



Kaipara District Council

Code of Conduct

April 2011



Kaipara te Oranganui

**KAIPARA
DISTRICT**

Two Oceans Two Harbours

Purpose

Schedule 7 of the Local Government Act 2002 requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code.

This Code of Conduct provides guidance on standards of behaviour that are expected from the Mayor and elected members of the Kaipara District Council. The Code applies to elected members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the Council
- the media
- the general public

The objective of the code is to enhance:

- the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local governance of the Kaipara District Council
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

This code of conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities
- agreed general principles of conduct
- specific codes of conduct applying to particular circumstances or matters

Elected members are primarily accountable to the electors of the district through the democratic process. However, members must note that the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

The code of conduct that follows is based on the following general principles of good governance:

Public interest – members should serve only the interests of the district as a whole and should never improperly confer an advantage or disadvantage on any one person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire district, not the ward that elected them.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of the Council and should be prepared to justify their actions.

Personal judgment – members can and will take account of the views of other but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the Council staff.

Duty to uphold the law – members should uphold the law and on all occasions act in accordance with the trust the public places in them.

Stewardship – members must ensure that the Council uses resources prudently and for lawful purposes and that the Council maintains sufficient resources to meet its statutory obligations.

Leadership – members should promote and support these proposals by example and should always endeavour to act in the best interests of the community.

Relationships and Behaviours

This part of the code sets out the Council's agreed standards of behaviour.

Relationships with other 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.

Relationships with Staff

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times.
- treat all employees with courtesy and respect including the avoidance of aggressive, offensive or abusive conduct towards employees
- observe any guidelines that the Chief Executive puts in place regarding contact with employees
- raise concerns about employees only with the Chief Executive and concerns about the Chief Executive only with the Mayor or the Chief Executive's Review Committee.

Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure that individual citizens are accorded respect in their dealing with the Council, have their concerns listened to and deliberated on in accordance with the requirements of the Act.

Members should act in a manner that encourages and values community involvement in local democracy.

Media/External Communications

Public statements representing Council policy or reporting decisions of the Council will be made only with the authority of the Council:

Generally:

- The Mayor is the first point of contact for the official view on any issues. Where the Mayor is absent any matters will be referred to the Deputy Mayor.
- Committee Chairpersons are authorised to make statements reporting decisions of their Committees, and factual statements relating to decisions of the Council or its Committees.
- The Chief Executive is authorised to make statements relating to any of the areas for which the Chief Executive has statutory or delegated responsibility
- Department managers may make factual statements relating to the functions of their departments.

Otherwise the Chief Executive, Mayor, or any elected member or officer may make statements on behalf of the Council only with the authority of the Council.

The Chief Executive, management and staff will not comment publicly on the performance of the Council or elected members.

The Mayor may deal with the news media and make public statements relevant to the non-statutory role as a community leader, only where it is clearly stated that the views expressed are the Mayor's own and are not made on behalf of the Council. No statements made in this capacity shall undermine any existing policy or decision of the Council.

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

- media comments must not state or imply that they represent the views of Council
- where an elected member is making a statement that is contrary to a Council decision or Council policy the member must not state or imply that his or her statements represent a majority view
- media comments must observe the other requirements of the Code of Conduct eg not disclose confidential information or compromise the impartiality or integrity of staff.

Confidential Information

In the course of their duties members will occasionally receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

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

Elected members should be aware that failure to observe these provisions will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Conflicts of Interest

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests and with other legal requirements concerning non-financial conflicts of interest.

It is a member's responsibility to declare conflicts of interest.

The Local Authorities (Member's Interest) Act 1968 provides that an elected member is disqualified from office or from election to office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Members must declare their interests at Council meetings where matters in which they have a any interest arise.

If any member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, the member should seek guidance from the Chief Executive immediately.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member may seek an exemption from the Audit Office to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. Members must also seek approval from the audit Office for contractual payments to themselves, their spouses or their companies that exceed the \$25,000 annual limit. The Chief Executive can assist the Member with this if requested.

