

## **Code of Conduct for Elected Members of Council and Community Boards: Buller District Council**

*To provide guidance on the standards of behaviour (both statutory and voluntary) required of elected members (Mayor, Councillors and Community Board members)*

### **Mission of the Council**

To serve the residents of the Buller District, conscious of their needs, by providing facilities and services, and, creating an appropriate environment for progress and development while preserving the distinctive natural environment, as well as the cultural and historical environments.

### **Introduction**

The purpose of this Code of Conduct is twofold:

Firstly, to outline a framework of personal conduct, which if adhered to, will protect members and ensure that they work within the rules imposed by the law and Standing Orders.

Elected members hold office by virtue of the law, and must at all times act within the law.

Members' actions are governed by several statutes:

- Failure to disclose a pecuniary (financial) interest can lead to a fine, conviction and disqualification from office (Local Authorities (Members' Interests) Act 1968);
- Any member convicted of offences under the Secret Commissions Act 1910 and the Crimes Act 1961 is liable for imprisonment or a fine;
- Members may be criminally liable if the requirements of the Securities Act 1978 or Securities Regulation 1983 are not met;
- Members are bound to act "in good faith" in their relations with Council officers and staff under the terms of several employment statutes;
- The Audit Office may hold elected members personally liable for any financial loss incurred by the Council and require them to make up the shortfall (Public Finance Act 1977).

Second, this Code seeks to promote effective teamwork within and between elected members and between elected members and Council staff. Without effective teamwork, any democratically-elected organisation will fail.

Aspects of the Code also provide guidance on the standards of behaviour required of Council staff.

It is comprised of statutory and voluntary elements, agreed to by both elected members and the Chief Executive to:

- achieve the stated mission of the Buller District Council;
- enhance the credibility and reputation of the Council within the Buller District;
- develop mutual trust, respect and tolerance between the elected members as a group, between the Council and Community Board and between elected members and Council management and staff.

### **Executive Summary**

It is vital that elected members recognise the distinction between 'governance' (role of elected members) and 'management' (Chief Executive and staff roles). Essentially governance is setting direction and policy ('the ends' and 'hands-off') and management is achieving goals in line with the stated policy ('the means' and 'hands on').

*(Sections 4.10 and 1.1 - 1.30)*

### **Disclosures**

At all times, members must avoid any occasion for suspicion or any appearance of improper conduct. The safest course of action to protect your position is "When in doubt, don't". There are severe penalties for perceived misconduct.

*(‘Introduction’, sections 2.4, 3.4, 4.23 - 4.24)*

Members must declare a direct or indirect pecuniary (personal financial) interest in **any** matter that arises in conjunction with their official duties. In law, 'pecuniary' covers the interests of the member's spouse, partner or other family members as well as business interests.

*(Sections 2.4 - 2.6)*

### **Contracts**

- Members may have a direct or indirect interest in contracts made by the Buller District Council, when the payments under them do not exceed \$25,000 in a financial year.
- Provided a member has the prior approval of the Audit Office, members may have an interest in contracts when the payments **exceed** \$25,000 in a single financial year. Failure to gain such approval will result in automatic disqualification from office.

*(Section 2.7)*

Members are also under a duty to disclose any personal interest (through friends, family, membership of clubs, societies and voluntary organisations etc) that may give the public the impression of any bias or favouritism.

*(Sections 2.8 - 2.10)*

Discussing and voting on matters in which there is an undisclosed pecuniary or personal interest is an offence and can lead to prosecution and disqualification from office. Special circumstances do exist (sections 2.12 - 2.13) but members are responsible for ensuring their own position is at no time in conflict with the Local Authorities (Members' Interests) Act 1968 (The Audit Office Guide to the Act; also section 3.3 and Appendix A of this Code) and advise and update the Register of Interests held by the PA to the Chief Executive (sections 2.1 - 2.3). If in doubt, seek advice from the Mayor or the Chief Executive.

Offers or receipt of gifts or invitations must be reported to the Chief Executive.

*(Section 2.14)*

The proper rules for claiming expenses and allowances must be scrupulously observed.

*(Section 2.15 and Appendix B)*

## **Decision Making**

Elected members are expected to approach decision-making without bias ("faithfully and impartially")

*(Sections 3.1 - 3.4)*

Elected members owe a "fiduciary" duty to ratepayers regarding the monies they hold on ratepayers' behalf. Ratepayers are entitled to expect quality decision-making regarding expenditure and ensure such monies are spent lawfully and wisely.

