



# Kaikōura District Council

## Code of Conduct

Name of Code:	Code of Conduct
Purpose of Code:	Sets boundaries on standards of behaviour and provides a means of resolving situations when elected members breach those standards
Code Applies to:	Elected Members
Adopted by:	Council
Date Adopted:	29 March 2023
Responsible for its Updating:	CEO/Executive Officer

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## Part One: Code of Conduct Wāhanga Tuatahi: Anga Tikanga Whanonga

The Kaikōura District Council Code of Conduct has been adopted in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of

### **Members' commitment** Ngā herenga a ngā mema

These commitments apply when conducting the business of the local authority as its representative or the representative of an electorate, and communicating with other members, the media, the public, or staff. By adopting the Code of Conduct members agree that they will:

1. treat all people fairly,
2. treat all other members, staff, and members of the public, with respect,
3. share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
4. operate in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi,
5. make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
6. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
7. not bully, harass, or discriminate unlawfully against any person,
8. not bring the local authority into disrepute,
9. not use their position to improperly advantage themselves or anyone else or disadvantage another person,
10. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
11. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

**Please note:** a failure to act in accordance with these commitments may result in a complaint being taken against you.

conduct for members of the local authority.

The Code of Conduct sets standards for the behaviour of members towards other members, staff, the public, and the media. It is also concerned with the disclosure of information that members receive in their capacity as members. Members of a local authority must comply with the Code of Conduct of that local authority. More detail explaining the Code of Conduct is set out in Appendix 1.

A copy of clause 15 of Schedule 7 of the LGA, which sets out the requirements for a code of conduct, is contained in Appendix 2.

# Appendix 1: The Code of Conduct explained He whakamārama mō te Tikanga Whanonga

## 1. Definitions

For the purposes of this Code “member” means an elected or appointed member of:

- the governing body of the local authority,
- any committee or sub-committee of the local authority,
- any local board of the local authority, or
- any community board of the local authority.

Local authority means the kaunihera, local board or community board which has adopted this Code.

## 2. Te Tiriti o Waitangi

The Kaikōura District Council kaunihera commits to operating in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi and acknowledges the following principles:

1. Tino Rangatiratanga: The principle of self-determination provides for Māori self-determination and mana motuhake. This requires local authorities to be open to working with mana whenua partners in the design and delivery of their work programmes,
2. Partnership: The principle of partnership implies that local authorities will seek to establish a strong and enduring relationship with iwi and Māori, within the context of iwi and Māori expectations. Kaunihera should identify opportunities, and develop and maintain ways, for Māori to contribute to kaunihera decisions, and consider ways kaunihera can help build Māori capacity to contribute to council decision-making,
3. Equity: The principle of equity requires local authorities to commit to achieving the equitable delivery of local public services,
4. Active protection: The principle of active protection requires local authorities to be well informed on the wellbeing of iwi, hapū and whanau within their respective rohe,
5. Options: The principle of options requires local authorities to ensure that its services are provided in a culturally appropriate way that recognises and supports the expression of te ao Māori.

## 3. Principles of good governance

Members recognise the importance of the following principles of good governance.

- **Public interest:** members should act solely in the public interest.
- **Integrity:** members should not act or take decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
- **Tāria te wā and kaitiakitanga/stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.

- **Objectivity:** members should act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** members will be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
- **Openness:** members should act and take decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** members should be truthful and not misleading.
- **Leadership:** members should not only exhibit these principles in their own behaviour but also be willing to challenge poor behaviour in others, wherever it occurs.

## 4. Behaviours

To promote good governance and build trust between the local authority, its members, and citizens, members **agree** to the following standards of conduct when they are:

- conducting the business of the local authority,
- acting as a representative of the local authority,
- acting as a representative of their electorate,
- communicating with other members, the media, the public and staff, and
- using social media and other communication channels.<sup>1</sup>

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint made under the council's "Policy for alleged breaches of the Code of Conduct".

### *Respect*

Members will treat all other members, staff, and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. As a member of a local authority you can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You must not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, your local authority. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.

### *Bullying, harassment, and discrimination*

Members will treat all people fairly and will not:

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<sup>1</sup> Please refer to the Guidelines for the responsible use of social media in the LGNZ Good Governance Guide

- bully any person,
- harass any person, or
- discriminate unlawfully against any person.

For the purpose of the Code of Conduct, bullying is offensive, intimidating, malicious, or insulting behaviour. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may be:

- a regular pattern of behaviour, or a one-off incident,
- occur face-to-face, on social media, in emails or phone calls, happen in the workplace, or at work social events, and
- may not always be obvious or noticed by others.

