

# Auckland Council Governance Manual

## He Puka Matarau



Updated 6 January 2020

## 2. Overview

This section gives a broad overview of Auckland Council and explains how its various structures fit together.

### 2.1 What is Auckland Council

- a. Auckland Council is the local authority that is responsible for all local government decisions and responsibilities in the Auckland region.
- b. In New Zealand, central government has created a local government structure for every region and district in New Zealand. The key piece of legislation setting out local government responsibilities and powers is the Local Government Act 2002. The purpose of this Act is to make sure that there is “*democratic and effective local government that recognises the diversity of New Zealand communities*” [1]. This is done through every region and district having a “local authority” that is accountable to their community, and plays a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions [2].
- c. New Zealand has two types of local authorities – territorial authorities (comprising district and city councils) and regional councils. Auckland Council is a territorial authority which also has the responsibilities, duties and powers of a regional council [3]. This makes Auckland Council a “unitary authority”. Other unitary authorities include Gisborne District Council and Nelson City Council. Auckland Council, like all other local authorities, is subject to the Local Government Act 2002 and other Acts that apply to local government, but has additional legislation unique to Tāmaki Makaurau.
- d. Auckland Council was created in November 2010 through the Local Government (Auckland Council) Act 2009. Auckland Council replaced seven territorial authorities and the Auckland Regional Council with the intent to deliver strong regional decision-making, complemented by decisions that meet diverse local needs and interests
- e. Auckland Council’s governance is unique – it is the only local authority in New Zealand with a two limb governance structure comprising the Governing Body and 21 local boards, and where decision-making responsibilities of Auckland Council are shared between the Governing Body and local boards [4]. The Independent Māori Statutory Board is another unique element in the governance structure.
- f. The Local Government (Auckland Council) Act sets out the statutory responsibilities of the Governing Body and local boards. It also provides principles for the Governing Body to decide how to allocate non-regulatory activities to itself or local boards; and the Governing Body's ability to delegate some responsibilities to local boards. For

further information, see Section 10: How council decisions are made. Once an activity is allocated to a local board, responsibility for that activity is with the local board, not with the Governing Body. The list of Governing Body and local board responsibilities is set out every year in the council annual plan (or the long-term plan).

## **2.2 Purpose, role, status, powers and functions**

The purpose, role, status, powers and functions for local authorities generally are set out in the Local Government Act [1].

a. The **purpose** of local government is to:

- enable democratic local decision-making and action by, and on behalf of, communities
- promote the social, economic, environmental and cultural well-being of communities in the present and for the future.

b. The **role** of a local authority is to:

- give effect, in relation to its district or region, to the purpose of local government; and
- perform the duties, and exercise the rights, conferred on it by or under the Local Government Act (and any other enactment).

c. **Status**

- A local authority is a corporate body which continues to exist despite changes in membership [2]. As a legal entity it can hold property and enter contracts in its own name; it is separate to any of the individuals that comprise the elected governors or management.

d. **Powers**

- Any council that is a territorial authority must exercise its powers under this section wholly or principally for the benefit of its district.
- Any council that is a regional council must exercise its powers under this section wholly or principally for the benefit of all or a significant part of its region, and not for the benefit of a single district.
- As a unitary authority. Auckland Council is both a regional and district council.

## **2.3 Principles of Local Government (section 14)**

a. The Local Government Act sets out principles relating to local authorities. These include:

- openness and transparency
- democratic accountability
- implementing identified priorities effectively and efficiently
- making itself aware of the views of its communities
- recognising diversity of the community and community interests

- taking account of both current and future communities
  - the impact of decisions on the wellbeings listed in the purpose of local government
  - undertaking commercial interests in accordance with sound business practices
  - assessing expected returns and the associated risks from any commercial activities it invests or undertakes
  - ensuring prudent stewardship of its resources by planning effectively for the future management of its assets
  - taking a sustainable approach to social, economic, and cultural well-being of people and communities; maintaining and enhancing the quality of the environment; and the reasonably foreseeable needs of future generations
- b. These principles are reflected in the Local Government Act which sets out a number of principles that govern the council's overall actions [1]. In particular, in its governance role, the council must:
- ensure that its role, and the expected conduct of elected members, is clear and understood by elected members and the community
  - ensure that its governance structures and processes are effective, open, and transparent
  - ensure that, so far as is practicable, decision-making processes are separated for regulatory and non-regulatory responsibilities
  - be a good employer
  - ensure that the relationship between elected members and management of the council is effective and understood.

#### **2.4.1 Auckland Council powers and responsibilities**

- a. In addition to the powers, responsibilities and duties set out in the Local Government Act, the Local Government (Auckland Council) Act sets out the decision-making responsibilities of the Governing Body and local boards and the unique governance structure. Under the scheme:
- Both the Governing Body and local boards are responsible and democratically accountable for the decision-making of Auckland Council.
  - Whether responsibility for making any particular decision rests with the Governing Body or one or more of the local boards depends on the nature of the decision being made [1].

#### **2.4.2 Auckland Council's structures and how they fit together**

- a. Auckland Council is a unitary authority with decision-making shared between the governing body (mayor and councillors) and local boards.

- b. The Governing Body appoints the chief executive who is responsible for employing all Auckland Council staff. The chief executive advises the Governing Body and local boards, and is responsible for implementing their decisions.
- c. The legislation creating Auckland Council also established council-controlled organisations (CCOs). CCOs are part of the council group and manage key activities including roading, public transport, water and wastewater. More detail – including the legislative status of the CCOs and which exist at the discretion of the council.
- d. In setting up Auckland Council, Parliament established the Independent Māori Statutory Board (see Section 7). This board provides advice to the council to assist the council with its decision-making by promoting matters of significance to Māori and ensuring the council meets its statutory obligations relating to Māori and the Treaty of Waitangi, and also nominating members to council committees that deal with the management and stewardship of natural and physical resources.

### **2.4.3 Leadership**

- a. The mayor is the head of the council's Governing Body and provides leadership to other elected members and the organisation (see Section 4). The mayor's powers are set out in the Local Government (Auckland Council) Act and include:
  - promoting a vision for Auckland
  - providing leadership to achieve the vision
  - leading the development of council plans, policies and budgets
  - ensuring effective engagement between Auckland Council and the people of Tāmaki Makaurau, including those too young to vote
- b. The mayor is also responsible for appointing the deputy mayor, establishing the Governing Body's committees and appointing committee chairs.
- c. Local boards provide local leadership. They were established to enable democratic decision-making by, and on behalf of, communities within their area and to better enable the purpose of local government to be given effect to within the local board area [1].
- d. Local board functions, duties and powers, include:
  - developing a local board plan every three years in consultation with its community
  - undertaking allocated decision-making (see the Allocation Table)
  - monitoring and implementing the local board agreement
  - communicating with community organisations within its local board area
  - undertaking responsibilities delegated to it
  - considering and reporting issues [2].

#### **2.4.4 Who speaks for Auckland Council?**

- a. A range of people can speak for Auckland Council, depending on the context. The mayor is the spokesperson for the Governing Body. However, if decision-making on a matter is delegated to a committee then the committee chair will act as spokesperson.
- b. A local board chair is the spokesperson for the local board. The chief executive is the spokesperson for operational or staff matters.
- c. These relationships are set out in the council's Code of Conduct.

#### **2.4.5 The council and the people of Tāmaki Makaurau**

- a. After being elected, but before members can act, members must make a declaration that they will act in the best interests of the area for which they are responsible. For Governing Body members, this means acting in the best interests of Tāmaki Makaurau as a whole; for local board members, acting in the best interests of their respective local board area.
- b. Ward councillors are elected on a ward basis to ensure effective representation of the communities contained within wards. However, councillors are required to act in the best interests of the whole of Tāmaki Makaurau and need to be careful local concerns do not dominate.
- c. Local board members are elected to ensure effective representation of the communities contained within the local board area. Some local boards are split into subdivisions. Local board members who are elected on the basis of subdivisions should also take care that they act in the best interests of the local board area, so that the interests of the communities in the subdivision do not dominate the interests of communities within the wider local board area.
- d. It can be confusing for constituents to know who to approach. Essentially, constituents can go to councillors for regional matters, including rates, and local board members for local matters. However, ward councillors and local board members may need to work together to resolve some issues.

#### **2.4.6 Funding**

- a. The council has a range of funding sources for capital and operating expenditure. Rates are the most well-known source, however, rates makes up less than half of the council's income. Other funding sources include:
  - grants and subsidies, including government subsidies
  - development or financial contributions
  - targeted rates
  - CCO profits and net rental and interest/dividends from investments
  - borrowing (loans and bonds)
  - fees and charges
  - trusts, bequests and other reserve funds

- surpluses
  - other funding sources
- b. The full range of funding sources, and how the council applies these to fund particular council activities, is set out in the council's revenue and financial policy.
  - c. The council is required to make sure that each year operating revenues are set at a level sufficient to meet that year's projected operating expenses. This is called the "balanced budget" requirement. Each year the council adopts an annual plan setting out the revenues and expenses. There can be circumstances when the council can set revenues at a different level to its expenses, provided that it is still financially prudent to do so.
  - d. Each year, by 30 June, the council adopts an annual plan setting out the council budget for the next financial year (starting from 1 July), and summarising the expected revenue and expenses. The council then sets any rates for that financial year.

## **2.5 Footnotes**

### **2.1 What is Auckland Council**

- [1] Section 3 Local Government Act 2002
- [2] Section 3 Local Government Act 2002
- [3] Section 6 Local Government (Auckland Council) Act 2009
- [4] Section 7 Local Government (Auckland Council) Act 2009

### **2.2 Purpose, role, status, powers and functions**

- [1] Sections 9 – 13 Local Government Act 2002
- [2] Section 12 Local Government Act 2002
- [3] Section 12 Local Government Act 2002

### **2.3 Principles of Local Government**

- [1] Sections 14(1) and 39 section 12 Local Government Act 2002
- [2] Section 14(2) Section 12 Local Government Act 2002

#### **2.4.1 Auckland Council powers and responsibilities**

- [1] Section 14 Local Government (Auckland Council) Act 2009

#### **2.4.3 Leadership**

- [1] Section 10 Local Government (Auckland Council) Act 2002
- [2] Section 14 Local Government (Auckland Council) Act 2002

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 8. Advisory panels

Auckland Council's advisory panels offer advice on policies, strategic issues and matters of particular interest to their communities.

### 8.1 Role and function

- a. Auckland Council's advisory panels do not have any decision-making power. In this way, the advisory panels are distinct from the council's committees.
- b. The advisory panels' role is to advise the council on:
  - relevant policies, plans and strategies
  - regional and strategic matters, including those dealt with by council-controlled organisations
  - any matter of particular interest or concern to their respective communities.
- c. The council has demographic and sector advisory panels.