- Decisions can be made only by a majority of the full Council, or Committees/Sub-Committees and Community Board within their areas of delegation.
- Individual elected members have no personal power to commit the Council or Committee or Community Board to any policy, course of action or expenditure.

*(Sections 3.5 - 3.7)*

No decisions should be made unless the matter is accompanied by a written management report that considers all relevant aspects of the matter in hand (sections 3.8 - 3.9). Regarding urgent items, where the timing precludes the preparation of a management report, the Chair can call for a verbal report from the relevant manager (section 3.11). Non-agenda items are dealt with according

to the Local Government Official Information and Meetings Act 1987. Late items can be discussed but may not be resolved (i.e. a decision made), only referred to a subsequent meeting (section 3.12).

Conduct at meetings is shaped by a number of guidelines:

- Punctuality
- Preparation
- Courtesy and a focus on policies, not personalities
- The strict observance of Standing Orders
- As a matter of course, to avoid abstaining, vote on every issue and endeavour to attend all meetings for the full period

*(Section 3.10)*

### **Behaviour**

Elected members are expected to act honestly and with dignity, for the proper purpose and without exceeding their powers, in the interests of the Buller District and the reputation of the Council.

*(Sections 4.1 - 4.4)*

The dignity of office includes respect for others - other elected members, Council staff, community members and the media.

*(Sections 4.5 - 4.7)*

Mutual respect and an effective working relationship between elected members and Council staff are essential to successful local government.

*(Sections 4.8 - 4.22)*

To perform their duties fully, members must be able to make statements at meetings without fear of an action for defamation. The Local Government Official Information and Meetings Act 1987 provides that such statements are privileged (i.e. protected from a defamation claim) unless it can be proved that the action is motivated predominantly by ill-will. Elected members should strive to avoid improper or derogatory allegations during the course of their official duties.

*(Sections 4.23 - 4.26)*

Any services provided by the Council for the use of elected members, such as transport or secretarial services, should be used only in conjunction with Council duties.

*(Section 4.27)*

### **External Communications**

Public statements should:

- Uphold the lawful decisions made by Council, Committees or Community Boards
- Personal opinions should be clearly stated as such and should not undermine Council, individuals or existing policies or decisions.

*(Sections 5.1 - 5.4)*

Generally, public statements outlining decisions or policy require the specific authority of the relevant Council, Committee, Sub-Committee or Community Board meeting unless formal authorisation exists:

- The Mayor is authorised to make statements accurately reporting decisions of Council meetings.
- Committee Chairs are authorised to make statements accurately reporting decisions of their committees, and factual statements relating to decisions of the Council and its committees.
- Community Board Chairs are authorised to make statements accurately reporting decisions of their Boards.
- The Chief Executive is authorised to make statements relating to any of the areas for which the Chief Executive has statutory responsibility.
- Department managers may make factual statements relating to the functions of their departments.

*(Section 5.5)*

Confidential information must never be disclosed or used to the disadvantage or discredit of the Council.

*(Section 5.6)*

Business must be conducted in meetings open to the public whenever possible. Powers to exclude the public should be invoked only in exceptional circumstances and for lawful reasons. Business conducted in a closed forum remains confidential, until released following Council resolution or by the Chief Executive under specific circumstances.

*(Section 5.7)*

This Code of Conduct applies to all members appointed by Council to represent it on external bodies.

*(Section 5.8)*

Elected members representing the Council at seminars and conferences must:

- Seek Mayoral approval for travel at Council expense outside the Buller District.
- Ensure the cost of representation is a budgeted item or there is an authorisation from Council for the additional expenditure.
- Provide a written report to the Council, or appropriate Committee(s) and/or Community Board(s) that summarises the event and its potential significance for the business of the Buller District Council. A spokesperson will be nominated by a delegation to provide a similar report.

*(Section 5.9)*

### **In Conclusion**

- Members have legal and quasi-legal obligations spelt out in statute.
- High ethical standards in public office ensure public confidence in the decisions of elected members.
- Members are expected to abide fully with the law and the Buller District Council Code of Conduct.
- Decisions must be taken fairly and impartially, without any suspicion of improper interests influencing members' actions. In cases of doubt or uncertainty, members should seek advice from the Chief Executive well before the relevant meeting.
- If members are still uncertain as to their course of action, they should reflect and be guided by the key principle that regardless of actual impropriety, they should at all times avoid any occasion for suspicion and any appearance of improper conduct.