Harassment means conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person because of any of the following<sup>2</sup>:

age	skin, hair, or eye colour	race
disability	employment status	ethical belief
ethnic or national origin	family status	marital status
political opinion	religious belief	gender identity
sex	sexual orientation.	

### ***Sharing information***

Members will share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties.

Occasionally members will receive information in their capacity as members of the governing body, which is pertinent to the ability of their kaunihera to properly perform its statutory duties. Where this occurs members will disclose any such information to other members and, where appropriate, the chief executive. Members who are offered information on the condition that it remains confidential will inform the person making the offer that they are under a duty to disclosure such information, for example, to a governing body meeting in public exclusion.

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<sup>2</sup> See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

## ***Expressing personal views publicly***

Members, except when authorised to speak on behalf of the local authority, will make it clear, when speaking to the media, on social media, or in hui and presentations, that statements reflect their personal view.

The media play an important role in the operation and efficacy of our local democracy and need accurate and timely information about the affairs of the local authority to fulfil that role. Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- they do not purport to talk on behalf of the local authority, if permission to speak on behalf of the authority has not been given to them
- their comments must not be inconsistent with the Code, for example, they should not disclose confidential information or criticise individual members of staff, and
- their comments must not purposefully misrepresent the views of the local authority or other members.

Members will abide by the social media protocols described in Attachment A, LGNZ's Good Governance Guide, available at <https://www.lgnz.co.nz/assets/Induction/The-Good-Governance-Guide.pdf>

## ***Provide equitable contribution***

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them.

Being a member is a position of considerable trust, given to you by your community to act on their behalf. To fulfil the expectations of your constituents and contribute to the good governance of your area it is important that you make all reasonable efforts to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training seminars.

The local government workload can be substantial, and it is important that every member contributes appropriately. This requires members to often work as a team and avoid situations where the majority of the work falls on the shoulders of a small number of members.

## ***Disrepute***

Members will not bring the local authority into disrepute.

Members are trusted to make decisions on behalf of their communities and as such their actions and behaviours are subject to greater scrutiny than other citizens. Members' actions also reflect on the local authority as well as themselves and can serve to either boost or erode public confidence in both.

Behaviours that might bring a local authority into disrepute, and diminish its ability to fulfil its statutory role, include behaviours that are dishonest and/or deceitful. Adhering to this Code does not in any way limit a member's ability to hold the local authority and fellow members to account or



constructively challenge and express concerns about decisions and processes undertaken by their local authority.

### ***Use of position for personal advantage***

Members will not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Being a member of a local authority comes with certain opportunities and privileges, including the power to make choices that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member may be subject to the provisions of the Secret Commissions Act 2010.

### ***Impartiality***

Members will not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They must not be coerced or persuaded to act in a way that would undermine their neutrality. Members can question officers to gain understanding of their thinking and decision-making, however, they must not seek to influence officials to change their advice or alter the content of a report, other than in a meeting or workshop, if doing so would prejudice their professional integrity. Members should:

- make themselves aware of the obligations that the local authority and chief executive have as employers and always observe these requirements, such as the obligation to be a good employer, and
- observe any protocols put in place by the chief executive concerning contact between members and employees, and not publicly criticise individual staff.

If you have concerns about the behaviour of an official, whether permanent or contracted, you should raise your concerns with the local authority's chief executive, or, if the concerns are to do with the chief executive, raise them with the mayor, the council chairperson, or chief executive performance committee.

### ***Maintaining confidentiality***

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless.

1. they have the consent of a person authorised to give it,
2. they are required by law to do so,
3. the disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person, or
4. the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.



## Appendix 2: Requirement for a code of conduct Te herenga kia whai tikanga whanonga

Clause 15, Schedule 7 of the Local Government Act 2002 requires every local authority to adopt a code of conduct for members of the local authority. It states:

### 15 Code of conduct

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.

The code of conduct must set out –

1. 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:
  - a. behaviour towards one another, staff, and the public; and
  - b. disclosure of information, including (but not limited to) the provision of any document, to elected members that –
    - i. is received by, or is in possession of, an elected member in his or her capacity as an elected member; and
    - ii. relates to the ability of the local authority to give effect to any provision of this Act; and
  - c. 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.
2. A local authority may amend or replace its code of conduct but may not revoke it without replacement.
3. A member of a local authority must comply with the code of conduct of that local authority.
4. 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.
5. 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.
6. To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

## **Part Two: The Kaikōura District Council policy for investigating and ruling on alleged breaches of the Code of Conduct** Te kaupapahere o te Kaunihera o [ingoa] hei tiro tiro me te whakatau i ngā whakapae kua takahia te Tikanga Whanonga

### **Principles**

The following principles will guide the investigation into, and assessment of, complaints made against a member for breaching the Code of Conduct:

- The complaints process will be independent, impartial, and respect members' privacy.
- Members will be given due notice that an investigation is underway and will be provided with an opportunity to be heard.
- Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process.
- Complaints will be resolved at the lowest level of resolution as possible, with priority given to finding a mediated settlement.
- Complainants, and members subject to a complaint, will have access to advice and support for the time it takes to find a resolution<sup>3</sup>.

