

2 July 2024

Jordan Williams
Jordan@taxpayers.org.nz

Dear Jordan

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT Request: 2024-31

Thank you for your LGOIMA request of 30 May 2024, attached as **Appendix A**, and your response, attached as **Appendix B** to my letter of 7 June 2024.

Your request has been considered under the Local Government Official Information and Meeting Act 1987 (the Act).

Appendix C attached, provides a table which shows seven email communications that I am releasing with my decision on the release of the information. Some of the information has been withheld under the following section of the Act:

- 7(2)(a), to protect the privacy of natural persons.

Where information has been withheld under section 7(2), I have considered, as required under section 7(1) of the Act, the public interest considerations favouring its release. I have identified no public interest considerations which outweigh the need to withhold information at this time.

Referring to the points raised, my response to each point is in the order below.

11. *"If we are wrong, and the decision of the Chair to exclude Councillor Ayling was justified, please explain why the same reasoning was not applied to Councillors with greater so-called conflicts of interest or apparent pre-determination / bias. For example, we note Mayor Ron Mark has disclosed that he had publicly advocated for funds for the Carterton Pool. Despite funding from the same being a matter before the Hearing, apparently no consideration was given to whether this posed a conflict worthy of also kicking him out of the Hearings. Why did the Council/Chair pounce on Councillor Ayling, but not the similar circumstances of the Mayor?"*

Councillor Ayling was the only Elected member that submitted on the Long-Term Plan. No other Elected Members made submissions as part of the LTP consultation.

To clarify, the decision was made by the Chair of the Hearings Committee, not Council. The reasoning for the Chair's decision is included **Appendix C**, as document 7.

- 13 *"Please correct us if any of the above facts are incorrect. Unless you can do so, we are left to conclude that the different treatment is really just bad faith by the Chair, or you (and your officers) advising her."*

As mentioned above Councillor Ayling was the only Elected Member to make a submission on the LTP.

- 15 *"Do we take from that that the Council concluded that the earlier disqualification was incorrect? If so, has the Chair, CEO, or Council apologised to Councillor Ayling? If not, why no?"*

I have no information to suggest the exclusion of Councillor Ayling was incorrect. The decision to exclude Councillor Ayling was made by the Chair of the Hearings Committee, not the CEO or Council.

- 16 *"If the Council is of the view the 15 May decision was the correct one, how does the reasoning to exclude Councillor Ayling from hearing submissions not apply to consideration of the same matters at subsequent meetings?"*

Councillor Ayling was excluded from voting on decisions she had submitted on, both at Hearings Committee and at Council when deliberations decisions were adopted. This exclusion covered the two consultation items of roading and wastewater, as well as cycle trails and the event centre which were specifically mentioned in her submission.

17. *"In addition to requesting official information that answers the questions posed above, we also request the following information under the Local Government Official Information Act.*
- (a) *A copy of the advice referred to by the Chair "Based on information provided by the Auditor General" in determining that "there is a real danger of bias" at the beginning of the 15 May 2024 meeting.*

Attached as **Appendix C**, document 7 is the statement that the Chair, Cr Robyn Cherry-Campbell, held during the LTP Hearing on 15 May 2024. Cr Cherry-Campbell's speech can be viewed here: [Carterton District Council Long Term Plan 2023-2034 Hearings, Wednesday 15 May; \[Video 1 of 4\] \(youtube.com\)](#). You will note in the video the Cr Robyn Cherry-Campbell summarised her views and did not read the entire statement word for word.

Also included in **Appendix C**, document 6 is an email which refers to guidance from the Office of the Auditor General, specifically around Councillors making public submission in a private capacity. The advice from the Office of the Auditor General can be found at <https://oag.parliament.nz/2020/conflicts/part7.htm#scenario7>

- (b) *A copy of all communications (including electronic communications between officials, elected officials, and/or any third parties such as the Office of Auditor-General and/or*

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LGOIMA ID: 2024-31

LGNZ) that refer to Councillor Ayling's written submission and/or alleged conflict/bias and decision to remove/exclude Councillor Ayling, and any and all advice on the same from the date it was lodged to today.

- (c) *If not covered above, any and all advice received from the Auditor General, LGNZ, and any other organisations or individuals on the alleged conflict/bias and decision to remove/exclude Councillor Ayling.*

In response to (b) and (c) requesting information and advice received from the Office of Auditor-General. The Auditor General is not subject to OIA. Please refer to their website: [Asking us for information — Office of the Auditor-General New Zealand \(oag.parliament.nz\)](https://www.oag.parliament.nz/).

Regarding the rest of your request relating to all communications including electronic communications between officials and elected officials and/or any third parties, I am refusing this part of your request under section 17(f) of the Act for the reason that the information requested cannot be made available without substantial collation or research.

- (d) *The same information as (b) but pertaining to the disclosures of conflicts (or potential conflicts) by other elected officials as part of this Hearings process."*

I am refusing this part of your request under section 17(d) of the Act for the reason that the information requested is publicly available and can be viewed here: [\(89\) Carterton District Council Long Term Plan 2023-2034 Hearings, Wednesday 15 May; \[Video 1 of 4\] - YouTube](#)

Please note, the Council proactively publishes LGOIMA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your request. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Geoff Hamilton
Chief Executive
Carterton District Council

