

Central Hawke's Bay District Council – Report

TO: Council
FROM: Chief Executive
DATE: 30 October 2008
FILE REF: LGA1-200
SUBJECT: CODE OF CONDUCT

1.0 SUMMARY

Schedule 7, clause 15 of the Local Government Act 2002 requires every local authority to adopt a Code of Conduct for its members. This Council has a code of conduct in place and adopts a new code following each triennial election, so Council has the opportunity to review its contents and purpose and amend if necessary or desired.

At the Council meeting held on 18 September 2008 Council resolved to adopt a Register of Members' Interests for the remainder of the 2007-2010 term.

Therefore the following amendment to the Code of Conduct is suggested under Conflicts of Interest:

"The Mayor and Elected Members of Council declare a personal involvement or interest in properties, businesses, organisations and appointments which may be seen to affect their ability to perform their role as an Elected Member. These interests are held in the Register of Members' Interests. These interests are held in the Register of Members' Interests."

2.0 RECOMMENDATION

THAT

The Code of Conduct be confirmed, as amended, for the remainder of the Council term 2007-2010.

3.0 BACKGROUND

Code of Conduct

The Code of Conduct sets out the standards of behaviour that are expected from all elected members. Each member of the local authority must comply with the code adopted by its authority. Although not a statutory requirement, it is recommended good practise that the Code be reviewed by the incoming Council following the triennial election. The current code was based on a template provided by Local Government New Zealand and amended for Council's use.

At the Council meeting held on 18 September 2008 Council resolved to adopt a Register of Members' Interests for the remainder of the 2007-2010 term. This therefore requires the Code of Conduct to be updated.

The Local Government Act provides that a vote in support of the amendment or adoption of a new code requires in every case support of not less than 75% of the members present.

4.0 OPTIONS

Option 1

That the Code of Conduct be confirmed, as amended, for the remainder of the Council term 2007-2010.

5.0 STATUTORY IMPLICATIONS

Local Government Act 2002

6.0 CONSULTATION

Her Worship the Mayor and Councillors

7.0 FINANCIAL

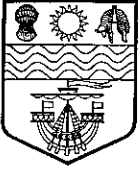
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8.0 STRATEGIC LINKS

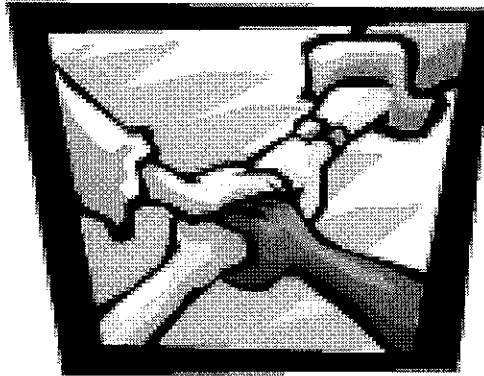
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9.0 POLICY/DELEGATION REFERENCE

John Freeman
Chief Executive



CENTRAL HAWKE'S BAY DISTRICT COUNCIL



CODE OF CONDUCT

Adopted by Council on:

Review date: As soon as practicable following each triennial general election

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Part One: INTRODUCTION

Schedule 7 of the Local Government Act 2002¹ 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 Central Hawke's Bay District Council.

Who does the Code apply to?

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

What is the objective of the Code?

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 government of the Central Hawke's Bay district.
- The credibility and accountability of the council within its community.
- Mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

This code 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 such 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.

¹ The section is appended.

- **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. 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 proposals by example, and should always endeavour to act in the best interests of the community.

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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 Central Hawke's Bay 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 only 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 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. Such advocacy will be most effective where it is carried out with the knowledge and support of the council;
- Ceremonial head of council;
- Providing leadership and feedback to other elected members on teamwork and chairmanship of committees; and
- Justice of the Peace (while 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.

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 summarized 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 may be called on to act as an official spokesperson on a particular 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.

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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. The majority of the code is material that the council has decided to include of its own initiative.

Relationships with other Members

Successful teamwork is a critical element in the success of any democratically elected organization. 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 guidelines (refer to 'Behaviour of Members' within this section) 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 criticizing 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 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.

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.

Behaviour of Members

Dealing with Council Issues

Elected members should remember that they have no personal power to commit the council to any particular policy or course of action or expenditure. That can only be done by resolution at a meeting of the council or a committee with delegated authority.