### **Roles and Responsibilities**

#### **Elected Members of Council**

1.1 Responsible for:

- The development and approval of Council policy.
- Determining expenditure and funding requirements of the Council through the Annual Plan process.
- Monitoring performance against Council's stated objectives and policies.
- Employment and monitoring of the Chief Executive.

1.2 Are accountable to electors.

Note: Restrictions on the Delegation of Functions, Powers or Duties:

Certain functions may be exercised only by the full Council:

- The power to make a rate
- The power to make a bylaw
- The power to borrow money, or purchase or dispose of assets, other than in accordance with the long term Council community plan
- The power to adopt a long term Council community plan, annual plan, or annual report
- The power to appoint a Chief Executive
- The power to adopt policies required to be adopted and consulted on under *the Local Government Act 2002* in association with the long term Council community plan or developed for the purpose of the local governance statement

### **The Mayor**

- 1.4 An elected member, sharing the same collective responsibilities.
- 1.5 Is the Chair at meetings of the Council and therefore responsible under Standing Orders for the orderly conduct of Council business at meetings.
- 1.6 The office of Mayor includes a community leadership role that requires the Mayor to act as community advocate, representing and promoting its interests. The knowledge and support of individual elected members is essential for effective community leadership and advocacy.
- 1.7 The Mayor automatically assumes the role of JP while holding the Mayoral office.

### **The Deputy Mayor**

- 1.8 In addition to the responsibilities of Councillor, the Deputy Mayor is authorised to chair meetings of the Council in the Mayor's absence and generally to perform the functions and duties of the Mayor:
  - with the Mayor's consent at any time during the Mayor's temporary absence;
  - without the Mayor's consent at any time while the Mayor is prevented by illness or other cause from performing the functions and duties or exercising the powers of office, or while there is a vacancy in the office of Mayor.

### **Committee Chairs**

- 1.9 The Chair of a Committee is charged by the Council with overseeing the business of that committee consistent with its delegated powers.
- 1.10 Chairs are responsible for ensuring the orderly conduct of their committees in implementing their business.

- 1.11 Like the full Council, committees should operate at a governance role (ie policymaking and direction-setting) level. Because the work of committees focus at the next level of detail down from the Council focus, committees need to avoid the temptation to get involved in operational activities, or in duplicating the work of staff. Similarly, committees are not operating at 'best practice' standards if they simply become a first-order rubber-stamping process for issues or resolutions en route to final approval by the full Council. (*Local Government New Zealand 'Best Practice Model' for the activities of a committee*)

### **Elected Members of Community Boards**

#### **Responsible for:**

- 1.12 The consideration and reporting of all matters referred to it by Council or any matter of interest to the Community Board.
- 1.13 The overview of road works, water supply, sewerage, storm water drainage, parks, recreational facilities, community activities, and traffic management within the community.
- 1.14 The preparation of an annual submission to the budgetary process of Council for expenditure within the community.
- 1.15 Communication with community organisations and special interest groups within the community.
- 1.16 Performing such functions as are delegated to it under the authority of Schedule 7 Clause 32 of the Local Government Act 2002 (refer to the Buller District Council Register of Delegations) contained in the Buller District Council Policy Manual.

#### **Community Board Chairs**

- 1.17 The Chair of a Community Board is charged by the Council with overseeing the business of that Board consistent with its delegated powers.
- 1.18 Chairs are responsible for ensuring the orderly conduct of their Boards in implementing their business.
- 1.19 Community Board Chairs are advocates for their communities and represent the Board at Council or its Committees, when advice and information is requested regarding local concerns and issues.

#### **Councillor Appointed to a Community Board**

- 1.20 Councillors appointed to Community Boards are Council's representative on the Board.

1.21 Their role is to:

- Update the Community Board on the business of the Council.
- Provide an informal interface between Council and Board.
- Help ensure that policy and strategic planning for local community facilities is consistent with Council policy and strategic planning.
- (At Community Board) To vote after considering the “local community view, which is based on both the collective Community Board view and own contact with the community.
- (At Council) To vote based on balancing the “local community view” with the district-wide view. They are not bound by Community Board resolutions.

1.22 The appointment of a Councillor to a Community Board may be revoked in exceptional circumstances. The request to review the matter should be taken up with the Mayor by the Chair of the Community Board.

### **Chief Executive**

1.23 The Chief Executive is responsible for the implementation and management of the Council's policies and objectives within the budgets established by the Council.

