



Policy No 2015-38

Code of Conduct (Elected Members) Policy

Responsible Officers: General Manager & Manager Finance & Administration

For Review By: General Manager & Manager Finance & Administration

Due Date: 30/10/2018

Signed by:

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Mayor

19 / 8 / 15
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Date

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General Manager

21 / 7 / 15
.....
Date

Adopted at Council Meeting:

21/7/2015.....

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Introduction¹

This Code of Conduct sets out the manner in which Central Highlands Council expects those elected to Council to behave in respect to all aspects of their role.

It provides guidance to the Mayor, Deputy Mayor and councillors to assist them in carrying out their duties in an appropriate manner as well as information to the community on how they can expect their local government representatives to behave.

In developing this Code of Conduct, the Council has been mindful of the statutory requirements related to Codes of Conduct in the *Local Government Act 1993* and the *Local Government (General) Regulations 2005* and also recognise that the standards in this Code of Conduct are in addition to the requirements of the *Local Government Act 1993* and related legislation.

We understand that as councillors, we are in a position of trust and that collectively we are responsible for decisions which impact on all in our community.

Legislation

Section 28E of the *Local Government Act 1993* currently requires the following:

- 1) A council must adopt a code relating to the conduct of councillors by 1 July 2006
- 2) A code of conduct must –
 - a) Be consistent with this Act; and
 - b) Address any prescribed matters; and
 - c) Be reviewed within 12 months after an ordinary election
- 3) The general manager is to make a copy of the council's code of conduct and any amendments to the code available –
 - a) For public inspection at the public office during ordinary office hours; and
 - b) For purchase at a reasonable charge; and
 - c) On its internet site free of charge.
- 4) A councillor is to comply with the provisions of the code of conduct in performing the functions and exercising the powers of a councillor.

Moreover, Regulation 22A of the *Local Government (General) Regulations 2005* prescribes that each council code of conduct must contain a number of elements. These are:

- a) Conflicts of interest
- b) The use of the office of councillor, mayor or deputy mayor
- c) The use of council resources
- d) The use of council information
- e) The giving and receiving of gifts and benefits
- f) Relationships with the community, other councillors and council employees
- g) The representation of the council

To see all the regulations prescribing how a complaint must be made and dealt with please go to www.thelaw.tas.gov.au.

¹ This document is based on the Model Code of Conduct Template produced by the Local Government Association of Tasmania April 2012.

Statement of Values

We the elected representatives of Central Highlands are committed to discharging our duties conscientiously and to the best of their ability. We will at all times endeavour to:

- Act with impartiality, taking into account all the information available and making decisions solely on merit;
- Treat all people with respect;
- Act honestly, declaring our interests, following policies and processes and exercising powers strictly for the purpose intended;
- Be accountable for our decisions, making clear our reasons, keeping proper records and showing discipline and responsibility;
- Show leadership through demonstrating the behaviour we expect of others and ourselves; and
- Act in the best interests of the entire municipal area and the community, balancing the interests of all stakeholders.

Standards of Conduct

Eight standards of Conduct have been identified. These are:

1. Objective Decision-Making

Councillors must ensure that they bring an impartial and unprejudiced mind to all matters being decided upon in the course of council duties.

This does not mean that councillors are automatically disqualified purely for having held a public view on a matter which is the subject of a council decision. In a case involving a Tasmanian council, the court found that “*expressing such views is part of the electoral process*”² provided that expressing an opinion does not go as far as indicating a decision has been made.

Hobart City Council has received legal advice that Aldermen are entitled to participate in discussions with developers and interested third parties after a development application is lodged and to attend private and public meetings and briefings in relation to an application that will be determined by the Council as a planning authority under the *Land Use Planning and Approvals Act 1993* provided Aldermen keep an open mind and act fairly and impartially.

Elected representatives should adhere to council policy and legal advice in relation to expressing personal versus council views.

2. Conflict of Interest

Councillors must ensure that, when carrying out their public duty, they are not wrongfully influenced by other external interests that they have, or duties that they owe. They must therefore, in all such dealings, put the interests of their community first. The onus is on

² R v West Coast Council; ex parte Strahan Motor Inn [1995] TASSC 47 (at paragraph 30)

Councillors to identify a conflict of interest, whether perceived or real, and take appropriate action to resolve the conflict in favour of their public duty.

3. Proper Use of Office

Councillors must not improperly use their position to gain an advantage or confer a disadvantage for themselves or anyone else. They must not conduct themselves in a way which could bring the Council or the position of councillor into disrepute.