### **Who can make a complaint?**

The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the chief executive, who can make a complaint on behalf of their staff. On receipt of a complaint, the chief executive must forward the complaint to an independent person, either an independent investigator or an initial assessor, for an assessment.

### **Role of the initial assessor<sup>4</sup>**

On receipt of a complaint an initial assessor will undertake an assessment to determine the relative merit and seriousness of the complaint, and the nature of the subsequent process that will be followed. The complaint may be dismissed if the initial assessor finds them to be trivial, vexatious, frivolous, or politically motivated.

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<sup>3</sup> For example, by enabling both parties to access a council's Employee Assistance Programme (EAP) or elected members' equivalent.

<sup>4</sup> See Attachment 3.2 for advice on the appointment of an Initial Assessor.

If a complaint is not dismissed, the initial assessor (or independent investigator in a one-step process) may initiate one of the following:

### **1 Refer to a chair or mayor**

In the case of a breach that is not serious or amendable to mediation, the initial assessor may refer the person responsible for the alleged breach to the chair or mayor for their advice and guidance. These will not be reported to the local authority. A meeting or meetings with the chair will be regarded as sufficient to resolve the complaint. Where a member is referred to the chair, the initial assessor may also recommend, for the chair's consideration:

- That the member attends a relevant training course.
- That the member work with a mentor for a period.
- That the member tenders an apology.

### **2 Mediation**

If the complaint concerns a dispute between two members, or between a member and another party, the initial assessor may recommend mediation. If mediation is agreed by both parties, then its completion will represent the end of the complaints process. The outcomes of any mediation will be confidential and, other than reporting that a complaint has been resolved through mediation, there will be no additional report to the local authority unless the complaint is referred to an independent investigator, usually due to a failure of the mediation.

### **3 Refer to an independent investigator**

Where the initial assessor finds that the complaint is serious or no resolution can be reached and/or mediation is refused, the initial assessor will refer the complaint to an independent investigator. The independent investigator will be selected from the local authority's independent investigators' panel assembled by the chief executive, or an independent investigator service that is contracted to the kaunihera. Complaints that involve a chairperson or chief executive will be referred directly to the independent investigator.

Complaints that are dismissed, referred to a chairperson, or resolved by mediation, will not be reported to the local authority.

## **Role of the independent investigator<sup>5</sup>**

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine actions that a local authority should take in response to the breach.

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<sup>5</sup> See Attachment 3.2 for advice on the appointment of an Independent Investigator.

Any recommended actions made in response to a complaint that has been upheld are binding on the local authority. This is to ensure the process for investigation is free of any suggestion of bias and reduces the cost of the complaints process, by reducing the time spent on it, by members and officials.

#### Determining the significance of an alleged breach

The independent investigator may take whatever actions they need to determine the significance of a complaint, within the budgetary constraints set down, including re-assessing the complaint.

The independent investigator will undertake an investigation appropriate to the scale of the breach, which may include interviews with other affected parties, and prepare a report for the chief executive which will set out the rationale for their findings and may include recommendations for resolving the breach and appropriate penalties.

When considering the issue of significance, the independent investigator will need to consider a range of factors before deciding, such as:

- Was the breach intentional or unintentional?
- Did it occur once or is there a pattern of recurring behaviour?
- Does the breach have legal or financial ramifications for the kaunihera?
- What is the impact of the breach on other elected members, on kaimahi (officials) and on the community in general?

#### Independent investigator can make a binding rule

On completing their investigation, an independent investigator may dismiss a complaint or make a binding ruling which the governing body will implement. The independent investigator's ruling will be contained in a report to the kaunihera chief executive which will form the basis of a consequent report to the governing body to inform them of the decision and the actions that they may be required to take.

**Please note:** All actions taken in the implementation of a policy must be consistent with the Bill of Rights Act 1990. No appeal right is included in the Code of Conduct. Members who are unhappy with an independent investigator's decision have access to judicial review and/or the Ombudsman's Office.

## Costs and support

Kaunihera must ensure that members who make a complaint are not left to meet any costs created by doing so. Members, those who make complaints, and those who are subject to a complaint, should be given appropriate and reasonable support.