1.24 The Chief Executive's responsibilities are:

- Implementing the decisions of the local authority;
- Providing advice to members of the local authority and to its community boards, if any;
- Ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of the local authority;
- 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, on behalf of the local authority, the staff of the local authority;
- Negotiating the terms of employment of the staff of the local authority.

1.25 The Chief Executive is responsible for the employment of all other staff of the Council.

### **Council Managers**

- 1.26 Provide advice to Council, Committees and Community Boards.
- 1.27 Under the direction of the Chief Executive, determine the best means to achieve the outcomes sought by Council and manage staff resources accordingly.
- 1.28 Ensure the effective, efficient and economic management of the activities and planning of the Council.

### **Council Staff**

- 1.29 Council staff implement Council's policies and action decisions made by Council, Committees and Community Boards and carry out other legal obligations conveyed directly by various Acts, under the direction of the Chief Executive.

### **Disclosures**

- 2.1 It is not enough to avoid actual impropriety. The Mayor, Councillors and Inangahua Community Board members should at all times avoid any occasion for suspicion and any appearance of improper conduct.
- 2.2 Members must complete the Register of Interests, and regularly update it in the event of changes, in line with advice issued from time to time by the Chief Executive. The Register is held by the PA Corporate Services.
- 2.3 Members need not disclose pecuniary interests that are so remote they cannot easily be regarded as likely to influence the Member when voting or considering the issue.

### **Pecuniary and other Interests**

#### **Personal Financial Interests**

- 2.4 Members are under a duty in law to declare a pecuniary (financial) interest and to withdraw from the Council or Committee meeting considering the contract, proposed contract or other matter under consideration. Unless invited to remain, in which case the member shall not vote or take part in the decision. This legal duty, if breached, can result in prosecution and a possible fine.
  - a) "Pecuniary" in law covers the interests of the member's spouse with whom he or she is living, but in line with the Commission's advice, the duty to declare and withdraw in this Code covers the interests of the member's partner with whom he or she is living. Members should also

have regard to other members of the family with whom they have a close or established relationship.

b) A "pecuniary" interest can mean loss as well as gain.

2.5 Members must disclose direct and indirect financial interests in any matter coming before the Council, Committee or Sub-Committee, or Community Board and must not speak or vote on the matter (see 2.9).

2.6 Members will always have a clear and substantial interest in their own planning applications, and in those in which they give professional advice to clients, and must take great care not to bring improper pressure to bear on officers. A planning applicant who is an elected member must never lobby or use their position to gain access to officers to pursue their private interest. Similarly, an elected member must never seek to use their position to bring pressure to bear with regard to any matters affecting their own Council housing, or Council housing for their family or friends. An elected member should avoid any involvement in job applications by family or friends.

2.7 Contracting:

Under the Local Authorities (Members' Interests) Act 1968, elected members may:

- Be concerned or interested in contracts or sub-contracts made with the Buller District Council, when the payments made under them do not exceed \$25,000 in a single financial year.
- Be concerned or interested in contracts or sub-contracts made with the Buller District Council, when the payments made under them exceed \$25,000 in a single financial year provided the member has the prior approval of the Audit Office.
- Failure to gain such approval will result in automatic disqualification from office.

Elected members are strongly advised to familiarise themselves with the 'Guide to the Local Authorities (Members' Interest) Act 1968', produced by the Audit Office.

### **Non-financial Interests**

2.8 Elected members must not allow the impression to be created that they are using their position to promote a private or personal interest (i.e. family and friends, or an interest arising from membership of clubs, societies, freemasons, trade unions, and voluntary bodies). They should disclose such interests in a matter arising at a Council or Committee or Community Board meeting, unless it is insignificant or common to the public as a whole.

- 2.9 If the interest is clear and substantial, the member should never take any further part in the meeting and withdraw. If it is not clear and substantial, the member may continue to take part in the decision and vote. The test on "clear and substantial" is whether members of the public, knowing the facts of the situation would reasonably think members might be influenced by the interest.
- 2.10 Before participating, members should however consider each case in the light of its own facts. It would not be appropriate for instance, to vote on a controversial application for planning permission from a public body which the member chairs, or to take part in a decision to award a contract to a company of which the member is a director.