### Legislative requirements

- a. When making a decision, the council is required to take account of the diversity of the community, and the community's interests, within its district or region [1].
- b. One of the roles of the mayor of Auckland is to ensure there is effective engagement between Auckland Council and the people of Tāmaki Makaurau, including those too young to vote [2]. The mayor also has the power to establish processes and mechanisms for the council to engage, whether generally or particularly (e.g. with the people of a cultural, ethnic, geographic or other community of interest) [3].
- c. Advisory panels are one of the council's mechanisms used to fulfil these legislative requirements.

### 8.2 Demographic panels

#### 8.2.1 The six demographic panels

- a. Auckland Council has six demographic advisory panels:
  - Disability
  - Ethnic Peoples



- Pacific Peoples
  - Rainbow Communities
  - Seniors
  - Youth
- b. These panels advise the Governing Body and staff on regional and strategic matters within the remit of the Auckland Plan, and offer strategic advice on other council plans and strategies that impact their communities. Local boards may also engage with the panels when they wish to seek panels' views on matters of relevance to both the local boards and the Governing Body.
- c. For more information on the council's demographic panels, see the Terms of Reference for Demographic Advisory Panels 2019-2022.

### **8.2.2 Membership**

- a. The mayor appoints demographic panel members, with the endorsement of the Governing Body, based on:
- experience and sound understanding of their respective communities
  - understanding of Te Tiriti O Waitangi
  - ability to think strategically and critically to offer high-level policy and strategic advice
  - commitment to scheduled panel meetings and workshops.
- b. The selection process is open to the public for applications. To minimise any conflicts of interest, elected members and staff of the council family staff are not eligible to be members.
- c. Each advisory panel has between eight and twelve members who are all Auckland-based.
- d. Members of the Youth Advisory Panel are aged between 14 and 24 years at the time of appointment. Members of the Seniors Advisory Panel are over 65 years. For other panels, members must be over 18 years old.
- e. All advisory panel members must be either New Zealand citizens or permanent residents. They are not appointed to represent any particular organisation or entity.
- f. Members must abide by the Code of Conduct for Members of Auckland Council Advisory Panels [1].

### **8.2.3 Meetings and agendas**

- a. Each panel has three scheduled meetings and up to seven workshops.
- b. Scheduled meetings are open to the public and any of the council's elected members. Workshops are also held to discuss plans under development, and these are for panel members, Governing Body members and relevant council staff.
- c. Work programmes and strategic agendas are developed to focus discussions and enable integrated input across the panels into matters of common relevance such as programmes of work under the Auckland Plan's Belonging and Participation outcome. For this term, the panels will also focus on climate change and the environment.
- d. Liaison councillors and council staff assist panel members in developing the work programmes and any subsequent changes. These are then approved by the Parks, Arts, Community and Events Committee.
- e. Advisory panels are encouraged to facilitate occasional community forums or online engagement between community members and council staff. Panel members work with staff where appropriate to ensure these activities complement council engagement commitments and processes.

### **8.2.4 Engagement with the council**

- a. A key way in which the advisory panels engage with the council is through liaison councillors.
- b. The mayor appoints a chief liaison councillor to:
  - support a more integrated approach across the panels
  - provide connections with the Governing Body
  - advise the mayor on panel issues.
- c. The mayor also appoints a liaison councillor for each of the six advisory panels. The liaison councillor:
  - ensures the Governing Body is aware of a panel's feedback on council issues and their advice on the needs and views of diverse communities
  - helps align the panels' strategic priorities with those of the Governing Body
  - actively engages in panel meetings and workshops
  - assists the panel chair and lead officer in setting meeting agendas.

### **8.2.5 Resourcing, fees and expenses**

- a. The council sets an annual budget for the panels.
- b. All panel members are entitled to meeting fees and reimbursement of expenses. These are determined by the Auckland Council Fees Framework and Expenses Policy for Appointed Members.

## **8.3 Sector panels**

### **8.3.1 Auckland City Centre Advisory Board**

- a. The Auckland City Centre Advisory Board advises the Governing Body, the Waitematā Local Board and council-controlled organisations on how best to achieve the vision and strategic outcomes of the Auckland Plan, the City Centre Masterplan, the expenditure of the city centre targeted rate and other city centre issues.
- b. The Board meets every month and comprises representatives of city centre business and resident groups who pay the city centre targeted rate. The membership also includes the mayor, one position for mana whenua, a councillor and a Waitematā Local Board member. The chair is elected by the board members. Members are unpaid.

For more information, including details about the composition of the Board, see the Terms of Reference for the Auckland City Centre Advisory Board.

### **8.3.2 Historic Heritage Advisory Panel**

- a. The Historic Heritage Advisory Panel was established in June 2011 to provide a forum considering issues affecting the region's historic heritage. As one of council's engagement mechanisms with the heritage sector in Auckland, the Heritage Advisory Panel provides advice to the governing body and council staff within the remit of historic heritage issues on the following areas:
  - council policies, plans, processes and strategies
  - regional and strategic matters
  - any matter of particular interest or concern to heritage communities.
- b. Members have a deep understanding of historic heritage issues and include heritage experts and representatives of Auckland's heritage community.
- c. The members of the Panel are selected by the liaison councillor and the mayor, in consultation with relevant officers, following a public call for expressions of interest. The chair of the Panel is elected by panel members.

- d. The panel meets every two months, and members are entitled to meeting fees as per the Auckland Council Fees Framework for Appointed Members unless they are representatives of an organisation or sector group or paid by the organisation they represent. Elected members and members of the Independent Māori Statutory Board are not entitled to meeting fees.

For more information, see the Heritage Advisory Panel Terms of Reference.

### **8.3.3 Rural Advisory Panel**

- a. The Rural Advisory Panel was set up in 2010 to contribute to the rural outcomes of council plans which were later incorporated into the Auckland Plan. The panel's role is to communicate shared interests of the rural sector and advise on policies and plans specific to this sector.
- b. The Rural Advisory Panel meets every two months. It comprises representatives of the rural industries of Tāmaki Makaurau, two councillors and three local board members from the Franklin, Rodney and Waitakere Ranges local board areas.
- c. Members of the panel are selected by the mayor in consultation with rural councillors in consultation with relevant officers. The chair is a councillor, appointed by the Mayor.
- d. Panel members are entitled to meeting fees as per the Auckland Council Fees Framework for Appointed Members unless they are representatives of an organisation or sector group or paid by the organisation they represent. Elected members and members of the Independent Māori Statutory Board are not entitled to meeting fees.

For more information see the Terms of Reference for the Rural Advisory Panel.

## **8.4 Footnotes**

### **8.1 Role and function**

[1] Local Government Act 2002, s 14(1)(c)(i)

[2] Local Government (Auckland Council) Act 2009, s 9(2)

[3] Local Government (Auckland Council) Act 2009, s 9(3)

### **8.2.2 Membership**

[1] The Code of Conduct for Members of Auckland Council Advisory Panels is included as Appendix A in the Terms of Reference for Demographic Advisory Panels 2016-2019

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

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**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 13. Te Tiriti o Waitangi and co-governance arrangements

This section sets out how te Tiriti o Waitangi / the Treaty of Waitangi applies to the council in a governance context and also discusses the co-governance arrangements, where the council shares governance of resources or assets with another entity. Many of these arrangements have arisen out of Tiriti / Treaty settlements.

### 13.1 Te Tiriti o Waitangi / the Treaty of Waitangi

- a. Te Tiriti o Waitangi / the Treaty of Waitangi is New Zealand's founding document and is one source of our constitution. It is an enduring and living document which laid the foundation for an ongoing and sustainable partnership between Māori and the Crown.
- b. Various courts have recognised the principles of te Tiriti / the Treaty as including:
  - rangatiratanga (chieftainship)
  - reciprocity
  - partnership
  - active protection
  - options
  - mutual benefit
  - the right of development
  - redress
- c. The Crown is the primary Tiriti / Treaty partner responsible for the Tiriti / Treaty relationship. However, under various statutes, Parliament has directed the council to give effect to certain principles and follow particular processes when making decisions that affect Māori. In particular, the principles and requirements in Parts 2 and 6 of the Local Government Act are intended to facilitate participation by Māori in council decision-making [1]. For further information see Section 10: How council decisions are made.
- d. The council is committed to operating in a manner that recognises and respects the significance of te Tiriti / the Treaty. This commitment is set out in the Auckland Plan. To honour this commitment, the principles of te Tiriti / the Treaty should be used as a

guide to inform the council's approach when making decisions about matters affecting Māori.

### **13.2 Auckland Council obligations**

The council has developed the following responses to meet its commitment to te Tiriti / the Treaty and its statutory obligations:

- a. Whiria Te Muka Tangata – the Māori Responsiveness Framework
  - This was signalled in the Auckland Plan. It enhances and guides the council family's responsiveness to Māori. One of the goals of the framework is to achieve effective Māori participation in democracy, placing emphasis on the council's democratic structures and decision-making processes. For more information, on the Māori Responsiveness Framework, see Māori Responsiveness Framework on Auckland Council's website [1].
- b. Māori impact statements in council decision-making reports
  - Reports for the Governing Body, local boards and their committees must include a Māori impact statement. This is so that decision-makers can take into account any impact on Māori in their decision-making. Māori impact statements should address:
    - i) whether the issue requires communication or engagement with Māori and, if so, who was involved, what they said and the result
    - ii) whether the issue relates to Māori wellbeing and, if so, the statement should explain the situation and the actions underway or intended and the expected outcomes
    - iii) whether the issue provides or has the potential to contribute to the development of Māori capacity and, if so, the statement should explain the situation and the actions underway or intended and the expected outcomes
    - iv) whether the matter has benefits or adverse effects for Māori
- c. Relationship agreements with Tāmaki Makaurau iwi
  - These will provide iwi greater opportunity to contribute to and influence the council's decision-making.

## **13.3 Co-governance arrangements with Māori**

### **13.3.1 Statutory co-governance arrangements**

- a. Māori throughout Tāmaki Makaurau have made claims against the Crown under the Treaty of Waitangi Act 1975. The Crown is in the process of negotiating settlements for the historical aspects of these claims.
- b. While claims are against the Crown, certain parts of the settlement redress may impose responsibilities on, or require action by, Auckland Council. Some Tiriti/Treaty settlements have included the establishment of co-governance structures as:
  - Ngāti Whātua Orākei Reserves Board
  - Te Poari o Kaipātiki ki Kaipara
  - Tūpuna Maunga o Tāmaki Makaurau Authority
- c. These partnership arrangements can enhance quality of life for all Aucklanders. They can include active mana whenua involvement in the co-governance of maunga (volcanic cones), wahapū (harbours), motu (islands) and kaitiakitanga (guardianship) of land and marine resources.
- d. The co-governance model represents a natural progression from the Tiriti/Treaty settlement era and a maturing of the relationship between the council and Māori. Three co-governance entities are discussed below.

### **13.3.2 Ngāti Whātua Orākei Reserves Board**

- a. The reserves board was established under the Ngāti Whātua Orākei Claims Settlement Act 2012 [1].
- b. The reserves board governs Pourewa Creek Recreation Reserve and the whenua rangatira [2]. It was set up as a part of the return of land to Ngāti Whātua on the basis that the reserve land referred is for the common use and benefit of Ngāti Whātua and the people of Auckland.
- c. The reserves board has the powers of an administering body and a local authority under the Reserves Act 1977 (for further information see the Department of Conservation's Reserves Act page). It consists of three members appointed by Ngāti Whātua and three members appointed by Auckland Council. The council is required to meet the board's costs [3].