4. Proper Use of Resources

Councillors must ensure that neither they nor others associated with them wrongfully benefit at the expense of the Council and its people, and thus are required to use Council property and resources strictly for the purposes of performing their role.

5. Proper Use of Information

Councillors must not disclose, without consent, confidential information or other information which they have acquired as a result of their office with Council. Further, they must actively protect all confidential and other information of Council which comes into their possession or knowledge.

6. Gifts and Benefits

Councillors hold positions of trust within the community. Councillors must exercise their powers and carry out their duties without being influenced by personal gifts or benefits which they might otherwise enjoy.

7. Relationships with the community, councillors and council staff.

Councillors must be familiar with, and adhere to, laws relating to treatment of people (e.g. antidiscrimination laws) and must treat people with courtesy, fairness, dignity and respect.

8. Representation of the Council

Councillors must ensure that when representing the Council they only do so within the ambit of their authority. Furthermore, councillors must make clear when a personal opinion, as opposed to a Council policy or decision, is being discussed.

In developing these standards the Council has given consideration to the legislative requirements of a Code of Conduct and the values we wish to support.

Further detail on each of the standards, and examples of breaches of the Code of Conduct in relation to these standards is provided in subsequent sections.

Application of the Code of Conduct

This Code of Conduct applies to a councillor whenever he or she:

- conducts council business, whether at or outside a meeting;
- conducts the business of his or her office - that may be mayor, deputy mayor or councillor; or
- acts as a representative of the Council.

A complaint for the failure to comply with the provisions of the Code of Conduct may be made where the Councillor fails to meet the standard of conduct specified in the Code.

Councillors should only invoke the provisions of this Code in good faith, where it is perceived that another Councillor has not complied with its provisions or intent. Councillors should in all cases attempt in to resolve matters of disagreement with one another in the first instance and not immediately resort to a formal complaint.

For information on how to make a complaint, please see the fact sheet or download a complaint sheet from www.centralhighlands.tas.gov.au

Standard of Conduct 1 – Objective decision-making

Expectations of Councillors

Councillors must ensure that:

- a) In all of their dealings related to their Council duties, including in making decisions, they strive to do so free of any bias or pre-judgement;
- b) They make decisions solely on merit and in accordance with their statutory obligations when carrying out public business, including the awarding of contracts or recommending individuals for rewards or benefits; and
- c) In making decisions they must:
 - inform themselves as much as possible;
 - take all relevant facts known to them, or that they should be reasonably aware of, into consideration; and
 - have regard to the particular merits of each case independent of any personalities involved.

Supporting Examples

- 1) If a councillor makes a public pronouncement about support of, or opposition to, an application prior to a decision of Council or suggests prior to a forthcoming Council or Council Committee meeting that they have already come to a decision, it is likely to give members of the public the view that the Councillor has already pre-judged the matter before a decision is made (whether that view is right or wrong does not matter).

- 2) Councillors ought not sign a public petition to Council or be party to a legal claim against Council which demonstrates that in their capacity to influence a decision of Council, they will be likely to bring a partial and/ or prejudiced view.

Standard of Conduct 2 – Conflict of Interest

Expectations of Councillors

- a) Councillors must exercise reasonable judgement to decide if circumstances have arisen that may place them in a potential or actual conflict of interest situation;
- b) Councillors must seek to remove themselves from positions of conflict of interest as far as reasonably possible and so should resolve in favour of the responsibilities of their public office, all conflicts between their Council duties and responsibilities and any other private or personal (including business) duties or interests they have elsewhere, including clubs, memberships and affiliations;
- c) Councillors must adhere to principles of transparency and honesty and therefore always declare actual or potential conflicts of interest at any meeting of Council and at any working group or meeting of an outside body to which they are appointed or nominated by the Council. Moreover, they must abide by the rules, policies and law to adequately and appropriately deal with any conflicts;
- d) Councillors must act in good faith and exercise reasonable judgement, to determine whether the actual or potential conflict of interest is so material that it demands one or more of the following actions in addition to the expectations set out in paragraphs (a) – (c) above, namely that:
 - Councillors state their views on the matter for discussion or decision but abstain from participating in any Council decision on the relevant matter; or
 - Councillors remove themselves physically from any Council discussion and remain out of the room during the decision on the relevant matter.
- e) If in doubt as to whether circumstances might amount or lead to an actual or potential conflict of interest, the Councillor must contact the General Manager to help resolve the course of action.

