

Elected Members Code of Conduct

DRAFT

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Part 1: Code of Conduct

1. Introduction

The Ashburton District Council Code of Conduct (Code) has been adopted in accordance with the requirements of Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of conduct for members of the local authority.

Members' commitment

These commitments apply when conducting the business of the Council 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 Council any information received that is pertinent to the ability of the Council 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 Council,
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 Council 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.

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 Council's Code of Conduct. More detail explaining the Code of Conduct is set out in *Appendix 1*.

This Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

Part 2: Roles, relationships and behaviours

2.1 Roles

Elected members - collectively acting as the Council, are responsible for:

- The development and adoption of Council policy, plans and budgets
- Monitoring the performance of the Council against its stated objectives and policies
- Prudent stewardship of Council resources
- Employment of the Chief Executive
- Representing the interests of the residents and ratepayers of the Ashburton District. (On election, an elected member's first responsibility is to the district as a whole.)
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets its legislative requirements.

Unless otherwise provided in the Local Government Act 2002, or in standing orders, Council can only act by majority decisions at meetings. Each member has one vote.

An individual member, including the Mayor, has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

The Mayor is elected by the district as a whole and as an elected member shares the same responsibilities as other members of Council. The Mayor also has the following roles as:

- The presiding member at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (in accordance with standing orders)
- An advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council
- The ceremonial head of Council
- Providing leadership and feedback to other elected members
- Promoting teamwork and effective committee membership and chairmanship.

The Deputy Mayor is either appointed by the Mayor or elected by the members of Council, at the first meeting of Council. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibility and duties, and may exercise the powers, of the Mayor.

Committee Chairpersons

The Mayor or Council may create one or more Committees of Council. A Committee Chairperson, appointed by the Mayor or the Council, presides over all meetings of their appointed Committee, ensuring that the Committee acts in accordance with standing orders, within the powers delegated by Council, and as set out in the Council's Delegations Manual. A Committee Chairperson may be called on to act as an official spokesperson on a particular issue. A Committee Chairperson may be removed from office by resolution of Council.

The Chief Executive is appointed by Council in accordance with Section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council.

The responsibilities of the Chief Executive are:

- Implementing the decisions of Council
- Providing advice to Council and the Methven Community Board
- Ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- Managing the activities of the local authority effectively and efficiently
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- Providing leadership for the staff of the local authority
- Employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

2.2 Relationships with other elected members

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members.

With this in mind elected members will conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct including the use of disrespectful or malicious language.
- avoid abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order.

2.3 Relationships with staff

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff.

To ensure that the desired level of cooperation and trust is maintained, elected members will:

- Recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss, instruct or censure an employee
- Make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times
- Treat all employees with courtesy and respect
- Observe any guidelines that the Chief Executive puts in place regarding contact with employees.

Elected members will not:

- Compromise, or be seen as compromising, the impartiality of an employee
- Publicly criticise any employee in any way.

Any concerns or complaints about the conduct or performance of a staff member or the Chief Executive are treated seriously and should not be brought lightly or without appropriate supporting evidence.

If an elected member has concerns about an employee's conduct or performance, these concerns are to be directed to the Chief Executive, who will investigate as appropriate.

If an elected member has concerns about the conduct or performance of the Chief Executive, these concerns are to be directed to the Mayor.

Please note: Elected members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's audit.

2.4 Relationships with the community

Effective Council decision-making depends on quality relationships between elected members and the community.

Elected members should ensure that residents are treated with respect in their dealings with the Council, have their concerns listened to, and deliberated on, in accordance with legislative requirements. Elected members should act in a manner that encourages and values community involvement in local democracy.

2.5 Contact with the media

The media plays an important part in local democracy. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council.

From time to time, individual members will be approached to comment on a particular issue either on behalf of Council, or as an elected member in their own right.