### **13.3.3 Te Poari o Kaipātiki ki Kaipara**

- a. Te Poari o Kaipātiki ki Kaipara (officially known as the Parakai Recreation Reserves Board) was established under the Ngāti Whātua o Kaipara Claims Settlement Act 2013, following the signing of a deed of settlement [1].
- b. Te Poari has the powers of an administering body and a local authority under the Reserves Act 1977. It governs Kaipātiki (formerly the Parakai Recreation Reserve) [2].
- c. Te Poari consists of three members appointed by Ngā Maunga Whakahii o Kaipara Development Trust and three members appointed by Auckland Council [3].

#### 13.3.4 Tūpuna Maunga o Tāmaki Makaurau Authority

- a. The Tūpuna Maunga o Tāmaki Makaurau Authority (or maunga authority) is established under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. The authority had its inaugural meeting on 15 September 2014.
- b. A Deed of Settlement was signed on 8 September 2012 between the Crown and a collective (known as the Tāmaki Collective) representing the iwi of Tāmaki Makaurau. The Act implements the Deed. The Deed recognises the rights of the iwi in regard to maunga (mountains), motu (islands) and other land.
- c. The Tāmaki Collective represents:
  - Ngāi Tai ki Tāmaki
  - Ngāti Maru
  - Ngāti Pāoa
  - Ngāti Tamaoho
  - Ngāti Tamaterā
  - Ngāti Te Ata
  - Ngāti Whanaunga
  - Ngāti Whātua o Kaipara
  - Ngāti Whātua Ōrākei
  - Te Ākitai Waiohū
  - Te Kawerau ā Maki
  - Te Patukirikiri
  - Ngāti Whātua hapū (other than Ngāti Whātua o Kaipara and Ngāti Whātua Ōrākei) whose members are beneficiaries of Te Rūnanga o Ngāti Whātua, including Te Taoū not descended from Tuperiri.
- d. The maunga authority membership consists of six members appointed by iwi, six members appointed by Auckland Council and one member appointed by the Minister for Arts, Culture and Heritage.
- e. The maunga authority has the powers of an administering body and local authority under the Reserves Act 1977 and has responsibility for certain maunga and administered lands:
  - Matukutūruru/Wiri Mountain

- Maungakiekie/One Tree Hill
- Maungakiekie / One Tree northern land
- Maungarei/Mount Wellington
- Maungauika/North Head
- Maungawhau/Mount Eden
- Ōhinerau/Mount Hobson
- Ōhūiarangi/Pigeon Mountain
- Ōtāhuhu/Mount Richmond
- Ōwairaka/Te Ahi Kā a Rakataura/Mt Albert
- Pukewīwī/Puketāpapa/Mt Roskill
- Takarunga/Mount Victoria
- Te Ara Pueru/Te Pane o Mataaho/Māngere Mountain
- Te Kōpuke/Tītīkōpuke/Mt St John
- Te Tātua-a-Riukiuta/Big King

### **13.3.5 Non-statutory co-governance and co-management arrangements**

- a. The council has other non-statutory co-governance and co-management arrangements with Māori within Tāmaki Makaurau.
- b. These include separate entities or local boards committees established to oversee a park or facility to which iwi may be appointed.
- c. One example is the Mutukaroa (Hamlins Hill) Management Trust, which was settled in 1996 by the Minister of Lands and trustees representing the former Auckland City Council, former Auckland Regional Council, Ngāti Pāoa, Ngāti Whātua, Tainui, and the member of parliament for the area. Auckland Council has assumed the responsibilities of Auckland City Council and Auckland Regional Council.
- d. The intent was to set aside Mutukaroa/Hamlins Hill as a regional park until treaty claims were finalised. This is achieved by the Crown leasing the area to the trust and the trust subleasing it to Auckland Council to operate as a regional park. The trust meets about four times a year to receive reports on park operations and to provide advice on matters of significance to trustees.

## **13.4 Footnotes**

### **13.1 Te Tiriti o Waitangi / the Treaty of Waitangi**

[1] Local Government Act 2002, s4.

### **13.2 Auckland Council Obligations**

[1] [http://www.aucklandcouncil.govt.nz/Plans/LongTermPlan/VolumeOne/section\\_1341865502973.html](http://www.aucklandcouncil.govt.nz/Plans/LongTermPlan/VolumeOne/section_1341865502973.html).

### **13.3.2 Ngāti Whātua Orākei Reserves Board**

[1] Ngāti Whātua Orākei Claims Settlement Act 2012, ss 13 and 13A.

[2] Ngāti Whātua Orākei Claims Settlement Act 2012, ss 66 and 67.

[3] Ngāti Whātua Orākei Claims Settlement Act 2012, s 4, 46(7) and 69.

### **13.3.3 Te Poari o Kaipātiki ki Kaipara**

[1] Ngāti Whātua o Kaipara Claims Settlement Act 2013, s 14.

[2] Ngāti Whātua o Kaipara Claims Settlement Act 2013, s 46.

[3] Ngāti Whātua o Kaipara Claims Settlement Act 2013, s 2

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**[Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014](#)**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

Auckland Council Governance Manual

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 10. How council decisions are made

What type of decisions the council makes, who makes them, the principles governing them and the procedures for Governing Body and local board decision-making meetings. This section also outlines some of the special types of decisions that the council makes, such as bylaws, plans and rates.

### 10.1 General scheme of the council's decision-making

- a. Every decision the council makes must be empowered by legislation. This means each decision is made under either:
  - a specific power given to the council by legislation
  - the council's power of general competence (this broadly allows it to make any decision that an ordinary person or body corporate could make while carrying out the council's role and purpose) [1].
- b. The council's shared governance structure means that both the Governing Body and local boards are responsible and democratically accountable for their decision-making [2]. Responsibility for specific decisions depends on the nature of the decision [3].
- c. A broad range of decision-making obligations and principles apply to the council's decisions, including statutory and public law requirements. How these principles apply to any particular decision depends on its nature and the context.

### 10.2 The types of decisions the council makes

#### 10.2.1 The varied nature of council decisions

- a. Council decisions vary in the discretion exercised, the process, the decision-maker and the significance to people and the region. Council decision-makers should be aware of the type of power they are exercising.
- b. The nature of the decision affects the requirements and principles that apply. Important features of a decision include:
  - **The source of the power** - legislation may prescribe certain processes or obligations where the decision-maker is exercising a specific statutory power.

If the source is the council's power of general competence, there may not be any specific processes to follow and the general decision-making requirements in the Local Government Act 2002 may be more important.

- **Nature of the discretion exercised** - every decision requires the decision-maker to exercise some sort of discretion. Some council decisions are political or involve mainly policy considerations; others are more administrative or operational. Decision-makers will normally have more discretion when making policy decisions. By contrast, administrative decision-makers have more limited discretion as they usually have a set of criteria to apply to a particular case. Most decisions fall somewhere on a spectrum rather than being purely political or administrative.
- **The decision-maker** - a range of people are responsible for council decisions, including elected members, council employees and independent experts. Elected members are expected to act in a politically and democratically accountable manner and may need to be more impartial and objective when making certain types of decisions. For more information see Section 10.4.4: Conflicts of interest, predetermination and bias. Council employees and independent experts are expected to make decisions based on their training or expertise.
- **Impact of the decision** - decisions can apply broadly or they can affect a particular individual. Decisions that impact a single individual are likely to give rise to natural justice obligations, while decisions with broad application are more likely to require public consultation (but may also come with natural justice obligations to consult specific people).
- **Whether the decision is regulatory** - this factor is discussed further in Section 10.2.2: Regulatory and non-regulatory decisions.

### 10.2.2 Regulatory and non-regulatory decisions

- a. Each council decision is either regulatory or non-regulatory [1]. A regulatory decision relates to a regulatory responsibility, duty or power, which the council has been given by legislation. The decision can be enforced against individuals under legislative authority [2]. A non-regulatory decision is simply one that does not relate to a regulatory responsibility, duty or power.
- b. The distinction is important. Firstly, the Governing Body is responsible for the council's regulatory decision-making (unless it delegates a regulatory decision) [3]. Non-regulatory decisions may be allocated to either the Governing Body or local boards [4]. Secondly, the council is required to ensure regulatory decision-making

responsibility and processes are kept separate from non-regulatory decision-making [5]. However there are times when this is not practical; for example where a decision has both regulatory and non-regulatory components (see Section 10.2.2(g)).

- c. A reason for the distinction is that regulatory decisions often directly affect the rights of individuals. People may be compelled by legislative authority to comply with a regulatory regime. Often a specific process must be followed before a regulatory decision; this is to protect the rights of individuals from arbitrary decisions. Further, decisions that implement a regulatory regime are often made in accordance with a set of criteria by expert decision-makers acting under delegation from the Governing Body (e.g. granting resource consents). These decisions are considered non-political in nature. However, there are some regulatory decisions, such as bylaws, that the Governing Body needs to make.
- d. In practice, the council complies with the requirement to maintain a distinction between regulatory and non-regulatory decision-making by making appropriate delegations to committees and council staff, (see Section 10.3.3: Delegation of decision-making functions and powers) and by separating decisions when appropriate and practical.
- e. Some examples of regulatory council decisions include [6]:
  - making and enforcing bylaws
  - making regulatory policies (e.g. the Local Alcohol Policy and the Class 4 Gambling Policy) (see Section 10.6.4: Decisions to make regulatory policies)
  - establishing plans and issuing consents under the Resource Management Act 1991
  - issuing consents under the Building Act 2004
  - issuing licences under the Gambling Act 2003 and the Sale and Supply of Alcohol Act 2012
  - classifying land under various statutes such as the Reserves Act 1977 and the Public Works Act 1981
  - setting rates and other mandatory levies
  - hearing and determining objections under the Dog Control Act 1996
  - granting registrations and licenses under regulations made under the Health Act 1956.
- f. Some examples of non-regulatory council decisions include:



- making non-regulatory policies and plans that guide the council's decision-making or action, e.g. the Annual Plan, the Long-term Plan and the Significance and Engagement Policy (N.B. this category does not include regulatory policies and plans under the Resource Management Act)
  - the provision of services and facilities, including setting fees for services (this is separate from fees associated with regulatory decisions, e.g. resource consent application fees)
  - the management of council land and assets
  - council financial management and procurement
  - external contractual and other relationships, including memorandums of understanding, development agreements and public-private partnerships
  - council political governance, including decisions on accountability, appointments, committees and internal allocation of decision-making
  - the release or withholding of official information.
- g. It may be difficult sometimes to determine if a decision is regulatory or non-regulatory, as some decisions may include both components. In these cases, the overall decision is considered regulatory and must be made by the Governing Body (or committee or local board or staff under delegation). Some decisions may form a chain of decisions that are both regulatory and non-regulatory, for example a non-regulatory decision may lead to a series of regulatory decisions. In this example, the non-regulatory decision is still non-regulatory as it precedes and may be separated from the subsequent regulatory decisions.