### **Special Circumstances**

- 2.11 Members may be able to participate and vote even when they have a clear and substantial non-pecuniary interest, only if at least half the Council, Committee or Community Board would otherwise withdraw. Or the withdrawal, together with that of other Members affected, would otherwise upset the elected party balance so that the decision could be affected. However, before taking such a decision, members must take advice from the Mayor or Chief Executive. In addition, members should consider whether the public would regard their interest as so closely connected with the matter in question that the member could not be expected to put the interest out of mind. If the member intends to participate after taking advice, the member should explain to the meeting why the self-dispensation is appropriate and the members present would then decide whether to proceed, in the knowledge that the member was participating.
- 2.12 If members have a significant interest shared by their ward or Community Board constituents, members should not represent the constituents affected but should advise them to seek representation from another member who is not personally affected. (For example, a Councillor or Community Board member who lives in a particular road and along with fellow residents feels strongly about a planning application for business development from a nearby householder).

### **Gifts and Hospitality**

- 2.13 Members must treat with extreme caution any offer, gift, favour or hospitality made to them personally, and in any decisions they make must avoid the risk of damage to public confidence in local government. They must report the offer or receipt of gifts or invitations to the Chief Executive.

## **Expenses**

- 2.14 Members must scrupulously observe all proper rules in claiming Member expenses and allowances. Member remuneration and expenses for 2003 are outlined in Appendix B.

## **Decision Making**

### **Bias**

- 3.1 The overriding duty of elected members to Council is to the Buller District as a whole, though they have a special duty to their ward constituents.
- 3.2 Elected members are expected to approach decision-making with an open mind ("faithfully and impartially"). This process requires elected members to listen carefully to competing advice and weigh up the pros and cons before making their decision.
- 3.3 If members have a private or personal interest in a question to be decided, they should not take any part in the decision except in special circumstances, and even there the Member's interest should not influence the decision (see 2.11, 2.12).
- 3.4 Members must never do anything as a Councillor or Community Board member that they could not justify to the public.

### **Quality**

- 3.4 Individual elected members have no personal power to commit the Council to any policy or course of action or expenditure. Decisions must be taken in accordance with Standing Orders, that is, by full Council, Committees or Sub-Committees, or Community Boards within their areas of responsibility, or by the relevant officer where authority has been delegated specifically by the Council, Committee or Sub-Committee to him or her.

The Audit Office may hold elected members personally liable for any financial loss incurred by the Council and require them to make up the shortfall (Public Finance Act 1977).

- 3.6 Elected members owe a "fiduciary" duty to ratepayers in respect of the monies they hold on their behalf. They must ensure such monies are spent lawfully and prudently.
- 3.7 While the Council (the corporate body comprising all elected members) is ultimately accountable, its function is not to make detailed decisions on operational matters. Decisions are made at various levels within the Council. Effective governance occurs when an organisation's structure and operating principles recognise, through effective delegation, the need to

empower elected members and staff to make decisions at strategic and operational levels, as appropriate to their role.

### **The Need for Management Reports**

- 3.8 The Council and its Committees should make decisions at meetings only on those matters that are accompanied by management reports. While members may hear submissions and delegations, and within the limits of the legislation, discuss matters raised from the floor of the meeting, no decisions should be made unless the matter is accompanied by a written management report.
- 3.9 In providing advice on such matters, management will ensure that accompanying reports address the significant implications arising from any proposed recommendations, such as fiscal, environmental and/or social implications.

### **Raising Matters**

- 3.10 Due notice should be given and proper process followed when elected members and Council officers bring a matter to the attention of Council. Matters should not be raised in the public arena without notice as it is unlikely that this will allow for an understanding of the facts to be obtained or an explanation to be given before discussion/debate begin on the matter. Council officers must be given adequate time to research a matter and Council must be given adequate time to consider options before making a decision.

### **Conduct at Meetings**

- 3.11 Rules governing conduct at meetings:
- Members are to be punctual
  - Members to prepare for issues as far as possible, prior to meetings
  - Meetings to start on time
  - Silence when someone else is speaking
  - Debate policies, not personalities
  - If any individual's conduct is deemed to be unacceptable, the Chair will call for Standing Orders and deal with the situation
  - Standing Orders will be strictly observed
  - Members are expected to vote on every issue.
  - They should avoid abstaining unless:
    - They have a declared conflict of interest
    - They have not had sufficient opportunity to familiarise themselves with the issue
    - They explain their reason for abstaining to the meeting
    - Should members feel that they must abstain from voting on an issue, they should, prior to the vote being taken, explain their reason for doing so and leave the room.

Further information regarding meetings and meetings procedures can be found in the LGNZ Elected Members' Handbook (pages 18 – 27).