- The Mayor is generally the first point of contact regarding Council policy or community advocacy issues. If the Mayor is unavailable, matters will be referred to the Deputy Mayor or Chief Executive.
- The Deputy Mayor acts as the Mayor's delegated spokesperson if the Mayor is unavailable.
- No other elected member may comment *on behalf of Council* without having first obtained the approval of the Mayor.
- The Chief Executive is generally the first point of contact regarding operational issues. The Chief Executive may refer the matter to an appropriate staff member.

Elected members are free to express a *personal view* in the media, at any time, provided the following is observed:

- Media comments must not state or imply that they represent the majority view of Council and care should be taken to ensure the credibility and reputation of Council as an entity is not compromised.
- This is particularly crucial when an elected member is making a statement that is contrary to a Council decision or Council policy.
- Media comments must observe all other requirements of the Code of Conduct, particularly regarding confidential information and relationships with staff.
- Media comments must not be misleading and should be accurate within the bounds of reasonableness.

Elected members are not permitted to post on Council's digital communications channel or post comments under Council posts, and Council will not tag individual elected members in posts.

Further guidelines for dealing with the media can be found in the Council's [Communications Policy](#).

2.6 Confidential Information

Elected members may receive or be privy to information that needs to be treated as confidential. Sources of confidential information are:

- 'In-committee' agenda items at Council and committee meetings
- Information made available in the course of Council duties that is commercially sensitive or is personal to a particular individual or organisation.

Elected members must not use or disclose confidential information for any purpose other than that for which the information was supplied to the elected member.

It is the responsibility of elected members to remain aware of which information is to be treated as confidential and of their responsibilities for managing this information.

Elected members should be aware that failure to observe these provisions may:

- Impede the performance of Council
- Undermine public confidence in Council
- Expose Council to prosecution under the Privacy Act 2020 and/or civil litigation.

2.7 Conflicts of Interest

Elected members must be careful that they maintain an appropriate separation between their personal interests and their duties as an elected member. This is to ensure that elected members carry out their duties free from bias (real or perceived).

2.8 Standing Orders

Elected members must adhere to the Ashburton District Council Standing Orders, adopted by Council under the Local Government Act 2002 (Schedule 7, clause 27(1)). These standing orders are subject to the same legal requirements as a Code of Conduct with regard to their adoption and amendment.

2.9 Remuneration, Expenses and Gifts

Members must abide by the [Elected Members Remuneration and Expenses Policy](#). This policy contains details of remuneration, allowances and expense rules for elected members. This policy sits alongside the [Sensitive Expenditure Policy](#).

In addition, elected members must:

- Not solicit, demand, or request any gift, reward or benefit by virtue of their position
- Disclose any gifts with a value of over \$500 which are *offered* to the elected member, to the Chief Executive. This will be included in the publicly available register of interests.

Members shall annually make a declaration of interest. Council makes a summary of the information contained in the register publicly available; and ensures 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 [Local Government Act 2002, \(sub-part 3\) S54A](#) sets out the nature and extent of interests to be declared.

Please note: Where a member's circumstances change they must ensure that the Register of Interests is updated as soon as practicable.

2.10 Disqualification of Members from Office

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more year's imprisonment or of certain breaches of the Local Authorities (Members' Interests) Act 1968. Members are also automatically disqualified from office if they cease to be an elector or become disqualified for registration as an elector.

2.11 Bankruptcy

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an "undischarged bankrupt" will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the member's adjudication and the likely outcome of the bankruptcy.

PART THREE: COMPLIANCE AND REVIEW

3.1 Compliance

Elected members are bound to comply with the provisions of this Code of Conduct by the Local Government Act 2002, Schedule 7, clause 15(4).

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 Health and Safety at Work Act 2015, and the Harmful Digital Communications Act 2015.

The Chief Executive will ensure that legislative requirements are explained at the first meeting of each triennium, and that copies of the above Acts are freely available to elected members. Short explanations of the relevant provisions of the legislation are attached in *Appendix 3*.

3.2 Breaches of the Code

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.

Complaints

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.