## **10.3 Who makes council decisions?**

### **10.3.1 General**

- a. The Governing Body and local boards are responsible and democratically accountable for the council's decision-making [1]. In general, the Governing Body focuses on region-wide strategic decisions, while the 21 local boards represent their local communities and make decisions on local issues, activities and facilities. For further information see Section 10.3.2: Division of responsibility between the Governing Body and local boards.
- b. There is a difference between who is ultimately responsible for decision-making about a particular activity and who is tasked with making the decisions on a day-to-day basis. In practice, many of the council's decisions are made under delegation by committees or staff.

- c. Each decision is made either by:
- The Governing Body or a local board by resolution of that body.
  - A committee, person (such as a council staff member) or other entity under delegation from the Governing Body or a local board. The Governing Body or local board that made the delegation remains ultimately responsible for the decision.
  - A person exercising statutory powers that they have because of their role or office (e.g. a warranted enforcement officer has statutory powers to make decisions related to their role). In this case, the decision is made by the statutory decision-maker under the authority of the Governing Body.

### **10.3.2 Division of responsibility between the Governing Body and local boards**

- a. The general principle is that the Governing Body focuses on the regional picture and is responsible for decisions with an Auckland-wide impact or focus, as well as the council's regulatory decision-making. Local boards are responsible for non-regulatory decisions that impact their local areas, unless there is a good reason why a decision should be made on an Auckland-wide basis.
- b. The Local Government (Auckland Council) Act 2009 sets out technical rules for how the council shares decision-making responsibilities. These fall into four classes[1]:
- decision-making the Governing Body must be responsible for
  - decision-making local boards must be responsible for
  - other non-regulatory decision-making for which responsibility can be allocated to either the Governing Body or the local board
  - special cases of decision-making about local activities for which both the Governing Body and local boards are responsible.
- c. Decisions the Governing Body must be responsible for are [2]:
- regulatory responsibilities, duties or powers (including the Unitary Plan, resource consents and bylaws)
  - financial management (including the Annual Plan, the Long-term Plan and financial policies)
  - governance of council-controlled organisations
  - transport networks and infrastructure
  - acquisition and disposal of assets

- the chief executive's appointment and performance
  - the council's capacity to establish and maintain services and facilities
  - the allocation of non-regulatory decision-making responsibilities either to itself or to local boards.
- d. Decisions local boards must be responsible for are [3]:
- identifying and communicating the interests and preferences of their communities as they relate to council strategies, policies, plans and bylaws
  - identifying and developing bylaws specifically for its local board area, and proposing them to the Governing Body
  - the agreement reached with the Governing Body (as set out in the local board agreement) in respect of local activities for its local board area
  - adopting a local board plan [4].
- di. Decision-making for any other non-regulatory activity must be allocated by the Governing Body either to itself or local boards [5]. The Governing Body must consider the views and preferences of local boards and apply the principle that local boards should be responsible for non-regulatory decisions unless decision-making on a region-wide basis will better promote the well-being of Auckland communities [6]. The reasons why Governing Body decision-making may be appropriate are [7]:
- the impact of the decision will extend beyond a single local board area
  - effective decision-making will require alignment or integration with other Governing Body decisions
  - the benefits of a consistent or coordinated approach across Auckland will outweigh the benefits of reflecting the diverse needs and preferences of the communities within each local board area.
- dii. The allocation of the council's non-regulatory decision-making responsibilities is included in its long-term plan. The Governing Body may review this allocation at any time; in practice this only occurs every three years during the long-term planning process.
- diii. There is provision in the legislation for a local board to dispute an allocation made by the Governing Body [8]. If one or more local board is dissatisfied with an allocation decision, both must make reasonable efforts to reach a solution [9]. If they cannot do so, the local board(s) may request a binding determination on the matter from the Local Government Commission [10]. After following a complaints process, the commission can issue a binding determination and amend the allocation table [11].

### **10.3.3 Delegation of decision-making functions and powers**

- a. The Governing Body and local boards do not (and could not practically) make all the decisions they are responsible for. Many decision-making functions are delegated for efficiency and effectiveness [1].
- b. These include:
  - the Governing Body delegating certain functions to Governing Body committees or members, local boards and to the chief executive
  - local boards delegating certain functions to their committees or members and to the chief executive
  - the chief executive delegating certain functions to council staff
  - the Governing Body and local boards delegating certain functions to external people or bodies such as independent hearings commissioners and council-controlled organisations.
- c. As a general rule, most of the council's day-to-day functions and powers are delegated to council staff. However, elected members will generally make significant decisions relating to the council's governance, especially significant policy decisions.
- d. When a function or power is delegated:
  - The delegated function or power can be performed or exercised in the same way and to the same legal effect as if the Governing Body or local board performed or exercised it [2].
  - The Governing Body or local board that made the original delegation remains legally responsible for the performance or exercise of the function or power [3].
- e. Functions that can and cannot be delegated**
  - As a general rule, a decision-making function or power can be delegated unless there is a rule to prevent this [4].
  - There is a group of decision-making responsibilities that cannot be delegated for both the Governing Body and local boards. These restrictions apply only to delegating the actual decision; they do not prevent the Governing Body or local boards from delegating preparatory work to inform the actual decision [5]. For example, the Governing Body can delegate the functions of drafting a bylaw and conducting public consultation but cannot delegate the decision to make the bylaw.
  - The Governing Body cannot delegate [6]:

- the power to make a rate
- the power to make a bylaw
- the power to borrow money, or purchase or dispose of assets other than in accordance with the long-term plan
- the power to adopt a long-term plan, annual plan or annual report
- the power to appoint a chief executive
- the power to adopt policies under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the council's local governance statement
- the power to adopt a remuneration and employment policy.
- Local boards cannot delegate [7]:
  - the duty to identify and communicate the interests and preferences of their communities in relation to council strategies, policies, plans and bylaws
  - the power to propose a bylaw or an amendment to a bylaw
  - the power to confirm a bylaw or modify a proposed bylaw
  - the power to propose the revocation of a bylaw
  - the duty to adopt the local board plan for its area
  - the duty to enter into a local board agreement for its area with the Governing Body
  - the power to apply to the Local Government Commission for a binding determination if there is a dispute between the local board and the Governing Body
  - any statutory responsibility, duty or power that expressly may not be delegated.

#### **f. Sub-delegation**

- A function or power can generally be sub-delegated, subject to any conditions imposed by the person or entity that made the original delegation [8]. (Note that a person making a delegation can specify that it may not be sub-delegated.)

#### **10.3.4 Specific delegations**

##### **a. Delegations from the Governing Body to its committees**

- In practice, the Governing Body makes a series of delegations to its committees and records them in its Terms of Reference. The Governing Body may also use the Terms of Reference to specifically retain certain responsibilities.

##### **b. Delegations from the Governing Body to local boards**

- The Governing Body may delegate functions or powers to local boards [1].
- In deciding whether to delegate a power or function to local boards, the Governing Body must weigh the benefits of reflecting local circumstances and preferences against the importance and benefits of using a single approach throughout the region [2].
- The Governing Body has delegated the following functions to local boards:
  - i) exemptions under the Fencing of Swimming Pools Act 1987
  - ii) input into notification decisions for resources consent applications
  - iii) authorising the destruction of wandering stock on Great Barrier Island, in accordance with the Impounding Act 1955 [3]
  - iv) decision-making on operational cemeteries on Great Barrier Island [4]
  - v) amendments to the Policy on Dogs in relation to any dog access rules in local parks, local beaches or local foreshore areas in their local board area
  - vi) making objections to liquor licensing applications under the Sale and Supply of Alcohol Act 2012
  - vii) making, amending or revoking alcohol bans, except in areas of regional significance.
- Local boards are accountable to the Governing Body for the performance of the delegated function or power, while the Governing Body remains responsible for it. This is in contrast to allocated functions, for which local boards are responsible.

##### **c. Delegations to the chief executive and to council staff – the empowering model**

- The Governing Body and local boards make delegations to the chief executive. These delegations are an important part of the council's effective operation and allow staff to perform their roles.
- To ensure that staff members have the powers they need to perform their roles, the council has taken an empowering rather than prescriptive approach to delegations. The features of this model are:

- i) The Governing Body and local boards delegate all their powers and functions to the chief executive, subject only to certain limits set out in the Combined Chief Executive's Delegation Register. These include financial limits and, in the case of local board delegations, local board protocols [5].
  - ii) The chief executive delegates the functions and powers relating to a particular council department to staff in that department (including powers originally delegated by the Governing Body and local boards [6], as well as those conferred directly on the chief executive by statute [7]). Some of these functions and powers are restricted to staff in specific tiers (e.g. senior managers).
- In practice, the delegations register also contains general principles that apply to the delegated powers, including:
  - i) a delegation to a staff member holding a named position or level of authority is also delegated to all officers in a direct line of authority above that officer
  - ii) a delegation to a staff member holding a named position is also delegated to an officer who performs or exercises the same or a substantially similar role or function
  - iii) a staff member who is given a delegation is also delegated any ancillary responsibilities, duties or powers necessary to give effect to the delegation
  - iv) staff may not sub-delegate any powers or functions given to them by the chief executive.
- The chief executive may also refer any matter to the Governing Body or the relevant local board for a decision. In practice this could occur when the matter has high policy content or is particularly significant, contentious or of high public interest.

**d. Delegations to external organisations or council-controlled organisations**

- From time to time, the council may delegate functions or powers to external people or organisations, e.g. functions and powers under the Resource Management Act 1991 to independent hearings commissioners [8].
- The council also delegates to its council-controlled organisations (CCOs) functions and powers relevant and necessary for them to conduct their business effectively and efficiently and according to its statement of intent, e.g. Panuku Development Auckland has the power to acquire and dispose of council assets.

## **10.4 How the council makes decisions**

### **10.4.1 General**

- a. A range of principles and requirements apply to how the council makes decisions, depending on the nature of the decision being made.
- b. As a general principle of governance the council should ensure its structures and processes are effective, open, and transparent [1]
- c. In making decisions, the council should:
  - comply with the specific requirements in the legislation under which the decision is made
  - comply with the general requirements of the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009 that apply to the particular decision, particularly any requirements to expressly consider alternative options and to consult the public and Māori
  - comply with any policy that applies to the decision or appropriately identifies and justifies any inconsistency with that policy
  - comply with the general requirements of public law, including ensuring decision-makers act lawfully, fairly and reasonably in the circumstances; in particular, decision-makers need to ensure decisions are not affected by conflicts of interest or predetermination
  - ensure decisions do not breach human rights legislation
  - ensure Governing Body and local board (or their committees) decisions comply with the relevant Standing Orders and other meeting procedure requirements.
- d. These requirements can be enforced by the High Court in judicial review.