Supporting Examples

As a key question, when councillors are asking themselves whether they have a conflict of interest, they should ask themselves whether they are, or may be, wrongfully influenced by other external interests they have, or duties they owe, in making the relevant Council decision.

As examples only, councillors should consider this question in the following contexts:

- 1) If a councillor is involved in the selection of a contractor or supplier of goods or services to the Council, it would be an unacceptable conflict of interest to place a contract with a family member or business contact without declaring the connection. Councillors should then either remove themselves from the process for selection, or if they are required to continue in the process, then strictly follow the applicable Council tendering or other relevant procedures for the selection of a contractor.
- 2) If a decision is before Council in which the Councillor has a personal (non-pecuniary) interest because it will assist a not-for-profit organisation of which the Councillor, or a family member, are a member, then it is required that the Councillor clearly declares the nature of their interest. It is unlikely, however, to be so material that it excludes the Councillor from discussion or decision.
- 3) It becomes even less likely that a councillor will have a conflict of interest the longer it has been since they had a formal involvement with an organisation which may cause conflict.

Note

Where a councillor has a direct or indirect financial interest (pecuniary interest), there are specific provisions in the Local Government Act which must be complied with. Complaints related to pecuniary interest matters should be made to the Director of Local Government and cannot be considered by a Code of Conduct Panel.

Standards of Conduct 3 – Proper use of Office

Expectations of Councillors

Councillors must ensure that:

- a) They do not take advantage (nor seek to take advantage) of their position or status to improperly influence others in the performance of their duties or functions, in order to gain an undue, improper, unauthorised or unfair benefit or detriment for themselves or any other person;
- b) In their personal dealings with the Council (e.g. as a ratepayer, recipient of a Council service or applicant for consent granted by Council), they do not expect nor request, expressly or implied, preferential treatment for themselves or any other person or body; and
- c) To act in a manner so as to not bring elected or Council officers into disrepute.

Supporting Examples

- 1) If a councillor wishes to transact business with the council in a private capacity, they should make clear the capacity in which they are speaking to staff and must not apply implicit or implied influence as a councillor to obtain preferential treatment for themselves or their family.
- 2) A councillor should not use the code of conduct for political purposes,

Standard of Conduct 4 – Proper use of resources

Expectations of Councillors

Councillors must ensure that:

- a) They use Council resources ethically, effectively, efficiently and carefully in the course of public duties;
- b) They do not use Council resources for private purposes except strictly as permitted by the Council for reasonable and limited personal use and, where required as part of such permission, proper payment for the use is made;
- c) They do not convert any property of the Council to their own use unless properly authorised;
- d) They use Council property appropriately, including intellectual property, official services and facilities and do not permit their misuse by any other person or body;
- e) They avoid any action or situation which could create the impression that Council property, official services or public facilities are being improperly used for their own or any other person's or bodies' private benefit; and

- f) Comply with Council's policies and procedures in relation to use of communications devices

Supporting examples

- 1) If the Council provides a Councillor with computer equipment for undertaking public duties, then they should not use that equipment for private work or outside the Council, except strictly in accordance with personal use guidelines or as otherwise expressly permitted by the Council.
- 2) The interest of a Councillor in their re-election is considered to be a personal interest and as a result the reimbursement of travel expenses incurred on election matters is not appropriate. Similarly, council equipment should not be used in a re-election campaign.

Standard of Conduct 5 – Proper use of information

Expectations of Councillors

Councillors must ensure that they:

- a) Protect confidential information in their possession or knowledge;
- b) Only access information needed for them to perform their role;
- c) Do not use confidential information for any non-official purpose;
- d) Only release confidential information if they have authority to do so;
- e) Only use confidential information for the purpose it is intended to be used;
- f) Only release other information in accordance with established Council policies and procedures; and in compliance with relevant legislation/ laws;
- g) Do not use Council information for personal purposes;
- h) Do not disclose any information discussed during a confidential session of a Council meeting;
- i) Actively protect all commercially sensitive and other confidential information of Council; and
- j) Comply with Council's policies and procedures relating to use of social media and communications.

Supporting examples

- 1) If a Councillor receives information about an organisation through a closed Council Meeting (agendas, papers, discussion) then they must not disclose any part of that information to persons outside Council.
- 2) Information used for public duties should not be copied or taken away from the workplace except strictly as necessary for Council purposes and in accordance with any relevant guidelines laid down within Council.