Failure to observe the requirements of the Local authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

Ethics

The Kaipara District Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly elected members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority
- approach decision making with an open mind ("faithfully and impartially"). This process requires elected members to listen carefully to competing advice and to weigh up the pros and cons before making their decision. Where Council is hearing formal submissions at a hearing, elected members should carefully avoid prior public comments which show a predetermined bias or non flexible attitude.
- not influence or attempt to influence any Council employee to take actions that may benefit the member or the member's family or business interests
- not solicit, demand or request any gift, reward or benefit by virtue of their position
- notify the Chief Executive if any gifts are offered and/or accepted

Standing Orders

Elected members must adhere to any standing orders adopted by Council under the Local Government Act 2002. These standing orders are subject to the same legal requirements as a code of conduct with regard to their adoption and amendment.

Compliance and Review

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

Compliance

Elected members must note that they are bound to comply with the provision of this Code of Conduct (Local Government Act 2002, Schedule 7, section 15(4)).

Compliance will be monitored by the Conduct Review Committee. This Committee will comprise of the membership of Mayor, Deputy Mayor and one other Councillor.

Responses to Breaches of the Code

The exact nature of the action the Council may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.

Where there are statutory provisions:

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

In these cases the Council may refer an issue to the relevant body, any member of the public may make a complaint or the body itself may take action of its own initiative.

Where there are no statutory provisions, the Council may take the following action:

- censure
- removal of the elected member from a Portfolio, Council committees and/or other representative type bodies
- dismissal of the elected member from a position as Deputy Mayor or Chair of a committee.

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

Complaints

Any member of the public may make a complaint about an alleged breach by a Elected Member of the Code of Conduct. A complaint may not be made about any other matter dealt with under Statute.

Complaints should be addressed to the Chief Executive and must:

- Be in writing

- Include the name and contact details of the complainant
- Specify the Elected Member about who the complaint is being made
- Specify the alleged breach of the Code
- Contain corroborating evidence to support the allegation of a breach.

On receipt of a complaint the Chief Executive must refer the complaint to the Conduct Review Committee to investigate the complaint. The Chief Executive must at this time send acknowledgements to the complainant and a letter to the Elected Member concerned notifying them that the Conduct Review Committee has been informed of the complaint and explaining the process that is to be followed.

The Conduct Review Committee must make a decision as to the validity of the complaint and on how to proceed with the matter. This decision must be based on an initial investigation of the complaint. If the complaint is not to be investigated further, the Conduct Review Committee must advise the complainant and the concerned Elected Member about the decision.

Reasons for refusing to continue with the investigation include:

- That the complainant is frivolous or vexatious
- That the complaint concerns a matter outside the scope of the Code
- That the matter is already being dealt with under the Code or any other process; or
- That there has been undue delay in making the complaint
- Any other reason that leads the Conduct Review Committee to believe the complaint can not be upheld.

If the complaint is to be investigated further, the Conduct Review Committee must conduct investigations and prepare a report which makes findings on matters of fact and provides the Committee decision on whether or not the Code of Conduct has been breached as alleged.

The Chief Executive must then make the report available on the agenda for the first Council meeting that is scheduled from the date on which he or she received the report which will be an open meeting of Council, except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a member of staff or the general public.

The Chief Executive must ensure all reasonable assistance that is necessary in the circumstances is provided to enable a person who wishes to make a complaint, to put their complaint in writing.

The Chief Executive must also forward a copy of the report to both the complainant and the Elected Member concerned.

Review

Once adopted, a code of conduct continues in force until amended by the Council. The code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once

adopted, amendments to the code of the conduct require a resolution supported by 75 per cent or more of the members of the Council present.

Council will formally review the code as soon as practicable after the beginning of each triennium. The results of that review will be presented to Council for their consideration and vote.

Appendix One

Appendix to the Code

Legislation Bearing On the Role and Conduct of Elected Members

This is a summary of the legislation requirements that has some bearing on the duties and conduct of elected members. Copies of these statutes can be found in Council's library or in the office of the Chief Executive.

Local Authority (Members' Interests) Act 1968

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

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements.

Secret Commissions Act 1910

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

If convicted of any offence under this Act a person can be imprisoned for up to two years, or fines up to \$1,000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

Crimes Act 1961

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council
- Use information gained in the course of their duties for their, or another persons' monetary gain for advantage.

These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will also be automatically ousted from office.

Securities Act 1978

The Securities Act 1978 essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if

investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

I agree to abide by the Kaipara District Council Code of Conduct in fulfilling the roles and responsibilities of Council.

I have read and understand the attached Code of Conduct.

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Member

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Dated

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Mayor

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Dated