### **10.4.2 General decision-making requirements of the Local Government Act 2002 and Local Government (Auckland Council) Act 2009**

- a. The Local Government Act 2002 and the Local Government (Auckland Council) Act 2009 set out substantive decision-making principles and requirements that apply to council decisions.
- b. Specific legislative requirements under which decisions are made will make these general principles less important. For example, decisions under the Resource Management Act do not generally refer to the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009, as the Resource Management Act



contains its own comprehensive set of decision-making requirements. However, all council decision-makers should be aware of Local Government Act principles and how they might apply to their decisions.

### **c. General legislative requirements**

- The basic procedural decision-making requirements in the Local Government Act 2002 and Local Government (Auckland Council) Act 2009 are:
  - i) to identify all reasonably practicable options for achieving the decision's purpose and assess the advantages and disadvantages [1]
  - ii) to consider the views and preferences of people likely to be affected by, or have an interest in, the decision (this does not require the council to iii) undertake consultation) [2]
  - ii) to conduct any consultation in accordance with the principles outlined in the legislation [3]
  - iv) to identify any significant inconsistency between the decision and any of the council's policies or plans, and to provide reasons for the inconsistency [4]
  - v) to provide opportunities for Māori to contribute to decision-making, including providing relevant information for that purpose [5]
  - vi) for the Governing Body to consider the views and preferences of local boards if the decision may affect their responsibilities or operation or the well-being of their communities [6]
  - vii) for local boards to cooperate with each other when the interests of their areas are better served by doing so [7].
- Decision-makers can decide how to fulfil these requirements [8]. The more significant a decision is, the stricter the compliance should be.

### **d. Consultation and engagement with communities.**

- Public consultation and engagement are key parts of the council's decision-making processes. Where there are no specific legislative requirements, the council can decide what level of consultation is appropriate [9].
  - i) the extent to which the council already knows the current views and preferences of the people who may have an interest in the decision
  - ii) the nature and significance of the decision
  - iii) whether there are good reasons for withholding information from the public
  - iv) the costs and benefits of any consultation process or procedure.
- The council's Significance and Engagement Policy sets out how and when communities can expect to be engaged. Decision-makers should also consider [10]:
  - i) the extent to which the council already knows the current views and preferences of the people who may have an interest in the decision
  - ii) the nature and significance of the decision
  - iii) whether there are good reasons for withholding information from the

public

iv) the costs and benefits of any consultation process or procedure.

- Consultation should be undertaken in accordance with the principles in the Local Government Act legislation [11]. These are that:
  - i) people affected by, or interested in, a decision will be provided with clear information; and that they are encouraged to – and are given reasonable opportunity to – present their views to the council in a way that is appropriate to them
  - ii) the council will receive and consider their views with an open mind
  - iii) people who present their views to the council will have access to a clear record of, and reasons for, the decisions
  - iv) the council must have processes in place to consult with Māori.
- For some types of significant decisions (e.g. bylaws and the long-term plan), the council is required to use the special consultative procedure set out in the Local Government Act 2002 [12]. Where this applies, the special consultative procedure overrides the general requirements for consultation [13].

#### **e. Decision-making duties to Māori**

- The Local Government Act 2002 and Local Government (Auckland Council) Act 2009 gives the council general decision-making responsibilities relating to Māori and the Independent Māori Statutory Board (IMSB). These duties include:
  - i) providing opportunities for Māori to contribute to its decision-making processes [14]
  - ii) supporting Māori in contributing to the council's decision-making processes [15]
  - iii) consulting the IMSB on matters affecting mana whenua groups and mataawaka of Tāmaki Makaurau, ensuring their input is reflected in the council's strategies, policies, and plans, and on other matters [16] (see Section 7.3.3: Key Programmes)
  - iv) providing information to Māori and the IMSB for the purpose of allowing them to contribute to the council's decision-making processes [17]
  - v) taking into account the relationship of Māori with their ancestral land, water, sites, waahi tapu, valued flora and fauna and other taonga [18]
- In practice, the council needs to ensure all decisions consider the impacts on Māori.

#### **10.4.3 General decision-making requirements of public law**

- a. All council decision-makers are subject to public law principles which are enforced by the High Court in judicial review. They require public decision-makers to act lawfully, fairly and reasonably.

- b. The concept of acting lawfully includes:
- having the necessary power or delegation to make the decision
  - acting in accordance with the purpose of the power being exercised, and within the scope of the discretion granted to the decision-maker
  - taking into account all relevant considerations and ignoring any irrelevant considerations
  - exercising independent judgement in making the decision rather than rubber-stamping the recommendation of another person.
- c. The concept of acting fairly includes:
- ensuring a proper process is followed, including consulting where appropriate
  - being unbiased and free from conflicts of interest [1]
  - fairly considering all relevant views put forward and not predetermining the decision [2]
  - complying with the public's legitimate expectations (e.g. keeping a promise to do something in a particular way that has been relied on)
  - complying with any applicable principles of natural justice (although what this will require depends heavily on the context, as discussed below).
- d. The concept of acting reasonably includes:
- ensuring the decision is rational, based on legitimate reasons and one that a reasonable decision-maker could make
  - ensuring the decision is proportionate to the purpose being served by the decision (the idea that a legal sledgehammer should not be used to crack a nut, especially if it affects human rights).
- e. These public law obligations vary by context; the exact obligations that apply depend on the nature of the decision [3].

#### **10.4.4 Conflicts of interest, predetermination and bias**

##### **a. The general rule**

- It is a general rule of law that all council decision-makers should make decisions for a proper purpose, unaffected by personal interests. This principle gives rise to the rules about conflicts of interest and bias.
- A decision-maker should not participate in a decision in which they might have a financial or non-financial conflict of interest.

- i) For elected members, the rules about conflicts of interest are contained in the Code of Conduct for Elected Members, the relevant standing orders for the decision-making body they are on, and (for financial interests only) the Local Authorities Members Interest Act 1968. They are also found in general public law. Guidance on these rules can be found in the Office of the Auditor-General's Guidance for members of local authorities about the Local Authorities Members Interest Act 1968.
  - ii) For other decision-makers, the rules about conflicts of interest are derived from general public law, the council's policies and any specific requirements of the legislation under which they make a decision. Guidance about the general principles can be found in the Office of the Auditor-General's Managing conflicts of interest: Guidance for public entities.
- Conflicts of interest are natural and unavoidable; they will inevitably arise from time to time in a country as small as New Zealand. The important thing is to manage them effectively.
  - Public perception is important when managing conflicts of interest. Decision-makers should ensure their decisions are unaffected by personal interests and that it appears that way to reasonable members of the public. This protects the integrity and reputation of the council as a decision-maker.
  - For this reason, potential conflicts of interest should be looked at from the point of view of the informed, fair-minded observer. In assessing conflicts of interest, the overarching question is [1]:
  - Would a fair-minded observer reasonably think the decision-maker might not bring an impartial mind to the relevant decision? That is, the decision-maker might unfairly regard with favour or disfavour a particular view because of his/her interest?

#### **b. Types of interest**

- The council groups interests into two categories [2]:
  - i) A financial conflict of interest is one where a decision or act of the Governing Body or local board could reasonably give rise to an (i) expectation of financial gain or loss to an elected member and is not in common with the public.
  - ii) A non-financial conflict of interest does not have a direct personal financial component. It may arise, for example, from a personal relationship or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

### **c. Predetermination and statements by decision-makers**

- Predetermination is a special type of interest and may arise when a decision-maker makes comments that suggest they made up their mind prior to considering all relevant views or consideration.
- All public decision-makers should be careful when commenting on decisions, before and after they are made.
- Any public statements that suggest the decision-maker made up their mind in advance, or took into account something they should not have, may lead to allegations of predetermination or bias.
- The strictness with which these principles are applied depends on the context.
  - i) When making quasi-judicial decisions, decision-makers are required to meet a higher standard of impartiality and objectivity. (Generally, regulatory decisions are more likely to be quasi-judicial decisions.)
  - ii) In other contexts (e.g. when elected members are making policy decisions), it will normally be more acceptable for the decision-maker to express a preliminary view in public and even express strong personal views about the matter [3]. (Generally, non-regulatory decisions are more likely to be policy decisions.)
- Elected members should not criticise Governing Body or local board decisions in council-funded communications [4]. Elected members and staff should also avoid publicly criticising decisions made by staff, especially when such criticism may reflect on the employee's competency [5]. Concerns of this nature should be raised with the chief executive.

### **10.4.5 Human Rights**

- a. The council's decisions are subject to the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 [1]. Council decision-makers need to take into account the requirements of human rights legislation when making decisions.

#### **b. The Bill of Rights Act**

- The Bill of Rights Act affirms a number of rights and freedoms existing in New Zealand. The rights affirmed by the Bill of Rights Act include:
  - i) the rights to the freedoms of expression, peaceful assembly, movement and association [2]
  - ii) the right to be secure against unreasonable search or seizure [3]
  - iii) the right to freedom from discrimination (discussed in more detail below in relation to the Human Rights Act) [4].

- The Bill of Rights applies to all acts or omissions by the council [5].
- Council decisions should not limit the rights and freedoms affirmed in the Bill of Rights Act unless the limitation is reasonable, prescribed by law and can be demonstrably justified in a free and democratic society [6].
- In practice, the council imposes a range of justified limitations on rights contained in the Bill of Rights Act, e.g. managing nuisances and public spaces requires the council to limit the freedoms of expression, peaceful assembly and movement.
- It is important any limits on rights affirmed in the Bill of Rights are properly considered and justified. The process of justification can be technical and may require legal advice. However, the following broad principles apply [7].
  - i) The council should identify when a decision impinges on an affirmed right or freedom.
  - ii) If it does, the council should consider if the objective obtained by the decision is proportionate to the limitation on the rights, including whether the objective is sufficiently important to justify infringing the right in question or if there are other, less rights-infringing ways to achieve the same objective.

### **c. Human Rights Act and unlawful discrimination**

- The Human Rights Act protects people in New Zealand from discrimination because of certain personal characteristics (known as “prohibited grounds of discrimination” [8]) in a number of areas of life (including public bodies performing public functions).
- All council decision-makers should ensure their decisions do not unlawfully discriminate against people in a manner that breaches the Human Rights Act.
- The prohibited grounds of discrimination are sex (including pregnancy and childbirth), marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation [9].
- The council’s decisions must not discriminate against people on a prohibited ground unless this can be demonstrably justified in a free and democratic society (i.e. the test that applies under the Bill of Rights Act, discussed above) [10].
- This requirement is relevant to all council decisions, including [11]:
  - i) decisions about the provision of services
  - ii) decisions about council policies

- iii) decisions about employment (there are special provisions in the Human Right Act) [12].
- In considering whether a decision is discriminatory, decision-makers should assess its intention and effect. It is important to be aware that a decision may indirectly (and impermissibly) discriminate against people on a prohibited ground [13]. Even when a decision does not expressly discriminate against people, it may do so (again, impermissibly) if the effect of the decision is different for different people.
- The council can take measures that would otherwise be considered discriminatory if they are taken in good faith to assist or advance an individual or group disadvantaged because of unlawful discrimination [14]. This concept is sometimes known as affirmative action.