Standard of Conduct 6 – Gifts and benefits

Expectations of Councillors

Councillors must ensure as part of their duties, they:

- a) Never accept an offer of money, regardless of the amount;

- b) Do not accept gifts and benefits, other than token gifts, without ensuring it is disclosed and recorded in the Gifts Register in keeping with Council policies and procedures; and
- c) Strive to avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing (or attempting to secure) a favour from you or the Council.

Refer to Council's Acceptance of Gifts and Benefits Policy

Supporting example

- 1) If a Councillor is involved in the allocation of tenders for any work supplied to the Council, they must not accept any benefits from the tenderer as this may be expected or perceived to influence the decision making process.
- 2) If a Councillor is provided with tickets to the theatre or any form of corporate entertaining, then it should be declared in the Council Gift Register in keeping with associated policies.
- 3) Token gifts can be defined as table favours, mementoes, remembrances or other tokens bestowed at an official function and other gifts received as souvenirs, marks of courtesy or of a seasonal that have a minor value (eg. books, diaries, ties and scarves, pens, pins and badges, etc) and do not give rise to or create the appearance of a conflict of interest.

Standard of Conduct 7 – Relationships with the community, councillors and council staff.

Expectations of Councillors

Councillors must ensure that:

- a) Where appropriate, make sure stakeholders have an opportunity to be heard about decisions that affect them;
- b) They do not make allegations to or about other Councillors or members of the public which are defamatory, slanderous, derogatory or discriminatory;
- c) They behave in a manner that is free from discrimination, bullying or harassment;
- d) Comply with Council's policies and procedures relating to appropriate workplace behaviour including but not limited to discrimination, bullying and harassment;
- e) They listen to and respect each other's views in Council and committee meetings and any other proceedings of the Council, and make certain that issues, not personalities, are the focus of debate;
- f) They refrain from directing council staff, other than giving appropriate direction to the General Manager in the performance of the Council's functions by way of Council or committee resolution, or by the Mayor exercising his or her functions under Section 27(1(ba)) of the *Local Government Act*;
- g) They refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other member of the staff of the Council or a delegate of the Council, in the exercise of the functions of the member or delegate; and
- h) They refrain from contacting an employee of the Council unless in accordance with procedures governing the interaction of Councillors and Council employees that have been authorised by the General Manager.

Supporting examples

- 1) Councillors should show respect to all other Councillors, even if they hold different views and not try to change a view through intimidation or bullying.
- 2) Councillors should respect the impartiality and integrity of Council staff and behave towards them in a way that engenders mutual respect.
- 3) Councillors should treat all employees with courtesy and respect and observe any guidelines that the General Manager puts in place regarding contact with employees.
- 4) Councillors must not victimise another councillor for having made a complaint.
- 5) Councillors must not verbally attack another Councillor personally, only their views should be challenged in a rational and dignified manner.
- 6) When referring to other Councillors in a public forum, including electronic forms of communication, Councillors should be conscious of how their comments will be perceived. Councillors should ask themselves what a reasonable observer would think.

Standard of Conduct 8 – Representation of the Council

Expectations of Councillors

Councillors must ensure that:

- a) When giving information to the community, they accurately represent the policies and decisions of the Council;
- b) They do not speak on behalf of the Council unless they have been specifically authorised or delegated by the Mayor;
- c) They clearly indicate when they are putting forward personal views;
- d) They do not knowingly misrepresent information they have obtained in the course of their duties; and
- e) When representing Council on external bodies, they make efforts to clearly understand the basis of the appointment and be aware of the ethical and legal responsibilities attached to such appointment.

Supporting example

The Mayor is spokesperson of Council. This does not mean that councillors cannot express a particular view, however, Councillors must report on Council's policies and decisions accurately and clearly distinguish between their personal views and the official position of the Council.

Adoption of the Code of Conduct

This Code of Conduct was adopted by the Council on (insert date) and is due for review by Council within 12 months of the next Council ordinary election which is due to be held in October 2018

Date of Approval	
Source of Approval	Council Resolution No.:
Date of Commencement	
Source of Authority	S28E Local Government Act 1993 and R. 22A Local Government (General) Regulations 2005
Legislative Reference	S28E Local Government Act 1993 and R. 22A Local Government (General) Regulations 2005
Strategic Plan Reference	
Date of Review	
Previous Policies Withdrawn or Amended	This policy supersedes all other policies and Council resolutions in relation to policy and/or guidance with respect to the Code of Conduct for Councillors pursuant to the <i>Local Government Act 1993</i> .
Department Responsible for Implementation	
Department Responsible for Policy	
Publication of Policy	Members of the public may inspect this Code of Conduct at the Council offices, 6 Tarleton Street, Hamilton. Copies can be obtained free of charge. Alternatively, it can be accessed on Council's website www.centralhighlands.tas.gov.au

Appendix 1.