When the council has made a decision, and the decision is contrary to a particular elected member's point of view, that elected member's public statements should make it clear that they represent a minority view.

Elected members should act in good faith (ie honestly, for the proper purpose, and without exceeding their powers) in the interests of the council and the community.

Elected members should make no allegations which are improper or derogatory. In the performance of their official duties they should refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment.

Dealing with Employees

Councillors who have concerns regarding management matters should not raise them with any employee other than the Chief Executive, and at all times their dealing should be through the Chief Executive. Should an elected member have a concern and not be satisfied with the response of the Chief Executive, the committee or council process should be used to address the concern. That way elected members will be properly informed, particularly if any public explanation or comment is required. Statements that are contentious should be raised only after consultation with the Chief Executive.

Elected members, not officers, bear that ultimate responsibility for decisions made by themselves and by officers. Elected members should ensure that the anonymity of individual officers is preserved and should not comment publicly on the management or staff of the council.

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.

Absence at Meetings by Elected Members

The Standing Orders (SO) that council has adopted contains specific provisions for absence at meetings. Elected members are expected to comply with these provisions as a matter of consideration and courtesy to the council, staff and the community.

SO 3.6.1: Granting Leave of Absence

The local authority may grant leave of absence to a member from an ordinary meeting or other meetings of the local authority or its committees upon application by the member.

SO 3.6.2: Apologies at Meetings

If a member has not obtained leave of absence, an apology may be tendered on behalf of the member and the apology may be accepted or declined by the local authority. Acceptance of the apology shall be deemed to be a granting of leave of absence for that meeting.

SO 3.6.3: Recording of Apologies

The Chairperson of each meeting will invite apologies at the beginning of each meeting, including apologies for lateness and early departure, and these and subsequent apologies during the meeting will be recorded in the minutes, including whether they were accepted or declined, and the time of arrival and departure of all members.

SO 3.6.4: Absence without Leave

An extraordinary vacancy shall be created where any member is absent without leave of the territorial authority, regional council or community board from four consecutive ordinary meetings of the territorial authority, regional council or community board.

Contact with the Media

The media plays an important part in local democracy. In order to fulfill 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 councilors 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***.

- 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 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 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, eg 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 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 Mayor and Elected Members of Council declare a personal involvement or interest in properties, businesses, organizations and appointments which may be seen to affect their ability to perform their role as an Elected Member. These interests are held in the Register of Members' Interests.

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.

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 apply where the member's spouse/partner 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.

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.

Benefits, Expenses and use of Resources

Central Hawke's Bay District Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- 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 (eg Elected Member Remuneration and Expenses Policy)
- 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.

Disqualification of Members from Office

Criminal Offences

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.

Undischarged Bankrupt

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.

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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.

Alleged breaches of the Code will be considered by the Conduct Review Committee. This committee will be constituted at the first meeting after triennial elections. The Mayor will be an ex-officio member. At the time a breach is brought to the attention of the Mayor and/or Chief Executive, two other elected members will by Council resolution be appointed to the Committee to consider the breach.

All alleged breaches of the code will be reported to the above committee. 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.

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

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

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% 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.

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APPENDIX ONE: Schedule 7, section 15 Code of Conduct

(As provided for in the Local Government Act 2002.)

- (1) A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.
- (2) The code of conduct must set out –
 - a. Understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including –
 - i. Behaviour toward one another, staff, and the public; and
 - ii. Disclosure of information, including (but not limited to) the provision of any document, to elected members that –
 - (A) is received by, or is in possession of, an elected member in his or her capacity as an elected member; and
 - (B) relates to the ability of the local authority to give effect to any provision of this Act; and
 - b. a general explanation of –
 - i. the Local Government Official Information and Meetings Act 1987; and
 - ii. any other enactment or rule of law applicable to members.
- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.
- (4) A member of a local authority must comply with the code of conduct of that local authority.
- (5) A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.
- (6) After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.
- (7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

APPENDIX TWO: 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 library in the Council Chamber.

Local Authority (Members' Interests) Act 1968

This Act² 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 member¹ 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.

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 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 councilor is speaking
- Be disrespectful when they refer to each other or other people
- Use offensive language about the council, other councilors, 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.

² The Audit Office publication *Financial Conflicts of Interests of Members of Governing Bodies* (2001) provides further guidance on this Act.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fines up to \$1,000, 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.

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