## 10.5 Meeting procedure

- a. Many of the council's significant formal decisions are made by resolution of the Governing Body, a local board or a committee.
- b. Such resolutions are made at formal meetings, the procedure for which is governed by [1]:
  - the relevant Standing Orders [2]
  - the rules in the Local Government Official Information and Meetings Act 1987
  - the rules in Schedule 7 of the Local Government Act 2002.
- c. The aspects of council meetings governed by these rules include the following:
  - how meetings are called, including the amount of notice required [3]
  - meeting quorum [4]
  - the chairs of meetings [5]
  - how items arise from discussion at the meeting, including how resolutions are proposed and voted on (see Standing Orders)
  - rules about the conduct of members at the meetings [6]
  - requirements for public notification of meetings and agendas [7]
  - the right of the public to attend meetings and the ability to exclude people in some circumstances [8]
  - requirements to keep minutes and make these publicly available [9].
- d. The council must hold meetings that are necessary for the good government of its region or district [10].
- e. Each council meeting follows an agenda [11]. Matters usually appear on the

meeting's agenda by way of officer reports, usually drafted by staff and approved by managers or a member of the council's executive leadership team. The reports are uploaded onto the council intranet before a scheduled meeting and an agenda is published on the council website two days before the meeting takes place. Unless the Local Government Act 2002 or the Standing Orders provide otherwise, any act or question coming before the Governing Body, local board or its committee must be decided by an open vote, by the majority of the members present and voting [12]. This reflects the fact that the Governing Body or local board is democratically responsible for the council's decision-making.

- f. The public can have input into the council's decisions at meetings of the Governing Body, local boards and their committees. Ordinarily, an item is included on the agenda at the start of meetings open to the public (see Standing Orders). Each speaker may talk for five minutes during this section of a Governing Body meeting and for three minutes during a local board meeting. However, a resolution to exclude the public may apply to the whole or a relevant part of a meeting.

## **10.6 Special types of decisions and decision-making processes**

### **10.6.1 Decision-making on annual plans, long-term plans and rates**

- a. There are special rules in the Local Government Act 2002 governing how the council makes its long-term and annual plans.
- b. The council must at all times have a long-term plan in place [1], and must adopt one every three years [2]. A long-term plan describes the council's activities and its budget over a 10 year period [3]. The council adopts an annual plan in the years between the long-term plan's three-year cycle. The annual plan contains the council's annual budget and financial impact statement and identifies any variations from the long-term plan [4].
- c. It is the mayor's role to lead the development of the long-term plan and annual plan [5], and it is for the Governing Body to make the decision to adopt them [6]. Local boards are responsible for identifying and communicating the interests and preferences of people in their areas. Local boards also have responsibility for reaching agreement with the Governing Body in relation to the local board agreements, which form part of the council's annual and long-term plans.
- d. **Consultation before adopting a long-term plan**
  - Before the Governing Body can adopt a new long-term plan, it must consult using a modified special consultative procedure under the Local Government Act 2002 [7]. The Governing Body must adopt a long-term plan prior to the previous plan expiring (which it does after it has been in force for three years). This means it must be adopted on or before 30 June of the relevant year [8].



- Long-term plans can (and sometimes must) be amended using the special consultative procedure under the Local Government Act 2002 [9].

**e. Consultation before adopting an annual plan**

- The council needs to undertake consultation before adopting an annual plan if that plan contains significant or material differences from the long-term plan. The council does not need to use the special consultative procedure for this consultation; but when consulting, the council will use a consultation document [10].

**f. Decision-making on rates**

- The setting of rates is a special type of decision made by the Governing Body under the Local Government (Rating) Act 2002.
- There are several categories - general rates, targeted rates and the uniform annual general charge. All categories are set by the Governing Body [11] immediately following the adoption of the Annual Plan or the Long-term Plan [12].
- In practice this means a separate rates report is put to the Governing Body directly after the relevant plan is adopted.

## **10.6.2 Hearings**

- a. The council holds a hearing before making some types of decisions. A hearing is a structured decision-making process that allows for submissions and evidence from affected parties to be heard and weighed fairly. Council hearings are often referred to as quasi-judicial as they are similar to a court process.
- b. For some council decisions, such as some decisions made under the RMA, the relevant legislation requires that a hearing be held. The council may also decide to hold a hearing into a particular matter.
- c. Hearings can be held when a decision requires a greater degree of impartiality or balance on the part of the decision-maker, e.g. because it will directly affect the rights of individuals.

## **10.6.3 Bylaws**

- a. A number of statutes empower the council to make bylaws. The most significant is the Local Government Act 2002. Others include the:
  - Dog Control Act 1996
  - Freedom Camping Act 2011

- Health Act 1956
  - Litter Act 1979
  - Prostitution Reform Act 2003
  - Reserves Act 1977
  - Sale and Supply of Alcohol Act 2012
  - Waste Minimisation Act 2008
  - In addition, local boards can propose bylaws to the Governing Body
  - All applicable bylaws are viewable on the council's website, search for 'bylaws'.
- b. The process for making a bylaw under the Local Government Act 2002 requires the council to take the following steps.
- Determine whether a bylaw is the most appropriate way of addressing the perceived problem [1].
    - i) This should be discussed in a council policy paper that identifies the problem, the range of existing regulatory tools available and their limitations.
    - ii) The relative merits of any other non-regulatory options should also be considered.
  - If a bylaw is the most appropriate solution, create a draft [2].
    - i) This involves considering the different forms a bylaw could take (e.g. standalone, amendment to existing, consolidation of other bylaws), the scope of the bylaw, and the powers it confers on the council.
    - ii) It is important to confirm the proposed bylaw is within the scope of the empowering provisions that allow the council to make the bylaw.
  - Assess whether the draft bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 [3]. A bylaw must not be inconsistent with the New Zealand Bill of Rights Act.
  - Determine which consultation process must be used, based on the council's Significance and Engagement Policy [4].
    - i) The special consultative procedure under the Local Government Act 2002 must be used if the bylaw concerns a matter identified in the policy as being of significant interest, or if the council considers the bylaw is likely to have a significant impact on the public.
    - ii) In all other cases, the council must consult in a manner that gives effect to the requirements of section 82 of the LGA 2002. This means that section 82A of that Act applies and must be adhered to.

- Prepare and adopt a statement of proposal (for a special consultative procedure [5] or document meeting the requirements of section 82A(2) of the LGA02 (for a section 82A process).
  - i) This document will set out the relevant policy matters and include a draft of the proposed bylaw.
  - ii) If necessary to enable public understanding, the council must also adopt a summary of the information in the statement of proposal [6].
  - iii) The Governing Body has (in its terms of reference) retained the power to approve a draft bylaw prior to community consultation.
- Undertake the consultation process by publishing the material adopted in (v) above and explaining how people may present their views to the council [7].
  - i) There is a minimum 30 day period for views to be presented if the special consultative procedure is used. The council must allow for people to present their views by way of spoken (or sign language) interaction with decision-makers, e.g. holding a hearing or have your say event.
  - ii) If a section 82A procedure is being used, people should be given a reasonable opportunity to present their views.
- c. Consider the views of submitters in making a decision on whether to adopt the proposed bylaw. Any amendments must be within scope, i.e. within the reasonable contemplation of a person reading the original statement of proposal. If the governing body has delegated responsibility to a panel to hear submitters' views, it must make a recommendation to the Governing Body. Only the Governing Body can make or amend a bylaw.
- d. Provide a public notice with the date the bylaw will become operative and where copies are available [8].

**e. Process for making a bylaw under other legislation**

- The process above may differ if a bylaw is being made under another enactment.
- Some Acts require bylaws to be made as if they were created under the Local Government Act 2002 (e.g. the Health Act, the Dog Control Act and the Waste Minimisation Act). Some have modified procedures (e.g. the Freedom Camping Act and Prostitution Reform Act). Some provide no specified procedures at all (Litter Act); the process for these should generally conform with the Local Government Act 2002.
- Care must be taken to ensure all relevant procedural aspects are followed if the council proposes making a bylaw under an act other than the Local Government Act.

#### 10.6.4 Decisions to make regulatory policies

##### a. Types of regulatory policies.

The council may make the following regulatory policies:

- **Local alcohol policy** - this contributes to the regulation of alcohol outlet locations, hours and conditions, pursuant to the Sale and Supply of Alcohol Act 2012. A District Licensing Committee must take a local alcohol policy into account when making decisions on licensing applications. The maximum hours set in the local alcohol policy apply automatically. The policy is enforced by the council's licensing inspectors and the police.
- **Local approved products policy** - this regulates the locations from which approved psychoactive products (often referred to as legal highs) may be sold, pursuant to the Psychoactive Substances Act 2013. Restricted locations may be identified by way of broad area or proximity from facilities such as schools. The council has no role in enforcement; the issuing and enforcement of licences is handled by the Psychoactive Substances Regulatory Authority.
- **Dog control policy** - this identifies Auckland locations where dogs are permitted under control off a leash, on a leash, or are prohibited, pursuant to the Dog Control Act 1996. Restrictions may differ according to times of the day or seasons (e.g. they might be relaxed during the winter months when there are fewer non-dog owners using public spaces). The policy itself is non-regulatory but a bylaw must be made under the Dog Control Act to give effect to the policy. It is enforced by the council's animal management team.
- **Class 4 gambling venue policy** - this regulates class 4 gambling machine (pokie machine) venues, by determining whether new machines will be permitted in Auckland, the location of these venues, and the number of machines permitted per venue, pursuant to the Gambling Act 2003. Any operator wishing to establish a new venue must obtain the council's consent under the policy.
- **Board venue policy** - this regulates TAB racing venues and determines if and where new venues will be permitted, pursuant to the Racing Act 2003. The TAB must obtain the council's consent if it wishes to open a new venue or relocate an existing venue.

- b. **Process for making regulatory policies.** The process for making regulatory policies is set out in the respective empowering statutes:

- The Local Approved Products Policy [1], Dog Control Policy [2], Class 4 Venue Policy [3], and Board Venue Policy [4] must be made in accordance with the special consultative procedure under the Local Government Act 2002. The legislation under which these policies are made also includes special notice requirements.
- The local alcohol policy has its own process set out in the Sale and Supply of Alcohol Act 2012 [5]. This involves the special consultative procedure under the Local Government Act 2002 to produce a provisional policy. But it also involves mandatory consultation with the police, licensing inspectors and medical officers. There is a right of appeal to the Alcohol Regulatory and Licensing Authority against the council's provisional policy [6].
- In every case, the general principles of decision-making apply when the council is making regulatory policies (see Section 10.5: Meeting Procedure).