All complaints under this Code must be made in a timely manner and in writing to the following recipients:

- (i) if made by a member against another member – to the Mayor or, if the Mayor is the subject of the complaint (or is the complainant) to the Deputy Mayor;
- (ii) if made by a member against an employee – to the Chief Executive
- (iii) if made by the Chief Executive and/or on behalf of an employee, against a member – to the Mayor or, if the Mayor is the subject of the complaint, to the Deputy Mayor.

A complaint made by a member of the public will be treated as if it were a complaint made by a member (the Mayor or Deputy Mayor) against another member.

Suspected breaches of the Code may first be verbally directed to the Mayor or Chief Executive who shall first attempt to resolve the matter through discussion with the relevant parties. If the matter is resolved by discussion, it is considered that the matter has been successfully concluded upon written notification by both the complainant and respondent.

If further investigation is required, the Mayor and Chief Executive will offer advice as to whether a written statement should be made. Written statements detailing the alleged breach of the Code must include any corroborating evidence.

If a complaint is to be progressed, the Chief Executive must forward the complaint to an independent person, either an independent investigator or an initial assessor, for an assessment to determine whether the issue is sufficiently serious to warrant a full investigation. Council will select the independent party as and when necessary.

The Mayor and/or Chief Executive have the discretion to determine whether any report will be initially considered in open or closed meeting of Council. Where the alleged breach could impinge on the privacy of a member of staff or of the general public, or the complaint relates to the misuse of confidential information, the report will be considered in closed meeting.

Rights of the respondent

All Code of Conduct investigations are to be conducted with regard to commonly accepted principles of natural justice, which include the right to a fair hearing, privacy, the right to proceedings free from bias and the right to representation. The respondent is also entitled to the presence of a support person at all hearings and discussions.

3.3 Responses to Breaches of the Code of Conduct

If there are relevant statutory provisions:

- Breaches relating to members' interests render members liable for prosecution by the Auditor-General under the Local Authority (Member's Interests) Act 1968
- Breaches which result in the Council suffering financial loss or damage may be reported on by the Auditor-General under the Local Government Act 2002, which may result in the member having to make good the loss or damage
- Criminal offences may result in liability for criminal prosecution.

Where there are statutory provisions, Council or a member of the public may refer the issue to the most relevant body or authority, or the body or authority may itself take action of its own initiative.

If there are no relevant statutory provisions:

Council may take the following action:

- Censure
- Removal of the elected member from Council committees and/or other representative type bodies
- Dismissal of the elected member from a position as Deputy Mayor or Chair of a committee
- a request (made either privately or publicly) for an apology
- a vote of no confidence in the member
- removal of certain Council-funded privileges (such as attendance at conferences)
- restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed)

- limitation on any dealings with Council staff so that they are confined to the Chief Executive only;
- an invitation for the member to consider resigning from the Council.

The Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

A decision to apply one or more of these actions requires a Council resolution to that effect. The Mayor cannot be dismissed from the position of Mayor or any statutory duties and responsibilities of that office by resolution of Council.

3.4 Review

Council will formally review the Code of Conduct within the first year of each triennium. The results of that review will be presented to Council for their consideration and vote.

Appendix 1: The Code of Conduct explained

1. Definitions

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

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

2. Te Tiriti o Waitangi

The Ashburton District Council 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 Council, its members, and citizens, members **agree** to the following standards of conduct when they are:

- conducting the business of the Council,
- acting as a representative of the Council,
- 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.¹

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 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:

- 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.

¹ Please refer to the Guidelines for the responsible use of social media in the [LGNZ Good Governance Guide](#)

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person because of any of the following²:

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 Council 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 Council, which is pertinent to the ability of their Council 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.

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 Council or other members.

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.

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

Disrepute

Members will not bring the Council 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 Council and fellow members to account or constructively challenge and express concerns about decisions and processes undertaken by the Council.

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 1910.

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 Council 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 Council's Chief Executive, or, if the concerns are to do with the Chief Executive, raise them with the Mayor.

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

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.

Appendix 3: Legislation which sets standards for ethical behaviour

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 (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 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 (that is otherwise disclosed in the members' return) 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 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 LAMIA) and the participation rule (in section 6 of the LAMIA).

- 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 Council.

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 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](#).