### **Non Agenda Items**

- 3.12 Where an item of urgency arises and the timing precludes the preparation of a management report, the presiding member will call for a verbal report from the relevant manager.
- 3.13 Matters not on the agenda will be dealt with in accordance with section 46A(7) or (7a) of the Local Government Official Information and Meetings Act 1987. This means that minor matters relating to the general business of the Council or Board may be discussed but not acted upon (other than by reference to a subsequent meeting). Otherwise late items may be dealt with at a meeting if the Council or Board resolves accordingly and the presiding member explains at the meeting the reason why the item is not included in the agenda and the reason why discussion cannot be delayed until a subsequent meeting. In either case, the presiding member's explanation must be made at a time when the meeting is open to the public.

However, late items cannot be resolved, only referred to another meeting.

### **Behaviour**

#### **Dignity of Office**

- 4.1 All elected members should insist on the respect and dignity of their office when dealing with each other, management, the public and the media.
- 4.2 Elected members should act in good faith (that is, honestly, for the proper purpose and without exceeding their powers) in the interests of the Buller District Council and the community.

#### **Public Duty**

- 4.3 Elected members of Council have a responsibility to the whole community of the Buller District.
- 4.4 Actions of all elected members may need to be justified to the public. The reputation of the Buller District Council is dependent on elected members' conduct and the public's perception of this conduct.

#### **Respect**

- 4.5 To listen to colleagues with respect.

4.6 The threat of resignation is not considered to be an appropriate political tool.

4.7 To afford respect and civility to other elected members, Council staff, members of the community and the media.

### **Relations with Staff**

4.8 An effective working relationship between elected members and officers is critical to the success of any Council. Mutual respect between employees and elected members is essential to good local government. There is no hard and fast definition of the relationship that can be applied in every situation, but it is essential to endeavour to establish a good working relationship.

### **Leadership**

4.9 The task of leading the organisation is shared between members and officers and both need to make a contribution to the best of their abilities if the Council is to achieve its objectives. The Chief Executive and the Mayor have formal responsibility for leadership and need to have a good working relationship, which can serve as an example to the rest of the organisation.

### **Clarification of Roles**

4.10 There is a distinction between governance and management and it is essential that elected members recognise this distinction in exercising their role:

<b><u>Governance</u></b> (elected members)	<b><u>Management</u></b> (Chief Executive and staff)
<p>Governance is concerned with setting the Council's overall direction through effective planning and the development of clear goals and policies. Community Boards have an input into the development of Council policy, then use this overarching policy to develop localised policies to suit their local communities.</p>	<p>Management is concerned with achieving the planned goals in accordance with the stated policies.</p>

Effective governance requires that appropriate reporting mechanisms are specified, are functioning and are being used to ensure accountability.	Successful management requires that timely, accurate and accessible information is available.
Governance is concerned with the <b>'ends'</b> of the Council's operations.	Management is concerned with the <b>'means'</b> of the Council's operations.
Governance is "hands off".	Management is "hands on".

### **Establishing A Good Working Relationship**

- 4.11 Members and officers together must establish the best way to put the Council's stated mission into practice and implement policy.
- 4.12 Members must decide policy priorities with the support and assistance of officers.
- 4.13 A relationship based on mutual respect should be developed.
- 4.14 Officers must provide clear advice and offer members options where the initial advice is negative.
- 4.15 Members should remember that officers cannot respond to personal criticism in the same way that politicians can and temper their remarks accordingly.
- 4.16 Members should be scrupulous in observing protocols in their contacts with less senior staff.
- 4.17 Elected members with concerns regarding management matters should not raise them with any employee other than the Chief Executive. At all times, their dealings should be through the Chief Executive.

### **Officer Advice**

- 4.18 Officers are employed to give unbiased professional advice. However, it is the mark of an effective officer that if they do have to give negative advice this will be accompanied by suggestions as to how members might achieve some or all of their objectives in other ways. Such officers are invaluable to any Council.

- 4.19 In certain extreme situations those officers who have specific legal responsibilities may have to intervene in ways which may cause members to disapprove. Such occasions are rare but it is sensible to consider how to handle this eventuality before it happens so that the problem can be minimised.
- 4.20 Members should listen to advice and take account of their legal duties but make their own decisions taking into account those political and community pressures.
- 4.21 Officers should provide unbiased advice and where possible offer alternative ways of achieving the Council's and Community Board objectives. They should also understand that members must also take legitimate account of other factors before reaching a decision.
- 4.22 Officers who are aggrieved at the conduct of a member have recourse to the Chief Executive, who will discuss the matter with the Mayor and agree an appropriate course of action.