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LGOIMA ID: 2024-31



Geoff Hamilton
CEO / Town Clerk
Carterton District Council

By email: geoffh@cdc.govt.nz

30 May 2024

Exclusion of Councillor Ayling from Long Term Plan 2023-2034 Hearings

1. We write to record our concern at the treatment of Councillor Grace Ayling following the decision of the Chair of the above Hearings Committee to exclude Councillor Ayling from hearing submissions to the same and questioning submitters.
2. We believe that the Council's decision to exclude Councillor Ayling was unjustified, unlawful, made in bad faith, and makes the Council's hearing decisions vulnerable to judicial review.
3. From the material publicly available, Councillor Ayling has done nothing more than advocate for her democratic mandate: to rein in your council's expenditure and fight for ratepayers.
4. The decision is fundamentally undemocratic. Preventing a councillor from advocating on matters of expenditure and excluding her from key decisions based on her advocacy, is a direct assault on those who voted for Councillor Ayling and the values she ran on and appears to be following through on.
5. Of course, for issues where Councillors are performing a quasi-judicial function, such as Resource Management Act applications, a higher level of impartiality can be expected. But submissions on the Long Term Plan are inherently political and often go to the heart of issues councillors were elected to address.
6. The Auditor-General helpfully outlines when decisions are to be considered quasi-judicial:¹

Quasi-judicial decisions are those that directly affect the legal rights, interests, and obligations of an individual or small group of individuals. Quasi-judicial decisions can be, for example, a decision to grant a permit, confer a specific benefit, or impose a punishment.

7. It cannot reasonably be argued that decisions that affect community and ratepayers as a whole are quasi-judicial. In fact, the very issues Councillor Ayling submitted on are about as broad as one could possibly get, far from merely affecting "an individual or small group of individuals".
8. The Auditor-General goes on to outline:²

¹ Auditor General *Managing Conflicts of Interest: Guidance for Public Entities* at 3.37.

² Ibid, at 3.38.

In other situations, it might nevertheless be acceptable for employees or officeholders to bring personal or previously formed views to decision-making – for example, when:

- *discussing issues and exchanging ideas with members of the public;*
- *developing a preliminary position, especially where a proposal is being consulted on or where the public organisation is expected to perform an advocacy role;*
- *already holding – and perhaps having expressed – strong personal views about the matter, for decisions that are made by an elected or representative body and are political in nature or involve high-level policy-making;*
- *promoting a particular view during debate in public hearings on a matter; and*
- *drawing on your own knowledge or experience, especially for decisions that are entrusted to particular people because of their special expertise in the subject*

9. All of the above listed situations would apply to those views expressed by Councillor Ayling.
10. If we were to apply the same overly strict interpretation of the predetermination rules to all councillors, we would not have anyone left to hear the submissions of ratepayers. The mere fact that Councillor Ayling bothered to write a submission should not preclude her from being a part of discussions any more than a councillor who expresses strong preference or opposition to a particular policy prior to being elected.

Decision appears to have been made in bad faith

11. If we are wrong, and the decision of the Chair to exclude Councillor Ayling was justified, please explain why the same reasoning was not applied to Councillors with greater so-called conflicts of interest or apparent pre-determination / bias. For example, we note Mayor Ron Mark has disclosed that he had publicly advocated for funds for the Carterton Pool. Despite funding from the same being a matter before the Hearing, apparently no consideration was given to whether this posed a conflict worthy of also kicking him out of the Hearings. Why did the Council/Chair pounce on Councillor Ayling, but not the similar circumstances of the Mayor?
12. Councillor Ayling's alleged bias can also be contrasted with what appears to be direct financial interests from other councillors that were not excluded. We are advised that one councillor owns multiple commercial properties on Carterton's High Street, and another Councillor owns a shop. Both advocated for (and were allowed to participate in the Hearings considering) more spending on High Street, despite what appears to be a direct financial interest. Meanwhile Councillor Ayling was kicked out because she argued on a principled basis for ratepayers?
13. Please correct us if any of the above facts are incorrect. Unless you can do so, we are left to conclude that the different treatment is really just bad faith by the Chair, or you (and your officers) advising her.

Apparent distinction between hearing submissions and posing questions to submitters and consideration of same issues

14. We understand that, notwithstanding Councillor Ayling being removed from on the day of submissions and being barred from posing questions to submitters on 15 May, she was nevertheless invited (or allowed) to sit on subsequent meetings of the Hearings Panel on the same issues.
15. Do we take from that that the Council concluded that the earlier disqualification was incorrect? If so, has the Chair, CEO, or Council apologised to Councillor Ayling? If not, why not?
16. If the Council is of the view the 15 May decision was the correct one, how does the reasoning to exclude Councillor Ayling from hearing submissions not apply to consideration of the same matters at subsequent meetings?

Additional Request for Official Information

17. In addition to requesting official information that answers the questions posed above, we also request the following information under the Local Government Official Information Act.
 - (a) A copy of the advice referred to by the Chair *"Based on information provided by the Auditor General"* in determining that *"there is a real danger of bias"* at the beginning of the 15 May 2024 meeting.
 - (b) A copy of all communications (including electronic communications between officials, elected officials, and/or any third parties such as the Office of Auditor-General and/or LGNZ) that refer to Councillor Ayling's written submission and/or alleged conflict/bias and decision to remove/exclude Councillor Ayling, and any and all advice on the same from the date it was lodged to today.
 - (c) If not covered above, any and all advice received from the Auditor General, LGNZ, and any other organisations or individuals on the alleged conflict/bias and decision to remove/exclude Councillor Ayling.
 - (d) The same information as (b) but pertaining to the disclosures of conflicts (or potential conflicts) by other elected officials as part of this Hearings process.
 - (e) All communications (including electronic) held by the Council (including elected officials) that refers to the Taxpayers' Union within the last 14 days.
18. If clarification of any of the requests would be helpful, please have your officials contact me.
19. We look forward to your response.