## **10.7 Revoking, amending and correcting errors in decisions**

- Generally a power to make a decision can be exercised more than once (i.e. as circumstances change or decisions are required) [1]. In some circumstances, a decision-maker also has the power to:
    - revoke, suspend, amend or remake the substance of the decision [2]
    - correct any errors or omissions in the decision [3]
  - A decision-maker does not always have these powers. It is normally appropriate for a decision-maker to seek legal advice before changing a decision.
- c. Revoking, suspending or amending decisions**
- Whether a decision can be revoked or amended after it has been made depends on the nature of the decision. This requires balancing the principles of finality and flexibility [4].
    - For some types of decisions, fairness requires that the council's decision is final and cannot be revoked or amended. This is usually because individuals need to be able to rely on the decision's finality or it would be unfair on affected individuals to restart the decision-making process once it has been completed.
    - For other types of decisions, it is more important the council has flexibility to revoke or amend its decisions as circumstances change or new information comes to light.
  - The general principle is that a decision that determines a specific individual's or group's legal rights (e.g. a resource consent decision) cannot be revoked

once it has been communicated to the individual or group concerned as final. At that stage, the decision-maker is *functus officio* or finished with the decision [5]. Prior to that point (e.g. if it has been communicated as a draft decision or signed-off but not communicated), the decision has not been finalised in law and may be amended. Most regulatory decisions fall into this category.

- The types of decisions that can generally be revoked, suspended or amended are:
  - i) decisions appointing someone to a role, office or committee [6]
  - ii) decisions delegating powers or functions to an individual or committee
  - iii) decisions creating regulations, rules, policies or other instruments [7].

#### **d. Correcting errors**

- Generally, the decision-maker may correct errors or omissions in the decision once it has been made [8]. Corrections should be made promptly after the decision has been issued and should be communicated to affected people.
- The power to correct errors does not allow the decision-maker to change the decision because they have changed their mind or because new information has come to light [9], even when it appears the decision was based on incorrect information.
- The power to correct errors may generally be used to correct drafting errors, e.g. when the wrong person is named in a decision or the document is misdated, provided that it is clear from the context what was actually intended. Some administrative errors may also be corrected, e.g. when the wrong person has signed the document, or the wrong document is referred to.
- Care needs to be taken if the correction affects the legal rights of an individual, especially where the error or omission is not obvious from reading the document. In these cases, legal advice should be sought.

## **10.8 Elected member workshops**

### **When to use workshops**

- a. Workshops are informal meetings that are not used to make decisions and are not generally open to the public or media. They support the decision-making process by enabling elected members to seek further clarification on items prior to making a formal decision at some point in the future.

- b. Workshops are also a mechanism for staff to seek informal guidance from elected members to improve future advice, including identifying information gaps and discussing options for policy development.
- c. Using the right mechanism, as illustrated in the table below, to engage with elected members helps to ensure efficiency and best use of staff and elected member time.

Seek a decision	Explore an issue or get political guidance on identified priorities	Seek political direction on other issues	Provide information or project update
↓	↓	↓	↓
Decision-making meeting of the Governing Body or local board	Workshop	Informal discussion, working party	Memos, reports, tours or other means

### Structuring workshops

- d. As informal meetings, there is flexibility on how workshops are structured. This provides an opportunity for local boards to collaborate across borders through sub-regional cluster workshops, as well as for Governing Body members to be invited to local board workshops if relevant. It also enables local board chairs or members to be invited to Governing Body committee workshops.
- e. Workshops are scheduled regularly with dedicated times blocked out in meeting schedules. This enables several items to be discussed, but time is limited. In general, workshop time is reserved for priority issues – those on the forward work programme or significant emerging issues – and other items may be refused or postponed.
- f. Material should be provided for pre-circulation to enable quality discussion and input. This includes a clear purpose (what elected members are being asked for) and clarity if any of the material is confidential.
- g. During the workshop

- Conflicts of interest need to be declared, with the member removing themselves from the discussion for that item [1]. This is the same process as for a formal decision-making meeting.
- If technology such as video conferencing is available, it can be used to save travel time for staff or presenters.
- Workshops are not decision-making meetings; therefore, while they can be used to gather informal feedback or insights, they cannot be used to provide formal feedback on an issue. This means for example that while a local board could provide insights on an issue at a workshop, it cannot decide a formal position.

e. Follow-up from the workshop

- Democracy Services or Local Board Services staff will record items discussed, who presented, member attendance, time taken for the workshops and any conflicts declared.
- To support transparency, information from the workshops is attached to the agenda of the next formal decision-making meeting. For Governing Body workshops, this will be – where possible – the presentations; and for local board workshops, in most instances, this will be a summary of non-confidential items.
- Details and updates on actions should be provided to the decision-makers at subsequent discussions of the issue. In particular, the outcomes should be noted in related reports going to the formal decision-making meetings, including how the workshop helped to inform the advice given.



## **10.9 Footnotes**

### **10.1 General scheme of the council's decision-making**

[1] Local Government Act 2002 s 12(2). See section 10.2.

[2] Local Government Auckland Council Act 2009, s 14(2). See section 10.2.

[3] Local Government Auckland Council Act 2009, s 14(2). See section 10.2.

### **10.2.2 Regulatory and non-regulatory decisions**

[1] See 10.2.2(h) for discussion of decisions that appear to have both regulatory and non-regulatory elements.

[2] The terms 'regulation' and 'regulatory' refer to the exercise of control or supervision or authority in relation to others.

[3] Local Government Auckland Council Act 2009 s 15(1)(a).

[4] Local Government Auckland Council Act 2009 s 17. See 10.4.2.

[5] Local Government Act 2002 s 39(c).

[6] This list is an illustrative rather than exhaustive list of all council regulatory decisions.

### **10.3.1 General**

[1] Local Government Auckland Council Act 2009 s 14(2).

### **10.3.2 Division of responsibility between the Governing Body and local boards**

[1] Local Government Auckland Council Act 2009, ss 15, 16 and 17.

[2] Local Government Auckland Council Act 2009, ss 12, 15 and 17; LGA02 Schedule 7 clause 32.

[3] Local Government Auckland Council Act 2009, s 16(1).

[4] Local Government Auckland Council Act 2009, s 20(1).

[5] Local Government Auckland Council Act 2009, s 17.

[6] Local Government Auckland Council Act 2009, s 17(2).

[7] Local Government Auckland Council Act 2009, s 17(2)(b).

[8] Local Government Auckland Council Act 2009 ss 97, 97 and 99.

[9] Local Government Auckland Council Act 2009 s 97(2).

[10] Local Government Auckland Council Act 2009 s 97(3).

[11] Local Government Auckland Council Act 2009 s 98.

### **10.3.3 Delegation of decision-making functions and powers**

- [1] Local Government Act 2002 Sch 7 cl 36C(1).
- [2] Local Government Act 2002 Sch 7 cls 32(4) and 36D(4)(a).
- [3] Local Government Act 2002 Sch 7, cls 32(7) and 36D(5).
- [4] Local Government Act 2002 Sch 7, cl 36C(1).
- [5] Local Government Act 2002 Sch 7, cls 32(2) and 36D(2).
- [6] Local Government Act 2002 Sch 7, cl 32(1).
- [7] Local Government Act 2002 Sch 7, cl 36D.
- [8] Local Government Act 2002 Sch 7, cls 32(3) and 36D(4)(b).

#### **10.3.4 Specific delegations**

- [1] Local Government Act 2002 Sch 7, cl 36C(1). The matters that the Governing Body may not delegate are set out in LGA02 Sch 7, cl 32(1)(a) to (f).
- [2] Local Government Act 2002 Sch 7, cl 36C(3).
- [3] Delegated to the Great Barrier Local Board.
- [4] Delegated to the Great Barrier Local Board.
- [5] Delegations Register, Local Board delegations, Sch 2.
- [6] Local Government Act 2002 Sch 7, cl 32. The Chief Executive sub-delegates responsibilities, duties and powers subject to any conditions and limits imposed by the Governing Body or local board in the original delegation.
- [7] Local Government Act 2002 Sch 7, cl 32B.
- [8] Resource management Act 1991 s 34A.

#### **10.4.1 General**

- [1] Local Government Act 2002 s 39(b).

#### **10.4.2 General decision making requirements of the Local Government Act 2002 and Local Government (Auckland Council) Act 2009**

- [1] Local Government Act 2002, s 77(1)(a) and (b).
- [2] Local Government Act 2002, s 78.
- [3] Local Government Act 2002, s 82.
- [4] Local Government Act 2002, s 80.
- [5] Local Government Act 2002, s 81.
- [6] Local Government Auckland Council Act 2009, s 15(2)(c).

- [7] Local Government Auckland Council Act 2009, s 16.
- [8] Local Government Act 2002, ss 79(1), 82(3).
- [9] Local Government Act 2002, s 82(3).
- [10] Local Government Act 2002, s 82(4).
- [11] Local Government Act 2002 s 82(1).
- [12] Local Government Act 2002 s 83.
- [13] Local Government Act 2002 s 82(5).
- [14] Local Government Act 2002 s 81(1)(a).
- [15] Local Government Act 2002 s 81(1)(b).
- [16] Local Government Auckland Council Act 2009 s 88(1).
- [17] Local Government Act 2002 s 81(1)(c); Local Government Auckland Council Act 2009 s 88(1)(a).
- [18] Local Government Act 2002 s 77(1).

#### **10.4.3 General decision-making requirements of public law**

- [1] Predetermination and conflicts of interest are a special topic addressed at 10.4.4.
- [2] Predetermination and conflicts of interest are a special topic addressed at 10.4.4.
- [3] For example *Wolf v Minister of Immigration* (2004) 7 HRNZ 469; [2004] NZAR 414 at [47].

#### **10.4.4 Conflicts of interest, predetermination and bias**

- [1] *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 122, [2010] 1 NZLR 76; OAG, *Guidance for Members of Local Authorities about the Local Authorities Members' Interests*) Act 1968, October 2010, para 5.9- 5.10.
- [2] Standing Orders, SOs 1.3.7 and 1.3.8; Code of Conduct for Elected Members, App 1 Conflicts of Interest Policy, cl 10.9 and 10.10.
- [3] Auditor General Managing Conflicts of Interest: Guidance for Public Entities (June 2007) at [2.42] and [2.43].
- [4] Auckland Council Communications Policy, para 16.
- [5] Code of Conduct for Elected Members, para 7.2.
- [6] New Zealand Bill of Rights 1990 s 3; HRA93 ss 20J and 21A.

#### **10.4.5 Human Rights**

- [1] New Zealand Bill of Rights 1990 ss 14, 16, 17 and 18.

- [2] New Zealand Bill of Rights 1990 s 21.
- [3] New Zealand Bill of Rights 1990 s 19.
- [4] New Zealand Bill of Rights 1990 s 3.
- [5] New Zealand Bill of Rights 1990 s 5.
- [6] R v Hansen [2007] NZSC 7.
- [7] Human Rights Act 1993 s 21.
- [8] New Zealand Bill of Rights 1990 s 19(1); HRA s 21.
- [9] New Zealand Bill of Rights 1990 s 19(1); HRA s 20L.
- [10] New Zealand Bill of Rights 1990 s 3; HRA s 20J.
- [11] Human Rights Act 1993 ss 22 – 35.
- [12] For example, see Human Rights Act 1993 s 65.
- [13] New Zealand Bill of Rights 1990 s 19(2).