### **Defamation**

- 4.23 Defamation is any statement, written or oral, designed to lower the esteem in which another person is held. To be defamatory, the statement must be untrue, must identify a particular person and must be published. "Published" means making known the defamatory statement to someone other than the victim.
- 4.24 However, Sections 52 and 53 of the Local Government Official Information and Meetings Act 1987 provide that such statements/publications are privileged (ie not actionable) unless the victim can prove that the person making the statement was motivated predominantly by ill-will towards the victim, or otherwise took improper advantage of the occasion of publication.
- 4.25 The reason for the existence of this privilege is so that a local authority can conduct its meetings in a way that is open and accountable. In order to perform the duties for which they were elected, members must be able to make statements at meetings without fear of an action for defamation. However, the privilege is qualified, to prevent an abuse of the power given to elected members.
- 4.26 Elected members should strive to make no allegations that are improper or derogatory in the performance of their official duties and refrain from any form of conduct that may cause any reasonable person unwarranted offence or embarrassment.

### **Use of Facilities**

- 4.27 Transport, stationery, secretarial services or any other service provided by the Council for the use of an elected member, must not be used for any other purpose than carrying out Council duties.

### **External Communications**

#### **Public Statements**

- 5.1 Within the limits imposed by Standing Orders, at any meeting of the Council, or at any Committee or Community Board, every elected member (who has the right to speak at the meeting) has the right to express their opinion on any matter lawfully before the meeting. Once a matter has been lawfully determined at a meeting of the Council, Committee or Community Board, it determines that body's position on that matter until it is lawfully changed by a subsequent decision of the Council, Committee or Community Board. All elected members and management will respect this position.
- 5.2 If an elected member feels strongly that a decision of Council is wrong or poor they may follow the process in the Standing Orders and attempt to have the matter reconsidered. If the attempt is unsuccessful the elected member must accept collective responsibility for the decision as a decision of Council.
- 5.3 Elected members are entitled to make public statements expressing their opinion on matters before the Council. All such statements should clearly state that they represent the personal opinion of the elected member and are not made on behalf of the Council. Such statements should not criticise the conduct of the Council, other elected members or Council officers, nor should they undermine any existing policy or decision of the Council.
- 5.4 When a decision is made by Council that is contrary to a particular elected member's viewpoint, that elected member's public statements should make it clear that they represent a minority view.
- 5.5 Elected members, not Council officers, bear the 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 Buller District Council.
- 5.6 Public statements representing Council policy or reporting decisions of the Council will be made only with specific or general authority of the Council, and will clearly state the person's authority for making the statement on behalf of the Council.

Generally:

- The Mayor is authorised to make statements accurately reporting decisions of Council meetings.

- Committee Chairs are authorised to make statements accurately reporting decisions of their committees, and factual statements relating to decisions of the Council and its committees.
- Community Board Chairs are authorised to make statements accurately reporting decisions of their Boards.
- The Chief Executive is authorised to make statements relating to any of the areas for which the Chief Executive has statutory responsibility.
- Department managers may make factual statements relating to the functions of their departments.

Otherwise, the Chief Executive, Mayor or any elected member or officer may make specific statements on behalf of the Council only with the specific authority of the relevant Council, Committee, Sub-Committee or Community Board meeting.

### **Confidentiality**

- 5.7 Members must never disclose or use confidential information, personal advantage or the advantage of anyone known to them to the disadvantage or discredit of the Council.
- 5.8 Elected members have the responsibility to see that whenever possible, business is conducted in “open” meeting. Powers to exclude the public should be used only where absolutely necessary and for the reasons permitted by law. Business conducted in this forum remains confidential and should not be disclosed to the public, until either Council decides by resolution to make it public, or the Chief Executive determines in response to a request under the Local Government Official Information and Meetings Act 1987, or the Privacy Act 1993 that there is no longer good reason to withhold the information.

### **Representing the Buller District Council**

- 5.9 Members appointed by the Council to serve on other bodies, must observe this Code in carrying out their duties on such bodies.
- 5.10 Elected members who are invited or wish to represent the Council at events such as seminars and conferences, must comply with the following conditions:
- The Mayor should approve any requests involving travel outside the Buller District at Council expense.
  - The cost of representation must be within the annual budget for such activities, unless the Council makes specific authorisation for additional expenditure.