Yours faithfully,
New Zealand Taxpayers' Union Inc.



Jordan Williams
Executive Director
Jordan@taxpayers.org.nz

cc Cr Robyn Cherry-Campbell, Chair of Long Term Plan 2023-2034 Hearings Panel
(by email robyn@cdc.govt.nz)



Geoff Hamilton
CEO / Town Clerk
Carterton District Council

By email: geoffh@cdc.govt.nz

17 June 2024

By email: geoffh@cdc.govt.nz

Dear Mr Hamilton,

Request 3035-31

1. We refer to your letter of 7 June 2024 where you propose to charge \$2,280 for your Council's justification (and associated communications) concerning Robyn Cherry-Campbell's decision to exclude a democratically elected councillor from participating in key 10-year budget consultation discussions and debates, apparently because the councillor expressed public concerns about the Council overspending or wasting money, while not excluding other councillors who appear to have direct financial conflicts of interest. The request for information can be summarised as asking for the justification and associated communications that related to the decision to exclude the councillor.
2. Unless there is an enormous volume of communications on these matters, it is beyond belief that some 20 hours is required to assemble the information sought. We certainly do not accept a requester must pay for "peer and manager review, and final sign off". Charges are for collation of the information requested, not pay for you or your spin doctors or managers to "review" the material.
3. You are legally required to consider the public interest of releasing information when coming to decisions (including decisions to charge) under the Act. Your letter fails to indicate you have even turned your mind to this. In my 10 years at this job, I cannot recall a Council trying to charge us to access the information referred to and, apparently, relied upon by a Chair in coming to a procedural decision. If the decision was justified, I would have thought you would want it known that in coming to the extraordinary decision to *exclude* a councillor from a 10-year plan hearing good process had been followed, that the decision was not politicised, and that statements made by the Chair (her accurately following advice, for example) were true.
4. Nevertheless, having reviewed the request, it can be broken into three parts which we address in turn:
 - (a) Justification for the decision to exclude Cr Ayling (paragraphs [11], [13], [15], [16], and [17(a)])

We see no reason that answering these questions and providing the sought advice will take longer than an hour. All of the information should be to hand, and if it is not, it would suggest the statements made by Cr Cherry-Campbell were not truthful, and therefore it is of extremely high public importance that the information sought is released.

If you are unable to provide this information within the original statutory timeframe, we require explanation of why this information is not immediately to hand.

- (b) Communications relating to the decision to exclude Cr Ayling (paragraphs [17(b)], [17(c)], and [17(d)]).

It is possible this request involves considerable communications, but again that would point to the matter having been politicised. We would like to understand how your staff got to the 20-hour estimate referred to. Please provide the advice referred to in your letter and the amount of correspondence (approximate is fine) that your staff estimate under each limb? Please also provide the communications you are able to, up until the point you require us to be charged for the information.

- (c) Communications relating to the Taxpayers' Union (paragraph [17(e)]).

At this stage we will withdraw this request under the Act, but as above, do provide us with the estimate of the number of communications believed to be in-scope (or otherwise the information used in coming to the 20-hour estimate).

5. We look forward to your response.

Yours faithfully,
New Zealand Taxpayers' Union Inc.



Jordan Williams
Executive Director
Jordan@taxpayers.org.nz

cc Cr Robyn Cherry-Campbell, Chair of Long Term Plan 2023-2034 Hearings Panel
(by email robyn@cdc.govt.nz)

Appendix C

No	Date	From	To	Subject and Title	Decision on release
1	9 May 2024	Geoff Hamilton	Mayor Ron Mark; s7(2)(a); Dale Williams Cc: Geri Brooking; Marcus Anselm	RE: URGENT-Grace Ayling's LTP Submission Attachments: CDC Code of Conduct Final 26 Oct 2022.pdf	Release in part. Information withheld under section 7(2)(a) of the Act.
2	10 May 2024	Geoff Hamilton	Ron Mark; Dale Williams	Fwd: CDC's alleged prejudice against Councillor Re Long-Term Plan – Free Speech Union Attachments: Letter to CDC (1)_240510_105654_240510_105810.pdf	Release in full.
3	10 May 2024	Dale Williams	Mayor-Ron Mark; Geoff Hamilton	Re: The question of Cr Ayling Eligibility to Sit on the CDC LTP Hearings Committee	Release in full.
4	10 May 2024	Solitaire Robertson	Geoff Hamilton; Cc: Karon Ashforth; Johannes Ferreira; Glenda Seville; Marcus Anselm	RE: CDC's alleged prejudice against Councillor re. Long-Term Plan – Free Speech Union	Release in part. Part of document is out of scope.
5	13 May 2024	Geoff	Robyn- Cherry-Campbell Cc: Philip Jones	FW: CDC's alleged prejudice against Councillor re. Long-Term Plan – Free Speech Union	Release in part. Information withheld under section 7(2)(a) of the Act.
6	13 May 2024	Rob Stockley	Mayor-Ron Mark Cc: Dale Williams; Geoff Hamilton; Grace Ayling	LTP Submissions Hearing	Release in part. Part of document is out of scope. Information withheld under section 7(2)(a) of the Act.
7	15 May 2024	Robyn Cherry-Campbell	Marcus Anselm Cc: Geoff Hamilton; Karon Ashforth	Statement I read out in the hearings - attached as requested	Release in part. Part of document is out of scope.