The costs of assessment and investigatory services will be met by the relevant kaunihera.

## **Part 3: Attachments** Ngā tāpiritanga

### **3.1: Process for determining and investigating complaints** Te tukanga whakatau me te tiro tiro i ngā amuamu

#### ***Step 1: Chief executive receives complaint***

All complaints made under this Code of Conduct must be made in writing and forwarded to the chief executive who will refer the complaint to the initial assessor. The chief executive will also:

- inform the complainant that the complaint has been referred to the independent person (named) and refer them to the process for dealing with complaints as set out in the Code of Conduct; and
- inform the respondent that a complaint has been made against them and the name of the independent investigator overseeing the process and refer them to the policy for dealing with complaints as set out in the Code of Conduct.

#### ***Step 2: Initial assessor makes an assessment and arranges mediation***

1. The initial assessor will undertake an assessment of the merits of the complaint. If they consider it is not valid, the complaint will be dismissed. The complainant will have no recourse or appeal. Grounds for concluding that a complaint has no merit include that it is trivial, vexatious, frivolous, or politically motivated.
2. If deemed to have merit, the initial assessor will contact the parties to seek their agreement to independently facilitated mediation. If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required.
3. If the parties do not agree to mediation, or mediation is unsuccessful in resolving the matter, the initial assessor will refer the complaint to an independent investigator selected from a panel established by the chief executive at the start of the triennium, or service contracted to the local authority. The initial assessor will also inform the complainant and the respondent that the complaint has been referred to the independent investigator and the name of the independent investigator.

#### ***Step 3: Independent investigator to inquire and conclude on the matter***

If the complaint is found to be a breach of the Code of Conduct the independent investigator will inform the initial assessor, who will inform the complainant and respondent. The independent investigator will then assess the nature and effect of the breach and prepare a report for the kaunihera on the seriousness of the breach and recommend actions commensurate with that breach. In preparing that report the independent investigator may:

- consult with the complainant, respondent, and any affected parties,
- undertake a hearing with relevant parties, and/or
- refer to any relevant documents or information.

At any stage in their inquiry the independent investigator may find that a breach has not occurred, or the matter should be referred to a relevant agency. If this is the case the independent investigator will

inform the initial assessor who will inform the complainant and respondent that the complaint is dismissed or has been referred to a relevant named agency.

On receipt of the independent investigator's report the chief executive, or initial assessor, will prepare a report for the kaunihera, which will meet to consider the findings and implement any recommended actions. The report will include the full report prepared by the investigator.

#### ***Step 4: Process for considering the investigator's report***

##### **Independent investigator's recommendations are binding**

The council's policy for determining and investigating complaints provides for an independent investigator's recommendations to be binding on the local authority:

- The chief executive's report, containing the independent investigator's recommendations and their full report, will be presented to the governing body for its information only.
- The chief executive's report may also outline the plan for the report's public release, for the governing body's information and comment.
- The report will be received in public meeting unless grounds, such as s.48 LGOIMA, exist for the exclusion of the public.

### **3.2: Selecting the initial assessor and independent investigator** Te kōwhiri i te tangata motuhake me te kaitirotiro motuhake

#### ***Selecting an initial assessor***

The chief executive is responsible for this. In selected the initial assessor, the chief executive will consult with the local authority.

The initial assessor should be a person, or a position, that is independent of a local authority's political governance, while also being easily accessible, as their role is crucial if complaints are to be expedited quickly and without controversy. For example:

- The external appointee on a kaunihera's Audit and Risk Committee.
- A member of staff, such as an internal ombudsman or ethics adviser, as long as they have operational independence from the chief executive (similar to the independence afforded an Electoral Officer).
- A retired local authority chief executive.
- A retired local authority politician.
- A member of the public with relevant experience and competency.

#### ***Selecting an independent investigator***<sup>6</sup>

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<sup>6</sup> At time of publication LGNZ is exploring options for the establishment of a national investigation and



The chief executive is responsible for compiling a panel or list of independent investigators.

At the beginning of each triennium the chief executive, in consultation with the kaunihera, will compile a list of independent investigators. In selecting them, a chief executive may consider:

- the council's legal advisers,
- a national service specialising in public sector integrity,
- a national service providing assessment and investigation services, or
- an individual with relevant skills and competencies.

**Please note:** Given the litigious nature of some code of conduct disputes independent investigators should have relevant liability insurance, provide on their own behalf or by the local authority. The chief executive also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

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assessment service.

### 3.3: Actions that may be applied when a breach has been confirmed Ngā mahi ka whāia pea ina whakatauhia tētahi takahanga

Where a complaint that the Code of Conduct was breached has been upheld, any actions taken against the member found to be in breach should be consistent with the following principles.