- Following attendance, the member must forward a written report to the Council, or appropriate Committee(s) and/or Community Board(s), which summarises the event, including its potential significance to the business of the Buller District Council. Where the Council is represented by a delegation, a spokesperson will be nominated by the party to report back on their behalf.

### **Collective Responsibility**

- 6.1 Once the Council, Committee or Community Board has lawfully made a decision that decision is the body's position on the matter and all elected members are collectively responsible for that decision, regardless of whether they voted in support or opposition. Elected members must honour and abide by the body's decision once it has been made.
- 6.2 While elected members may express personal views in accordance with Section 5 of this Code, they must always keep in mind that their overriding duty is to the community. Once the decision has been made the focus should move to effectively implementing the decision on behalf of the community rather than publicly calling into question the process that was followed or the effectiveness of the Council, Committee or Community Board as a whole.
- 6.3 This Code and the Standing Orders provide elected members with avenues should they feel strongly that a decision of Council, a Committee or a Community Board was incorrect, and should be used in such instances.

### **Compliance and Review**

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

#### Compliance

- 7.2 Elected members must note that they are bound to comply with the provisions of this code of conduct, as stated in the Local Government Act 2002, Schedule 7, section 15(4).
- 7.3 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 are included in Section 8 of this code.
- 7.4 All alleged breaches of the code will be reported to the Mayor and Chief Executive or Deputy Mayor and Chief Executive if involving the Mayor.
- 7.5 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.
- 7.6 Where an allegation of a breach of the code of conduct is made and there are no relevant statutory provisions the procedure for dealing with it will be as follows:
  - The Mayor/Deputy Mayor or Chief Executive will carry out an initial investigation of the alleged breach to determine whether there is a sufficient case to support the

allegation. The initial investigation will involve considering the allegation in a manner that is fair to all parties and ensures due process is respected, including:

- notifying the elected member(s) in writing of the complaint and providing them with an opportunity to put their version of events; and
- if required, contacting the complainant to request any additional information deemed reasonably necessary to carry out an initial investigation of the complaint.
- If the initial investigation determines that there is no case to answer, or that the allegation was vexatious or baseless, the Mayor/Deputy Mayor or Chief Executive will write to the complainant advising them of this decision, the reason/s for the decision and the right of the complainant to contact the Office of the Ombudsman if they are dissatisfied with the decision.
- Where it is considered that there is a case to answer, the Mayor/Deputy Mayor or Chief Executive will prepare a report for the consideration of Council.
- 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.
- The member/s named in the allegation and the complainant will be given the opportunity to address Council on the allegation before Council makes its decision.
- Council will consider and determine whether a breach of the code has occurred and, if so, what consequences should arise for the member/s.
- Council must consider and determine the matter in a manner that is fair to all parties and ensures due process is respected.

#### Responses to Breaches of the Code

7.7 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 (Member's 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 letter to the member
- a request, made either privately or publicly, or requirement for an apology
- a vote of no confidence in the member
- suspension from committees or other bodies
- an invitation for the member to consider resigning from the council

## Review

- 7.8 Once adopted, a code of conduct continues in force until amended by the Council. The code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once adopted, amendments to the code of the conduct require a resolution supported by 75 per cent or more of the members of the Council present.

## **Legislation Bearing on the Role and Conduct of Elected Members**

- 8.1 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 at <http://www.legislation.govt.nz> or can be provided to elected members on request.

### 8.2 **Local Authorities (Members Interests) Act 1968**

This Act regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may 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 Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

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

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

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

### 8.4 **Secret Commissions Act 1910**

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

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

#### 8.5 **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.

#### 8.6 **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.

### **In Conclusion**

Members have legal and quasi-legal obligations spelt out in statute.

The essence of these obligations reflects the need to ensure that elected members follow high ethical standards in their public obligations so that the public can have confidence that their decisions are taken entirely properly, without any suspicion *of* improper interests influencing members' actions.

Members are expected to abide fully with the law and the Buller District Council Code of Conduct.

In cases of doubt or uncertainty, members should seek advice from the Chief Executive well before the relevant meeting.

If members are still uncertain as to their course of action, they should reflect and be guided by the key principle that regardless of actual impropriety, they should at all times avoid any occasion for suspicion and any appearance of improper conduct.

A flow chart on Declaration of Interests is attached at Appendix A and should be consulted by members.