Serah Pettigrew

From: Geoff Hamilton
Sent: Thursday, 9 May 2024 6:20 pm
To: Mayor - Ron Mark; s 7(2)(a) Dale Williams; Robyn Cherry-Campbell
Cc: Geri Brooking; Marcus Anselm
Subject: RE: URGENT - Grace Alying's LTP Submission
Attachments: CDC Code of Conduct FINAL 26 Oct 2022.pdf

Greetings again Ron, Dale, and Robyn Cherry-Campbell

Following on from my email below I have spoken with Dr Mike Reid at LGNZ this afternoon.

His feedback was as follows:

- Grace is able to withdraw her submission. Practically speaking if this is done first thing tomorrow morning we can remove it from the Public Hearings agenda pack before it is released.
- Grace's submission is discoverable under LGOIMA, even if it is withdrawn. The reasoning being it was submitted into a public process, with full knowledge that it would be made public as part of that process.
- If Grace withdraws her submission, she is not able to replace it with a new one, now submissions have closed.
- Even if Grace withdraws her submission, and does not present to the Hearings Panel, she may still be showing Bias or pre-determination because of her comments made. LGNZ indicated she should not take part in Deliberations on aspects she has raised in her submission where she indicates Bias (Cycle Trails and Events Centre).
- If Grace decides to present to the Hearings Committee, (regardless of her submission standing, or being withdrawn) LGNZ strongly advise she does not take part of the Deliberations due to the risk of a Judicial Review of any decisions.
- There is a clear conflict, and a risk of Bias if Grace sits on the Hearings Committee when her husband presents.

We didn't discuss Grace remaining on the Hearings Committee if her submission remains – but Dr Reid noted the issue here is not actual Bias, but perceived Bias. It's more complicated and he indicated the Code of Conduct should be used to guide our response. (I've attached the Code of Conduct again)

Media interest is the next big question. We have issued the order of speakers, to the speakers – so this is public now although it hasn't gone to the media yet. Knowing Emily she will be all over this – so the cat is probably out of the bag already. I suggest both Ron takes the lead on responding to media queries regarding Grace's (and maybe her husbands) submissions. Even if Grace withdraws her submission, I expect Emily Ireland will find out and request a copy of what Grace submitted. Robyn CC - as Chair of the Hearings Committee you may also be asked for a comment, or be given a list of questions.

I expect this will go National, so we should expect Stuff, RNZ, Herald and maybe TV news interest. Marcus, Geri and I will be able to assist with responses.

Ron I understand you will be talking to Grace this evening. Knowing her thoughts will be helpful. At the moment I'm working on the assumption that Grace will want to be heard and probably won't withdraw the submission, or will withdraw and still present. Given this I advice is we need to protect the Councils' decision making process around the LTP. A judicial review is the last thing we need.

A reminder the actual voting on the LTP doesn't happen in Deliberations – it occurs at the end of June. LGNZ did not think Grace would be conflicted when voting on the LTP at that time.

I hope this helps. Good luck everyone.

Geoff Hamilton | Chief Executive | Tumuaki Rangatira
CARTERTON DISTRICT COUNCIL | TE KAUNIHERA-Ā-ROHE O TARATAHI

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From: Geoff Hamilton

Sent: Wednesday, May 8, 2024 9:04 PM

To: Mayor - Ron Mark <Mayor@cdc.govt.nz>; [REDACTED] s 7(2)(a) Dale Williams <dale@cdc.govt.nz>

Subject: URGENT - Grace Alying's LTP Submission

Importance: High

Greetings Ron, (copy Dale)

Sorry I didn't get to talk to you this evening.

I wish to raise an issue with one (potentially two) submissions that have been made on our Long-Term Plan consultation.

Grace Alying and her husband have both made submissions. My primary concern relates to Grace's submission, which on the face of it appears to show she has made a decision already regarding aspects of our LTP budgets already, specifically around cycle trails and the Events Centre and also relating to Community Services generally. This would be contrary to Code of Conduct expectations that Councillors remain impartial until hearing all the information. If sustained, this may preclude Grace from participating in part, or all of our Deliberations discussion next Thursday.

The Submissions (emphasis added)

Grace Alying

Really pleased that the council are prioritising core business of water and roading in this LTP. However the questions give those submitting no understanding of the impact the preferred optionTwo core concerns. Our population growth in Carterton is slowing; and as indicated in the LTP consultation document those aged 65+ will increase by 30%, (we currently have 25% of our population aged over 65). For a single pensioner approximately 20% of their superannuation will go toward council rates. While some may be entitled to a rates rebate, others are left struggling to pay. As our population continues to age, those able to pay our rates will decrease. With a slowing growth in our population the steep rates increases are spread against a smaller population (many of which are on fixed incomes) therefore hurting individual families more.

Due to the increased cost of roading, cuts need to be made in other areas of council business to ensure rates increases are reasonable and fair. I note an error between the listed figure of 2.4M on cycle paths in the consultation doc and \$3.035m in the Capex spreadsheet under community support "Carterton district trails project". Spending \$3million on cycle trails is not core business and in a time of nationwide belt tightening having our council investing in cycle paths is tone deaf to the concerns and struggles of our ratepayers. While central government is cutting costs and reducing staff numbers our council is continuing to spend, borrow

and splurge on projects that are outside of core business. When you look at councils operating spend over the next 10 years community service is the second largest cost at \$68.4Million (a 21% increase) ahead of our 3 waters. *The event centre continues to be* a significant cost burden to ratepayers and capex spending of over 1.1M in the first 3 years of the LTP is *a misappropriation of spending/borrowing*. Council needs to continue to focus spend on core business and cut its cloth to suit the tough economic times we are currently in.