- Actions should be commensurate with the seriousness of the breach.
- Actions should be applied in a manner that is culturally appropriate and safe for the members involved.
- Actions should, to the degree practical, contribute to an inclusive culture in the local authority by focusing on constructive mediation, learning, and member improvement.

In determining a response to a breach of the Code of Conduct, one or more of the following could be selected:

1. That no action is required.
2. That the member meets with the mayor/chair for advice.
3. That the member attends a relevant training course.
4. That the member agrees to cease the behaviour.
5. That the member work with a mentor for a period.
6. That the member tenders an apology.
7. That the member participates in voluntary mediation (if the complaint involves a conflict between two members).
8. That the local authority sends a letter of censure to the member.
9. That the local authority passes a vote of no confidence in the member.
10. That the member loses certain kaunihera-funded privileges (such as attendance at conferences).
11. That the member loses specific responsibilities, such as committee chair, deputy committee chair or portfolio holder.
12. That the member be subject to restricted entry to kaunihera offices, such as no access to staff areas (where restrictions may not previously have existed).
13. That the member be subject to limitations on their dealings with kaunihera staff, other than the chief executive or identified senior manager.
14. That the member be suspended from committees or other bodies to which the member has been appointed.
15. That the member be invited to consider resigning from the council.

**Please note:** Actions 1-6 will typically not be reported to the local authority. Actions 7-15, which have a high degree of public interest, namely democratic representation, should be considered in an open meeting, unless there are grounds, such as those set out in LGOIMA, for not doing so.

#### ***Responses to statutory breaches***

In cases where a breach of the Code of Conduct is found to involve regulatory or legislative requirements, the chief executive will refer the complaint to the relevant agency. For example:

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under LAMIA).
- Breaches which result in the council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under section 44 LGA 2002 which may result in the member having to make good the loss or damage).
- Breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

### **3.4: Legislation which sets standards for ethical behaviour Ngā ture e whakatakoto ana i ngā paerewa mō ngā whanonga matatika**

Clause 15 of Schedule 7 of the Local Government Act (the Act) 2002, requires that the Code of Conduct provides members with a general explanation of the Local Government Official Information and Meetings Act 1987, and any other enactment or rule of law that affects members.

The key statutes that promote ethical behaviour are the Local Government Act 2002 (LGA), Local Government Official Information Act 1987 (LGOIMA), the Local Authorities (Members' Interests) Act 1968 (LAMIA), the Protected Disclosures (Protection of Whistleblowers) Act 2022, the Serious Fraud Office Act 1990, the Local Government (Pecuniary Interests Register) Act 2022, the Health and Safety at Work Act 2015, and the Harmful Digital Communications Act 2015.

#### ***The Local Government Act 2002***

The LGA 2002 is local government's empowering statute. It establishes our system of local government and sets out the rules by which it operates. Those rules include the principles underpinning kaunihera decision-making, governance principles, Te Tiriti obligations as set by the Crown, and the role of the chief executive which is:

1. implementing the decisions of the local authority,
2. providing advice to members of the local authority and to its community boards, if any and
3. 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,
4. ensuring the effective and efficient management of the activities of the local authority,
5. facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001,
6. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
7. providing leadership for the staff of the local authority,
8. employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy), and
9. negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

#### ***The Local Government Official Information and Meetings act 1987***

The LGOIMA sets rules for ensuring the public are able to access official information unless there is a valid reason for withholding it. All information should be considered public and released accordingly unless there is a compelling case for confidentiality. Even where information has been classified as confidential, best practice is for it to be proactively released as soon as the grounds for confidentiality have passed.

There are both conclusive and other reasons for withholding information set out in sections 6 and 7 of LGOIMA, which include:

Conclusive reasons for withholding – if making the information available would likely:

- prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial; or
- endanger the safety of any person.

Other reasons for withholding – withholding the information is necessary to:

- protect the privacy of natural persons, including that of deceased natural persons;
- protect information where it would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- in the case of an application for resource consents or certain orders under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu;
- protect information the subject of an obligation of confidence, where making that information available would prejudice the supply of similar information (and it is in the public interest for this to continue), or would be likely otherwise to damage the public interest;
- avoid prejudice to measures protecting the health or safety of members of the public;
- avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- maintain the effective conduct of public affairs through free and frank expression of opinions between or to members and local authority employees in the course of their duty or the protection of such people from improper pressure or harassment;
- maintain legal professional privilege;
- enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- prevent the disclosure or use of official information for improper gain or improper advantage.

