of elected members. Short explanations of the obligations under each are given below.

Local Government Act 2002 ('LGA')

Elected Members are required by clause 15 of Schedule 7 of the LGA to comply with the code of conduct adopted by Council. Further, elected members have a duty to act in good faith and to perform their role to the best of their skill and judgment.

Under sections 43 to 47 of the LGA, elected members of a local authority are indemnified (except for any loss found by the Auditor-General) by the local authority for:

*costs and damages for any civil liability arising from any action brought by a third party **if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and***

costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.

Therefore, the question as to whether elected members have acted in good faith and for a proper purpose is relevant to the assessment of personal liability.

A local authority must act in accordance with the principles set out in section 14 of the LGA. These principles, which are relevant to the conduct of elected members, are as follows:

(a) a local authority should—

(i) conduct its business in an open, transparent, and democratically accountable manner; and

(ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:

(b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and

(c) when making a decision, a local authority should take account of—

(i) the diversity of the community, and the community's interests, within its district or region; and

(ii) the interests of future as well as current communities; and

(iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):

(d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:

(e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and

(f) a local authority should undertake any commercial transactions in accordance with sound business practices; and

(f) a local authority should periodically—

(i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and

(ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and

(h) in taking a sustainable development approach, a local authority should take into account—

(i) the social, economic, and cultural interests of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

Section 39 of the LGA also states that a local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of Elected Members, is clear and understood by Elected Members and the community; and*
- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and*
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and*
- (d) a local authority should be a good employer; and*
- (e) a local authority should ensure that the relationship between Elected Members and management of the local authority is effective and understood.*

Section 42 of the LGA provides that the CEO is the principal administrative officer of the local authority.

Therefore, it is the CEO, not the elected members, who is responsible for implementing decisions of the elected members as council and the employment and management of council staff.

Schedule 7 of the LGA sets out the statutory provisions for, amongst other things:

- The vacation of office by Elected Members (e.g. disqualification of members if convicted of an offence and ouster provisions);
- Remuneration of Elected Members;
- Conduct of Elected Members;
- Election and removal of chairperson, deputy chairperson and deputy mayor;
- Calling of meetings;
- Conduct of meetings;
- Procedures at meetings;
- Subordinate decision-making structures;
- Delegations; and
- Employment of staff (including an obligation to be a good employer).Local Authorities (Members' Interests) Act 1968 ('LAMIA')

Local Authority (Members' Interests) Act 1968

This Act regulates situations where members' 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 Authority (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

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