Jonathan Alying

Local Government is at risk of losing its social license. I have lived (and paid rates) in Carterton for 5 years. During this time, the increase in rates has been justified as getting ahead of the infrastructure costs coming down the pike. Yet these rate hikes just keep on coming. The projected increase in total rate revenue over this 10 year period is entirely out of step with the overall growth across the district, and the need for Council management. It is necessary for Council to re-articulate its function: that is to provide the core services, such as roading, water, and waste. A proliferation of additional or expanded services is continuing to make Carterton a location in which it is not worth living.

I intend to move out of the District, as I do not see the value in comparison to the cost. I believe many others agree with me on this, but may not have the options I do.

I repeat, if Local Government does not reassess the prioritisation of its services and function, it will lose its social license. This would be a worse situation for all of us.

Code of Conduct

Our Code of Conduct (attached) states the Principles of good governance in Section 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.

The Local Authorities (Members Interests) Bill 1968 covers pecuniary interests and non-pecuniary interests. Non-pecuniary interests are not limited to actual bias but relates to the appearance or possibility of bias. Whether we believe that Grace is, or is 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.

External Advice

We contacted Taituara who spoke with LGNZ (Mike Reid) today and they responded to our query. Their feedback is Grace should not be participating in the Deliberations on the aspects she raised in her submission. They suggested

we obtain legal advice around Grace participating in the Deliberations regarding the submission made by her husband. I wanted to talk to the both of you before doing this.

In Summary

It is a very unusual situation to have a Councillor make a submission on our LTP. It's also a pretty blunt submission, using some strong language. In my opinion, Grace's submission on our LTP Consultation indicates bias, and suggests she has a closed mind or pre-determined aspects of the LTP Deliberations, especially around the Cycle Trails and Events Centre. It may be prudent to also consider excluding Grace from considering all aspects of Community Services / Community Development budgets for this LTP given her comments about this specific area in her submission.

The comments about rates growth raise questions generally about perceived bias, especially anything included in the LTP that is not *"core business of water and roading"*...

As you would expect, Grace has a close relationship with Jonathan. In my opinion she should also be excluded from discussing his submission.

Finally I think the Wairarapa Times Age is very likely to pick up on the fact that a Councillor has made a submission on our LTP using strong language and including a suggestion of misappropriation of funds. I think we need to deal with this quickly, before the Hearings papers are made public.

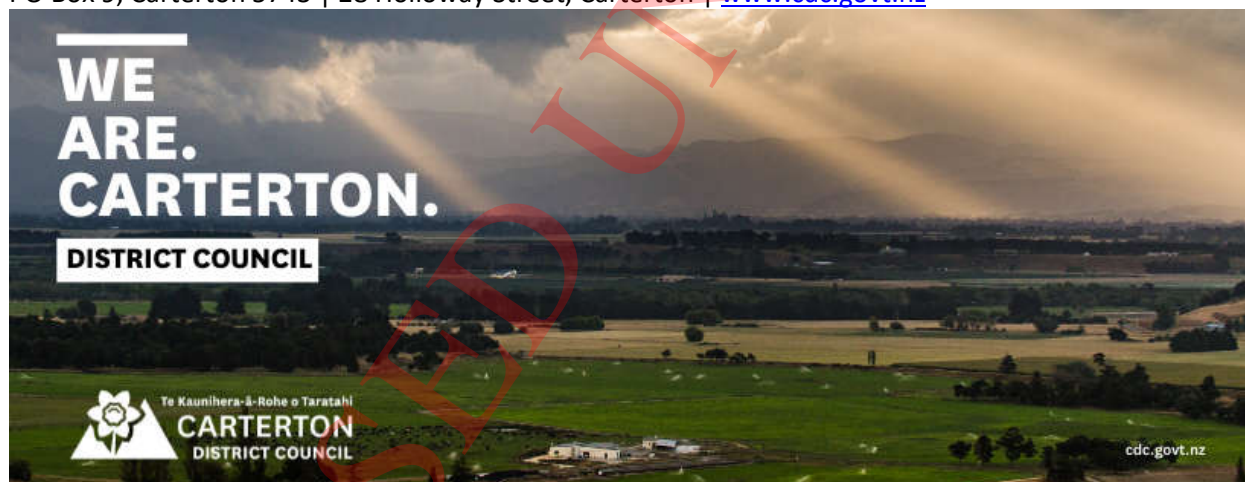
Very keen to get your views on the next steps. I'm available to talk on the phone tomorrow after 9am.

Many thanks

Geoff Hamilton | Chief Executive | Tumuaki Rangatira
CARTERTON DISTRICT COUNCIL | TE KAUNIHERA-Ā-ROHE O TARATAHI

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Carterton District Council **Te Kaunihera-ā-rohe o Taratahi**

Code of Conduct **Anga Tikanga Whanonga**

Adopted 26 October 2022

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

The Carterton 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 conduct for members of the local authority.

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.

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 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.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 "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.

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

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.

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.	

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

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 disclose 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 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 2: 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 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 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](https://www.netsafe.org.nz/).

Serah Pettigrew

From: Geoff Hamilton
Sent: Friday, 10 May 2024 11:16 am
To: Ron Mark; Dale Williams
Subject: Fwd: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union
Attachments: Letter to CDC (1)_240510_105654_240510_105810.pdf
Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hi Ron, Dale.

This just arrived.

Talk at midday.
G

Begin forwarded message:

From: Hannah Clow <hannah@fsu.nz>
Date: 10 May 2024 at 11:05:34 AM NZST
To: Geoff Hamilton <geoffh@cdc.govt.nz>
Subject: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

Caution: This email originated from outside the council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Please see attached correspondence regarding the Council's alleged prejudice against Councillor Grace Ayling regarding her submissions on the Long-term Term Plan.