Regarding these ‘other’ reasons, a public interest balancing test applies. In these cases the kaunihera must consider whether the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available. Decisions about the release of information under LGOIMA need to be made by the appropriately authorised people within each kaunihera, and elected members must work within the rules adopted by each kaunihera.

The LGOIMA also sets the rules that govern public access to meetings and the grounds on which that access can be restricted, which occurs when meetings consider matters that are confidential.

### **The role of the Ombudsman**

An Ombudsman is an Officer of Parliament appointed by the Governor-General on the recommendation of Parliament. An Ombudsman’s primary role under the Ombudsmen Act 1975 is to independently investigate administrative acts and decisions of central and local government departments and organisations that affect someone in a personal capacity. Ombudsmen investigate complaints made under LGOIMA.

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain

whatever information is considered necessary, whether from the complainant, the chief executive of the local body involved, or any other party. The Ombudsman’s decision is provided in writing to both parties.

If a complaint is sustained, the Ombudsman may recommend the local authority takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to the local authority under this Act will, in general, become binding unless the local authority resolves otherwise. However, any such resolution must be recorded in writing and be made within 20 working days of the date of the recommendation.

## ***The Local Authorities (Members’ Interests) Act 1968***

### **Pecuniary interests**

The LAMIA provides rules about members discussing or voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAIMA) and the participation rule (in section 6 of the LAIMA).

- The **contracting rule** prevents a member from having interests in contracts with the local authority that are worth more than \$25,000 in any financial year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office.
- The **participation rule** prevents a member from voting or taking part in the discussion of any matter in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence, and conviction results in automatic disqualification from office.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs. These are broadly where:

- a person’s spouse or partner is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
- a person or their spouse or partner is involved in a company that is “concerned or interested” in the contract or where the company has a pecuniary interest in the decision.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the members family trust and the kaunihera.

### **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider

this question: Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

The question is not limited to actual bias but relates to the appearance or possibility of bias. This is in line with the principle that justice should not only be done but should be seen to be done. Whether or not you believe that you are not biased is irrelevant. The focus should be on the nature of any conflicting interest or relationship, and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- statements or conduct indicate that a member has predetermined the decision before hearing all relevant information (that is, they have a “closed mind”), or
- a member has close relationship or involvement with an individual or organisation affected by the decision.

### **Seeking exemption from the Auditor-General**

Members who have a financial conflict of interest that is covered by section 6 of the LAMIA, may apply to the Auditor-General for approval to participate. The Auditor-General can approve participation in two ways.

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when voting or taking part in the discussion.
2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
  - a. the application of the rule would impede the transaction of business by the council; or
  - b. it would be in the interests of the electors or residents of the district/region that the rule should not apply.

More information on non-pecuniary conflicts of interest and how to manage them can be found in the Auditor-General’s Guidance for members of local authorities about the law on conflicts of interest.

### ***Protected Disclosures (Protection of Whistleblowers) Act 2022***

The Protected Disclosures (Protection of Whistleblowers) Act 2022 is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, **serious wrongdoing** in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has an employment type relationship with the organisation they are disclosing about and includes current and former employees, homeworkers, secondees, contractors, volunteers, and board members. Serious wrongdoing includes:

- an offence

- a serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- a serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
- an unlawful, corrupt, or irregular use of public funds or public resources
- oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government

Kaunihera need to have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protections available under the Act, and explain how the organisation will provide practical assistance and advice to disclosers. A discloser does not have to go through their organisation first. An appropriate authority can include the head of any public sector organisation and any officer of Parliament, such as the Ombudsman and Controller and Auditor-General. Ombudsmen are also an “appropriate authority” under the Protected Disclosures (Protection of Whistleblowers) Act 2022.

### ***The Serious Fraud Office Act 1990***

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational frameworks and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

- Operations people with the right skills and experience in the relevant areas, with clear accountability lines.
- Risk mitigation to manage risks that can’t be eliminated through segregation, discretion reduction, delegations, management oversight, and audit.
- Basic standards of behaviour moderated by a Code of Conduct, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support.
- Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal).

### ***The Local Government (Pecuniary Interests Register) Act 2022***

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. The purpose of the register is to record members’ interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers must comprise the following:



- the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the 30 main business activities of each of those companies,
- the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities,
- if the member is employed, the name of each employer of their employer and a description of the main business activities of those employers,
- the name of each trust in which the member has a beneficial interest,
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the member has been elected,
- the title and description of any organisation in which the member holds an appointment by virtue of being an elected member,
- the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property,
- the location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust (disclosed under subclause 20) or a retirement scheme whose membership is open to the public.