Code of Conduct (Elected Members) Policy

General information about making a code of conduct complaint

How to make a complaint

Any person may make a complaint if he or she believes a Councillor or Alderman has breached their Council's Code of Conduct. Code of Conduct complaints must be submitted in writing to the Mayor (or Deputy Mayor if the complaint relates to the Mayor), and may use the 'Code of Conduct Complaint Form', which is designed to make it easier to make a complaint. Your complaint must provide details of the alleged failure to comply with the Code of Conduct; i.e., you should detail those sections of the Code of Conduct which you allege have been breached. The complaint must identify the respondent councillor (the person who is alleged to have breached the Code of Conduct) and the complainant (the person or persons laying the complaint). It must be lodged within 90 days of the alleged failure and be accompanied by the prescribed fee. The complainant must also provide contact details so that correspondence about the matter can be provided.

Will my complaint be confidential?

Yes. Under Section 22T of the *Local Government (General) Regulations 2005* the Mayor/Deputy Mayor or a member of the Code of Conduct Panel or Standards Panel must not disclose the identity of a complainant or a respondent councillor or any information relating to the complaint until a determination has been made and time for lodging an appeal has expired.

What happens after a complaint is lodged?

Council will acknowledge receipt of your complaint either verbally or in writing, and let you know as soon as possible if your complaint is accepted for further investigation. A Code of Conduct Panel may reject a complaint if:

- The complaint discloses that an offence or a crime may have been committed;
- The complaint is frivolous or vexatious; or
- The complaint does not relate to a failure to comply with a provision of the Code of Conduct.

Complaints are heard by the local Code of Conduct Panel within 90 days of the complaint being referred to the panel, unless both parties agree to mediation, or the matter is referred to the Local Government Association of Tasmania's Standards Panel.

Complaints may be referred to the Local Government Association's Standards Panel on request of the respondent Councillor, or if the local Code of Conduct Panel does not have the expertise to hear and determine the complaint. If the complaint is referred to the Standards Panel, the parties will be notified in writing. The complaint will be heard within 90 days of being referred to the Standards panel, unless both parties agree to mediation.

Your complaint will be upheld or dismissed by the relevant panel, with sanctions imposed if the complaint is upheld. Sanctions include a caution, a reprimand, an apology, or counselling/training. The Panel will provide a report to the Mayor (or Deputy Mayor), the respondent councillor and yourself. A summary report is also required to be tabled at the next available open meeting of council. Matters heard by the Code of Conduct Panel may also be appealed to the Standards Panel by either party. Matters heard by the Standards Panel may be appealed to the Supreme Court.

Appendix 2.

Code of conduct complaint form

INTRODUCTION

This form is designed to help you comply with the Local Government regulations in relation to making a Code of Conduct complaint. It is not compulsory that it accompany a complaint. It is suggested that this form is read in conjunction with the 'General information about making a complaint' fact sheet.

INSTRUCTIONS

If completing this form by hand, please use black or blue pen and print clearly. Send your completed form to the General Manager of the Council with the prescribed fee. If you require assistance completing this form please contact the Council to make arrangements.

CONTACT DETAILS (of person making the complaint)

Name:

Telephone (mobile):

Address (Residential):

Telephone (work):

Address (Postal):

Telephone (home):

SUMMARY OF COMPLAINT

Name of the Councillor who you believe has breached the Code of Conduct:

Provisions of the Code of Conduct that you believe have been breached:

Date(s) of incident(s):

Location(s) of incident(s):

DETAILS OF THE COMPLAINT (further information may be attached)

WITNESSES (include anyone with knowledge of what happened and is willing to provide a statement)

HAVE YOU PREVIOUSLY MADE A COMPLAINT ABOUT THIS MATTER?

YES ☐ NO ☐

If yes, when did you make the complaint?

DESIRED OUTCOME OF COMPLAINT

Please explain what you would like to happen as a result of lodging this complaint:

PLEASE SIGN AND DATE

SIGNATURE:

Date:

***Please remember to attach the prescribed fee**