Kind regards,

Hannah Clow

Senior In-house Counsel | Free Speech Union

Email: hannah@fsu.nz

Free Speech Union (New Zealand) Incorporated | PO Box 10512, The Terrace, Wellington 6143 | www.fsu.nz

The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech, [click here to receive our updates](#)



10 May 2024

Geoff Hamilton
Chief Executive
Carterton District Council
Geoff.Hamilton@CDC.govt.nz

Alleged ideological prejudice against an elected representative

Good morning,

1. The Free Speech Union ("the FSU") is a registered trade union with a mission to fight for, protect, and expand New Zealanders' rights to freedom of speech, conscience, and intellectual inquiry. We are the largest organisation in New Zealand defending civil liberties. We envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas. This is especially important within our government structures, and with respect to the speech rights of individuals elected to represent other New Zealanders.
2. We write to you concerning correspondence we received from Councillor Grace Ayling. We understand she has submitted on the Long-Term Plan on which Carterton District Council (CDC) is currently consulting.
3. We believe there is opposition to Councillor Ayling submitting a written submission (which she intends on submitting orally), and participating in the Council's deliberations related to the public consultation. This opposition stems from allegations her submission appears to constitute a predetermination, which is contrary to the CDC Code of Conduct for elected members. There are also concerns related to language used in Councillor Ayling's written submission, namely the terms, "tone deaf", "splurge", and "misappropriation". Having reviewed Councillor Ayling's submission, we believe her use of these terms has been mischaracterised.
4. We write to remind you of the very function Councillor Ayling has been elected to perform, and her right to use language she believes accurately articulates the conduct or plans of the Council. Further, we remind you Councillor Ayling is entitled to operate out of her worldview and value structure, which may be informed by your political perspectives, without discrimination. These rights are protected under the New Zealand Bill of Rights Act 1990, sections 13 and 14.
5. It is nonsense to suggest by having longstanding perspectives related to Council funding for local projects, such as the Carterton Events Centre, or infrastructure funding, such as the Bike/Cycle Trail, Councillor Ayling is unwilling/unable to engage with submissions from the public with an open mind. We have seen no evidence to suggest that she is biased or any more predetermined on these or other matters than other Councillors on the Council. We are concerned the difference is simply the content of her perspectives (questioning aspects of the Council's Long-Term Plan).

6. We remind you that it is not uncommon, at the central government level and at the local government level, for elected representatives to submit to the body on which they sit.
7. We understand that you have sought legal advice from Local Government New Zealand (LGNZ), which has advised you to exclude Councillor Ayling from the deliberations of Council. We write to advise considerable caution in this action, as we would be inclined to consider legal action subsequent to this.
8. At this stage, we have not contacted the media, which we believe would be interested in this case. We invite your comment on these issues before we take any further steps.

Yours faithfully,

Free Speech Union (New Zealand) Inc.



Hannah Clow

Senior In-house Counsel

hannah@fsu.nz

Serah Pettigrew

From: Dale Williams
Sent: Friday, 10 May 2024 12:38 pm
To: Mayor - Ron Mark; Geoff Hamilton
Subject: Re: The question of Cr Aylings Eligability to Sit on the CDC LTP Hearings Committee.

Follow Up Flag: Follow up
Flag Status: Completed

Thanks guys. It's a very difficult situation and we are forced into reaction and damage control by Grace's action and stance. But it is what it is. As the process is about to go live here Karon, Marcus et al are awaiting further instructions and Robyn as chair is preparing for the hearings, so there needs to be an agreed position from us on what the process will be and how we want it managed.. So that all parties can prepare accordingly. Cheers Dale

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From: Mayor - Ron Mark <Mayor@cdc.govt.nz>
Sent: Friday, May 10, 2024 12:02:21 PM
To: Geoff Hamilton <geoffh@cdc.govt.nz>; Dale Williams <dale@cdc.govt.nz>
Subject: The question of Cr Aylings Eligability to Sit on the CDC LTP Hearings Committee.

Afternoon gents,

I have discussed the situation as you have both put it to me and noted that you have elevated your concerns to the proposed Chair and to CDC staff.

As agreed, I met with Grace last night at 8pm to discuss the concerns you expressed.

I asked her as I said I would if she would consider withdrawing her submission and just make a more moderated oral submission. I made her aware of the LGNZ advice that had been canvassed and what it said.

The following is her answer.

"Geoff was correct in his assessment that I would be unlikely to remove my written submission. The way in which Dale is interpreting the words I used in my submission is incorrect and inflammatory. I am no more conflicted than any other councillor at the table, and I expect to be heard at the hearing, and to participate in all aspects of the deliberation, except with regards to Jonathan's submission (I can completely understand the conflict of interest in that case)."

I also note that copying in Cr Cherry-Campbell Chair of the Hearings Committee and CDC staff without advising me that you intended doing so has, potentially changed the discussion environment and my ability to have any influence.

I reiterate the consequences of disbaring her may well prove counterproductive to your desire to avoid adverse media reporting and scrutiny.

I'm now in the next meeting. We are aiming to finish at 1.30pm.

I will be ready to discuss the matter then should you feel it necessary.