Each council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

### ***The Health and Safety Act at Work Act 2015***

The Health and Safety at Work Act 2015 aims to create a new culture towards health and safety in workplaces. A council is termed a Person Conducting a Business or Undertaking (PCBU) - all involved in work, including elected members, are required to have a duty of care. Elected members are “officers” under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as elected members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

- stepping up and being accountable,
- identifying and managing your risks,
- making health and safety part of your organisation’s culture, and
- getting your workers involved.

Councils have wide discretion about how these matters might be applied, for example:

- adopting a charter setting out the elected members’ role in leading health and safety – with your chief executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with your chief executive,

- ensuring there is an effective linkage between health and safety goals and the actions and priorities of your chief executive and their senior management, or
- having effective implementation of a fit-for-purpose health and safety management system.

Elected members, through their chief executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet the health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

### ***The Harmful Digital Communications Act 2015***

The Harmful Digital Communications Act (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include racist, sexist and religiously intolerant comments – plus those about disabilities or sexual orientation and sets out 10 communication principles for guiding communication online. Under the Act a digital communication should not:

- disclose sensitive personal facts about an individual
- be threatening, intimidating, or menacing
- be grossly offensive to a reasonable person in the position of the affected individual
- be indecent or obscene
- be used to harass an individual
- make a false allegation
- contain a matter that is published in breach of confidence
- incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual
- incite or encourage an individual to commit suicide
- denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation or disability

More information about the Act can be found at [Netsafe](#).

### **3.5: Case studies for assessing potential breaches: Ngā rangahau whakapūaho mō te aromatawai i ngā tūpono takahanga**

#### ***Example one: staff accused of improper motives***

Councillor Smith was elected on a platform of stopping the sale of kaunihera housing. The kaunihera has made a decision to sell the kaunihera housing. Cr Smith makes media comments against the decision after it is made. Those same statements suggested that kaunihera staff advising on the sale “must have owned shares” in the company that proposed to buy the houses.

Cr Smith’s actions in releasing a media statement criticising a decision after it has been made would probably not in and of itself constitute a breach of a reasonable code of conduct. Cr Smith has a right to express a viewpoint and, provided that he makes it clear he is expressing a personal view, then issuing a critical press statement is an action he is entitled to take. If his statements failed to make it clear that he was expressing a personal or minority view then it may be a non-material breach of the Code, probably one where censure would be the appropriate response.

However, this media statement includes an allegation that staff advice was based on improper motives or corruption. This is a breach of most codes of conduct. It is most likely to be a material breach given the potential impact on the kaunihera’s reputation and the reputation of staff.

Also, there is no qualified privilege attached to public statements about employees which are false and damaging. In other words, elected members may be sued for defamatory statements made about employees.

#### ***Example two: leak of confidential information***

Cr Jones is on the kaunihera’s Works and Services Committee. The Committee is currently considering tenders for the construction of a new wastewater treatment plant and has received four tenders in commercial confidence. The Committee has recommended to kaunihera that they award the contract to the lowest tenderer. Cr Jones is concerned the lowest tender proposes to treat sewage to a lesser standard than others. She leaks all four tenders to the local media. A subsequent investigation by the kaunihera conclusively traces the leak back to her.

In leaking the tender information to the media, Cr Jones will have breached most codes of conduct. This breach has potentially serious consequences for the kaunihera as a whole. It not only undermines elected members trust of each other, it also undermines the confidence of suppliers in the kaunihera, which may lead to them not dealing with council in future, or even complaints under the Privacy Act 2020.

In circumstances such as these where an elected member fails to respect a commercial confidence censure and removal from the committee is an obvious first step. The kaunihera may be liable for prosecution under the Privacy Act 2020 and even to civil litigation.

In the event that the kaunihera suffers financial loss it may elect to ask the Auditor-General to prepare a report on the loss (or the Audit Office may do so on their own initiative), which may result in Cr Jones having to make good the loss from her own pocket.

### ***Example three: member purports to speak on behalf of kaunihera***

Eastland Regional Council is conducting a performance review of the chief executive. It has established a chief executive Performance Management Committee to conduct the review. In the course of that review the committee meets informally with the chief executive to review which performance targets were met and which were not. The meeting notes that the chief executive has been unable to meet two of his twenty targets and resolves to formally report this to the full kaunihera for its consideration. At the conclusion of that meeting Councillor Black leaves to find a local reporter waiting outside and makes the comment that “Jack White won’t be getting a pay increase this year because he didn’t meet all his targets”.

This action will probably constitute a breach of most codes of conduct in that it:

- breached a confidence,
- presumed to speak on behalf of council,
- purported to commit council to a course of action before the council and made a decision (or even met to consider the matter), and
- failed to treat a staff member with respect and/or courtesy.