Regards,

Ron

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RELEASED UNDER LGOIMA

Out of scope

From: Solitaire Robertson <solitaire@cdc.govt.nz>
Sent: Friday, May 10, 2024 11:37 AM
To: Geoff Hamilton <geoffh@cdc.govt.nz>
Cc: Geri Brooking <geri@cdc.govt.nz>; Karon Ashforth <karon@cdc.govt.nz>; Johannes Ferreira <johannes@cdc.govt.nz>; Glenda Seville <glenda@cdc.govt.nz>; Marcus Anselm <marcus@cdc.govt.nz>
Subject: RE: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

Also interesting to note that the free speech union was set up Jordan Williams who also set up the taxpayers union..... jut screen shot below of the team members for FSU, note the maiden name still being used

TEAM MEMBERS



Jonathan Ayling

Chief Executive

Jonathan has worked in Wellington for 8 years across roles as a Beehive staffer, senior political advisor, and in the NGO sector. In addition to leading the work at the Free Speech Union, he and his wife own a vineyard in the Wairarapa (which is almost as stressful as politics!).



Grace Watling

Engagement Manager

With previous experience working in media and politics, Grace is a 'make things happen' kind of woman, who keeps us all in line. In addition to working as a District Councillor, and raising a young family, Grace has the great job of being the face of the union to our many fantastic supporters.



Adam Young

Legal Drafting and Research

A fifth-year law student, Adam puts his skills to work as the powerhouse behind many of the letters, OIAs, submissions, reports, and emails that we produce. At the back-end of the FSU, Adam does a lot of the leg work- the team wouldn't function without him.



From: Geoff Hamilton <geoffh@cdc.govt.nz>
Sent: Friday, May 10, 2024 11:26 AM
To: Solitaire Robertson <solitaire@cdc.govt.nz>
Cc: Geri Brooking <geri@cdc.govt.nz>; Karon Ashforth <karon@cdc.govt.nz>; Johannes Ferreira <johannes@cdc.govt.nz>; Glenda Seville <glenda@cdc.govt.nz>; Marcus Anselm <marcus@cdc.govt.nz>
Subject: Re: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

That's interesting.

Also very interesting they refer to my email, which was only sent to Ron, Dale and Robyn CC.

And appears to have been leaked to Grace.



On 10/05/2024, at 11:20 AM, Solitaire Robertson <solitaire@cdc.govt.nz> wrote:

Her husband is the CEO of this organisation.....



SOLITAIRE ROBERTSON | Planning & Regulatory Services Manager | **CARTERTON DISTRICT COUNCIL**

Phone: 06 379 4030 | DDI: 06 379 40 48 | Email: solitaire@cdc.govt.nz

PO Box 9, Carterton 5743 | 28 Holloway Street, Carterton 5713 | Website: www.cdc.govt.nz

From: Geoff Hamilton <geoffh@cdc.govt.nz>
Sent: Friday, May 10, 2024 11:17 AM
To: Geri Brooking <geri@cdc.govt.nz>; Karon Ashforth <karon@cdc.govt.nz>; Johannes Ferreira <johannes@cdc.govt.nz>; Glenda Seville <glenda@cdc.govt.nz>; Solitaire Robertson <solitaire@cdc.govt.nz>; Marcus Anselm <marcus@cdc.govt.nz>
Subject: Fwd: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

In confidence team.

I have forwarded to the Mayor and Deputy Mayor immediately.

Regards
Geoff

Begin forwarded message:

From: Hannah Clow <hannah@fsu.nz>
Date: 10 May 2024 at 11:05:34 AM NZST
To: Geoff Hamilton <geoffh@cdc.govt.nz>
Subject: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

Caution: This email originated from outside the council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Please see attached correspondence regarding the Council's alleged prejudice against Councillor Grace Ayling regarding her submissions on the Long-term Term Plan.

Kind regards,

Hannah Clow
Senior In-house Counsel | Free Speech Union
Email: hannah@fsu.nz

Free Speech Union (New Zealand) Incorporated | PO Box 10512, The Terrace, Wellington 6143 www.fsu.nz

The Free Speech Union is a registered trade union under the Employment Relations Act 2000. If you would like to stand with us to protect and promote free speech, [click here to receive our updates](#)

Out of scope

From: Geoff Hamilton

Sent: Monday, May 13, 2024 4:47 PM

To: Robyn Cherry-Campbell <robyn@cdc.govt.nz>

Cc: Philip Jones s 7(2)(a)

Subject: FW: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

Kia Robyn (copy Philip Jones)

Attached is a letter received from the Free Speech Union regarding Councillor Alying's submission to our LTP Consultation, for your consideration.

The CEO of the Free Speech Union is Grace's Husband – Jonathon Alying https://www.fsu.nz/meet_the_team

If you have any questions please don't hesitate to ask.

Kind regards

Geoff Hamilton | Chief Executive | Tumuaki Rangatira

CARTERTON DISTRICT COUNCIL | TE KAUNIHERA-Ā-ROHE O TARATAHI

geoffh@cdc.govt.nz | 0274 872 099 | 06 379 4030

PO Box 9, Carterton 5743 | 28 Holloway Street, Carterton | www.cdc.govt.nz



From: Hannah Clow <hannah@fsu.nz>

Sent: Friday, May 10, 2024 11:05 AM

To: Geoff Hamilton <geoffh@cdc.govt.nz>

Subject: CDC's alleged prejudice against Councillor re. Long-Term Plan - Free Speech Union

Caution: This email originated from outside the council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

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Kind regards,

Hannah Clow

Senior In-house Counsel | Free Speech Union

Email: hannah@fsu.nz

Free Speech Union (New Zealand) Incorporated | PO Box 10512, The Terrace, Wellington 6143 www.fsu.nz

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10 May 2024

Geoff Hamilton
Chief Executive
Carterton District Council
Geoff.Hamilton@CDC.govt.nz

Alleged ideological prejudice against an elected representative

Good morning,

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4. We write to remind you of the very function Councillor Ayling has been elected to perform, and her right to use language she believes accurately articulates the conduct or plans of the Council. Further, we remind you Councillor Ayling is entitled to operate out of her worldview and value structure, which may be informed by your political perspectives, without discrimination. These rights are protected under the New Zealand Bill of Rights Act 1990, sections 13 and 14.
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8. At this stage, we have not contacted the media, which we believe would be interested in this case. We invite your comment on these issues before we take any further steps.

Yours faithfully,

Free Speech Union (New Zealand) Inc.



Hannah Clow

Senior In-house Counsel

hannah@fsu.nz

Serah Pettigrew

From: Rob Stockley Carterton <robstockleycarterton@s7(2)(a)>
Sent: Monday, 13 May 2024 12:24 am
To: Mayor - Ron Mark
Cc: Dale Williams; Geoff Hamilton; Grace Ayling
Subject: LTP Submissions Hearing

Follow Up Flag: Follow up
Flag Status: Completed

Caution: This email originated from outside the council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Your Worship,

I wish to express my surprise and concern upon discovering that Cr Ayling is simultaneously a submitter to the LTP Consultation, and a member of the Hearings Committee.

In Cr Ayling's submission she expresses some very strong personal positions in relation to Community Services. She attempts to back these up with misleading numbers taken from the Prospective Financial Statements.

- Cr Ayling decries CS for increasing 21% over the ten year plan. That equates to only 1.9% per annum which is less than RBNZ inflation target midpoint 2%, and less than the average increase in expenses across the whole of council 2.3%.

- Cr Ayling claims that CS is Carterton's second largest expense behind three waters. This is not true. Three waters \$110M. Roading \$90M. Community Services \$70M.

- Cr Ayling makes a dubious comparison between the \$2.4M rating impact of cycle trails, and the \$3M capex for cycle trails listed in the financial statements. I was on the trails working group. I know that the trails project was predicated on gaining external subsidies. Please confirm whether the difference is due to an error made by Cr Ayling, or subsidies as I suspect.

Cr Ayling's submission gives the appearance of strong bias against Community Services and in particular cycle trails. Cr Ayling's position on these matters appears to be predetermined. I don't hold confidence that public submissions in favour of CS or cycle trails will receive a fair hearing while Cr Ayling is part of the process. Cr Ayling has revealed her hand as putting personal interests ahead of the community's interests.

OAG provides clear guidance on conflicts of interest due to bias and predetermination. Indeed, OAG example 7 (link below) is a close match to what has happened here. OAG suggests that Cr Ayling should not participate in the hearing of submissions, or in subsequent decisions relating to them (OAG para 7.47). I put it to you that Cr Ayling should be invited to absent herself from the remainder of the LTP process. If she refuses, then it will be incumbent on Your Worship to ensure that OAG expectations are met.

OAG Scenario 7: Making a public submission in a private capacity
<https://oag.parliament.nz/2020/conflicts/part7.htm#scenario7>

I appreciate that this email may come across a bit harsh. I've reached out to Cr Ayling in three different ways this weekend. I have been unable to establish a conversation with her to establish whether her actions are simply naive. So, given the short time before hearings commence, I have to assume Cr Ayling's actions are deliberate. If it transpires that her actions were naive and misguided then I wouldn't hold that against her. I nearly made the same mistake in 2021. Regardless, Cr Ayling has made her participation in the 2024 LTP process untenable.

To be clear. This is not a formal complaint. I await your response.

Yours sincerely,
Rob Stockley

Out of scope

From: Robyn Cherry-Campbell <robyn@cdc.govt.nz>
Sent: Wednesday, May 15, 2024 6:28 PM
To: Marcus Anselm <marcus@cdc.govt.nz>
Cc: Geoff Hamilton <geoffh@cdc.govt.nz>; Karon Ashforth <karon@cdc.govt.nz>
Subject: Statement I read out in the hearings committee - attached as requested

Evening,

Attached are the notes I read out this morning.

Nga mihi
Robyn

Robyn Cherry-Campbell | Councillor | **Carterton District Council**

Mobile: 021 155 6821 | Email: robyn@cdc.govt.nz

PO Box 9, Carterton 5743 | 28 Holloway Street, Carterton | Website: www.cdc.govt.nz

As Chair of the Hearings Committee, it is my role to highlight any conflict of interests of any members of the Hearings Committee.

In reading the submissions I note the submission from Councillor Ayling, in which there are four statements indicating a predetermined view on what council should be actioning. These statements are as follows:

1. With a slowing growth in our population the steep rates increases are spread against a smaller population (many of which are on fixed incomes) therefore hurting individual families more
2. Spending \$3million on cycle trails is not core business and in a time of nationwide belt tightening having our council investing in cycle paths is tone deaf to the concerns and struggles of our ratepayers.
3. The event centre continues to be a significant cost burden to ratepayers and capex spending of over 1.1M in the first 3 years of the LTP is a misappropriation of spending/borrowing.
4. Council needs to continue to focus spend on core business and cut its cloth to suit the tough economic times we are currently in.

Based on the information provided by the Office of the Auditor General, I make the following comments:

"There is 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. This is not limited to actual bias but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done but should be seen to be done.

Whether or not members believe they are not biased is irrelevant. Members focus should be on the nature of the 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 the members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind")"

As Councillor Ayling's statements may make people think she is not going to listen to, or consider all, relevant information before she contributes to the decision(s) - this is clear predetermination.

The Councillor is excluded from the submission process as an elected member as predetermination is a clear conflict of interest. The Councillor may remain through both the hearings and deliberation process (as a submitter, ratepayer and member of the public), but because of predetermination shall not be participating in questioning of submitters or of deliberations by Council as she has already predetermined what outcome should be achieved without hearing from the submitters.