In addition to the provisions of the Code of Conduct, Cr Black’s actions will severely undermine the relationship between the chief executive and the kaunihera, which may well constitute grounds for litigation against the kaunihera both in terms of employment and privacy law.

### ***Example four: member criticises staff performance in media***

Cr Mary Fogg, concerned about the failure of her kaunihera to respond quickly to resident complaints about flooding in their neighbourhood, expressed her frustration when speaking at a public meeting and, as part of her response to questions stated that kaunihera staff had dropped the ball and failed to take residents’ concerns seriously.

The councillor’s remarks were reported in the local suburban paper and were read by kaunihera staff, some of whom felt that they had been unfairly criticised and raised the matter with their chief executive. The chief executive felt it necessary to lodge a complaint under the council’s Code of Conduct because the member’s comments were disrespectful of staff.

The question for the initial assessor is whether, publicly expressing disappointment in the performance of the staff is a breach of the Code of Conduct. Considerations might include:

- Whether there was a basis of fact for the member’s comments.
- How the member’s views were expressed, that is, as a form of constructive criticism or not.
- The right of an employer (staff are employed by the local authority) to express a view should an organisation fail to live up to expectations.
- Whether a general statement about the performance of staff is in anyway comparable to a public criticism of an individual staff member, which would be a clear breach and might be an example of intimidation or harassment.

In this case the initial assessor concluded that it was not unreasonable for a member to make general statement about the performance of staff as a collective, indeed, one of her pre-election commitments was to improve the responsiveness of kaunihera staff. However, the assessor also concluded that the article lacked sufficient context to explain why she was disappointed, especially when some of the concerns were outside the control of staff and recommended that the member meet with the mayor to get guidance on how to raise such concerns in the future.

### ***Example five: member accused of using sexist language and humour***

Towards the end of the first year of the new triennium, the chief executive received a complaint, signed by four councillors, alleging that Cr Rob Jones regularly used sexist language in meetings, workshops and other official engagements. The councillors who made the complaint alleged that his tendency to call female colleagues 'girls'; interrupt them while speaking or ignore their comments; and that his use of sexist humour was demeaning to women and inconsistent with the behaviours set out in the Code of Conduct; the commitment to treat other members, staff and members of the public with respect. The chief executive forwarded the complaint to the independent investigator.

The investigator, having access to minutes, video recordings and the testimony of other members, was able to easily confirm that the complaint was justified and that both Cr Jones' language and behaviour was inconsistent with the Code. That left the Investigator with the task of determining how serious the breach was and what actions should be taken. Factors that the investigator took into consideration included:

- that the issue had been raised with Cr Jones earlier in the year by a colleague, with no obvious change in behaviour
- that Cr Jones was one of the kaunihera's representatives on its Youth Committee, bringing him into regular contact with young people
- that the kaunihera had adopted a specific policy to be a safe and supportive workplace for both elected members and staff.

Taking these factors into account the Investigator recommended that Cr Jones be removed from his role as a kaunihera representative on the Youth Committee; should be enrolled in a relevant course to better understand offensive behaviour and its impacts; and meet monthly with mayor to monitor his behaviour.

### ***Example six: Councillor Facebook page used to disparage others***

Councillors Sarah Smith and William Getty share political views in common and have recently established a Facebook group through which they promote debate and discussion with like-minded people in their district. Some of the participants in that Facebook Group make posts that include explicit criticism of other councillors, sometimes using explicit language, commenting on things like the way they voted, their motivations and personal matters. Some of the councillors targeted by the abuse complained to Cllrs Smith and Getty who, in response, closed the Facebook page to other councillors, preventing them from joining or viewing the content.

Rather than solve the concerns the decision to close the Facebook to others created additional anxiety for some councillors who became concerned that the page may be sharing their personal details and

mis-representing their views. A complaint was made to the chief executive that the Code of Conduct had been breached, on the basis that the decision to exclude them from the website, and the fact that it appeared to me unmoderated, was intimidating, potentially exposed them to harm and allowed promoted statements about them and the council that were clearly untrue. The chief executive referred the complaint to the council's independent investigator.

The investigator found that, while Cllrs Smith and Getty were not directly mis-representing the views of their colleagues, they were indirectly encouraging it, which breached the Code. Because this was the first complaint, and because the two councillors believed that by limiting access to the website, they had addressed the initial concerns, the investigator did not regard the breach as material. She recommended that the two councillors remove the block preventing other councillors from joining or accessing the site and install a system for approving posts, such as a moderator, before they are published.