### **10.5 Meeting Procedure**

- [1] Local Government Act 2002, Sch 7, cl 19(3).
- [2] Made under Local Government Act 2002, Sch 7, cl 27.
- [3] Local Government Act 2002, Sch 7, cl 19(4), (5) and (6) & cls 21, 22; LGOIMA ss 46, 51.
- [4] Local Government Act 2002, Sch 7, cl 23.
- [5] Local Government Act 2002, Sch 7, cl 26.
- [6] See Standing Orders; Local Government Official Information and Meetings Act s 50.
- [7] Local Government Official Information Meetings Act s 46A.
- [8] Local Government Official Information Meetings Act ss 47, 48 and 49.
- [9] Local Government Act 2002, Sch 7, cl 28; LGOIMA s 51.
- [10] Local Government Act 2002, Sch 7, cl 19.
- [11] Local Government Official Information Meetings Act s 46A; see also Standing Orders.
- [12] Local Government Act 2002, Sch 7, cl 24.

### **10.6.1 Decision-making on annual plans, long-term plans and rates**

- [1] Local Government Act 2002 ss 93(1) and 95(1).
- [2] Local Government Act 2002 s 93(3).
- [3] Local Government Act 2002 ss 93(6) and (7).

[4] Local Government Act 2002 ss 95(5)(a) and (b), Sch 10 clauses 18-22.

[5] Local Government Auckland Council Act 2009 s 9(2)(a).

[6] Local Government Auckland Council Act 2009, s 15(1).

[7] Local Government Act 2002 ss 93(2) and s 93A(1).

[8] See definition of financial year in Local Government Act 2002 s 5.

[9] Local Government Act 2002 s 93D.

[10] Local Government Act 2002 ss 95(2), 95(2A), 82A(3) and 95A.

[11] Local Government Act 2002 sch 7 cl 32.

[12] LG (Rating) Act s 23(2).

### **10.6.3 Bylaws**

[1] Local Government Act 2002 s 155(1).

[2] Local Government Act 2002 s 155(2)(a).

[3] Local Government Act 2002 s 155(2)(b).

[4] Local Government Act 2002 s 156(1).

[5] Local Government Act 2002 s 86.

[6] Local Government Act 2002 s 83(1)(a)(ii).

[7] Local Government Act 2002 ss 83(1)(b)-(c), 82A(2).

[8] Local Government Act 2002 s 157(1).

### **10.6.4 Decisions to make regulatory policies**

[1] Psychoactive Substances Act 2013 s 69(1).

[2] Dog Control Act 1996 s 10(1).

[3] Gambling Act 2003 s 102(1).

[4] Racing Act 2003 s 65E.

[5] Sale and Supply of Alcohol Act 2012 s 79.

[6] Sale and Supply of Alcohol Act 2012 s 81.

### **10.7 Revoking, amending and correcting errors in decisions**

[1] Interpretation Act 1999 s 16,

[2] Interpretation Act 1999, s 15.

[3] Interpretation Act 1999, s 13.

[4] See for example *Goulding v Chief Executive Ministry of Fisheries* [2004] 3 NZLR 173; and *Zaoui v Attorney-General* [2005] 1 NZLR 577 (CA) at [54].

[5] See for example *Goulding v Chief Executive Ministry of Fisheries* [2004] 3 NZLR 173.

[6] Interpretation Act 1999, s 12.

[6] Interpretation Act 1999 s 15.

[7] Interpretation Act 1999 s 13.

[8] See for example *Goulding v Chief Executive Ministry of Fisheries* [2004] 3 NZLR 173; *Ellipse Institute Ltd v New Zealand Qualifications Authority*.

### **10.8 Elected member workshops**

[1] <http://oag.govt.nz/2016/reflections/part4.htm>

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 7. Independent Māori Statutory Board

### 7.1 Introduction

This section focuses on Auckland Council's Independent Māori Statutory Board (IMSB):

- a. The IMSB was established through the Local Government (Auckland Council) Act 2009.
- b. It promotes issues of significance for Tāmaki Makaurau mana whenua and mataawaka and ensures council compliance with statutory provisions referring to [Te Tiriti o Waitangi / Treaty of Waitangi](#).
- c. The IMSB produced the Māori Plan, a 30-year document that describes how the board will achieve improvements on issues of significance. For further information on the Māori Plan, see the [What is The Māori Plan for Tāmaki Makaurau?](#) video.

### 7.2 Relationships with Māori

- a. Mana whenua are Māori with ancestral relationships in certain areas in Tāmaki Makaurau where they exercise customary authority.
- b. Auckland Council recognises 19 mana whenua groups within Tāmaki Makaurau:
  - Ngāi Tai ki Tāmaki
  - Ngāti Manuhiri
  - Ngāti Maru
  - Ngāti Paoa
  - Ngāti Rehua
  - Ngāti Tamaoho
  - Ngāti Tamaterā
  - Ngāti Te Ata Waiohua
  - Ngāti Wai
  - Ngāti Whanaunga
  - Ngāti Whātua Ngā Rima o Kaipara

- Ngāti Whātua o Ōrākei
  - Patukirikiri
  - Waikato-Tainui
  - Te Ākitai
  - Te Ahiwaru
  - Te Kawerau a Maki
  - Te Rūnanga o Ngāti Whātua
  - Te Uri o Hau.
- c. Mataawaka are Māori living in Tāmaki Makaurau (the Auckland region) who do not form part of a mana whenua group, and whose ancestral links lie outside of Tāmaki Makaurau.

## **7.3 Functions and procedures**

### **7.3.1 Purpose, status and funding**

- a. The Local Government (Auckland Council) Act 2009 established the board whose purpose is to help Auckland Council make decisions, perform functions and exercise powers by: [1]
- promoting cultural, economic, environmental and social issues of significance for Tāmaki Makaurau mana whenua and mataawaka
  - ensuring the council acts in accordance with statutory provisions referring to Te Tiriti o Waitangi/Treaty of Waitangi.
- b. When representing the IMSB, members must act in the interests of the board's purpose and in no other interest [2]. The board members are separate from and independent of mana whenua represented on the selection panel.

#### **Status**

- a. The board is a body corporate, separate and independent from Auckland Council [3].
- b. The IMSB may choose to name itself and may change its name at any time [4]. It has currently chosen the name Independent Māori Statutory Board (IMSB).

#### **Functions**

- a. The board's general functions are to: [5]
- act in accordance with its purpose



- develop and keep up to date a schedule of issues of significance to mana whenua and mataawaka of Tāmaki Makaurau.
  - advise Auckland Council on matters affecting Tāmaki Makaurau mana whenua and mataawaka
  - work with the council on the design and execution of documents and processes to implement the council's statutory responsibilities towards Tāmaki Makaurau mana whenua and mataawaka.
- b. The board and the council are required to meet at least four times each financial year to discuss their respective performances [6].
- c. The council must meet the reasonable costs of the IMSB's operations, the secretariat, the establishment of committees and seeking and obtaining advice. This is done by the council and the IMSB agreeing a funding agreement annually [7].

### **7.3.2 Appointments to council committees**

- a. The board is required to appoint a maximum of two members to each council committee dealing with the management and stewardship of natural and physical resources, and has voting rights on these committees [1]. The council may also invite the board to make appointments to other committees [2].
- b. The board must seek the council's views on appointees' skills and experience and take those views into account when making appointments [3].
- c. Appointments are at the board's discretion. It also has the ability to replace a member appointed to a committee at any time.

### **7.3.3 Key programmes**

#### **a. Schedule of Issues of Significance**

- The Independent Māori Statutory Board must create a Schedule of Issues of Significance [1].
- This schedule reflects issues for Māori within Auckland Council's jurisdictional boundary.

#### **b. The Māori Plan**

- The Schedule of Issues of Significance includes the Māori Plan. This plan looks at the cultural, social, economic and environmental wellbeing of Māori communities. It is a 30-year plan based on Māori values and outcomes and includes the activity or action-based plans in each of the four wellbeing domains, derived from the aspirations of Tāmaki Māori.

### **c. Treaty of Waitangi audit**

- To fulfil its purpose of ensuring the council acts in accordance with statutory provisions relating to Te Tiriti/the Treaty [2], the IMSB undertakes an audit of the council's performance. The Te Tiriti o Waitangi Audit is carried out every three years. For the latest version and further information on the audit programme, see [Te Tiriti o Waitangi Audit](#) found on the IMSB website.
- In response to the findings, the council develops a Te Tiriti o Waitangi Audit Response Programme that is approved for action by council committee. The Waharoa group is a joint steering group of IMSB and council staff, which provides oversight of the programme's delivery. Tiriti/Treaty audit projects must be presented to the Waharoa for sign-off before they are reported to council committee.

### **7.3.4 Membership selection**

- a. The IMSB has 9 members composed of two mataawaka representatives and seven mana whenua representatives [1]. A term of office is three years [2].
- b. The members of the IMSB are appointed by a selection body. The Minister of Māori Affairs invites mana whenua groups to appoint representatives to the selection body [3]. This body meets several times to select the nine board members. If the selection panel is unable to appoint the members of the board, the Minister of Māori Affairs must appoint the members [4].
- c. Mana whenua board members are nominated by the iwi they represent. Each iwi has its own method of making nominations to the board.
- d. Recommendations for mataawaka representatives are presented to a selection panel of mana whenua in Tāmaki Makaurau.
- e. The selection body makes appointments to the board and provides certificate of appointments to the Minister for Māori Development and to Auckland Council.

### **7.3.5 Meeting procedures**

- a. The board must meet at least 6 times a year and may hold as many more meetings as are necessary to carry out its purpose [1]. Meetings are open to the public except where confidential items are being considered. Meetings are publicly notified.
- b. The Local Government Official Information and Meetings Act 1987 applies to meetings of the IMSB.

- c. The IMSB is supported by a secretariat, which prepares and submits reports to the board, introduces council reports and information and works with officers on their documents and processes.

### **7.3.6 Co-governance and co-management**

- a. The IMSB does not have any role in co-governance or co-management arrangements with the council. IMSB members may also be mana whenua representatives on council co-governance and co-management bodies, but would represent their iwi or hapu interests, which are distinct from the interests they represent as members of the IMSB.

## **7.4 Footnotes**

### **7.3.1 Purpose, status and funding**

- [1] Local Government (Auckland Council) Act 2009, s 81.
- [2] Local Government (Auckland Council) Act 2009, s 82(4).
- [3] Local Government (Auckland Council) Act 2009, s 82(1).
- [4] Local Government (Auckland Council) Act 2009, s 83.
- [5] Local Government (Auckland Council) Act 2009, s 84(2).
- [6] Local Government (Auckland Council) Act 2009, s 84(1).
- [7] Local Government (Auckland Council) Act 2009, s 20.

### **7.3.2 Appointments to council committees**

- [1] Local Government (Auckland Council) Act 2009, s 85(1).
- [2] Local Government (Auckland Council) Act 2009, s 85(2).
- [3] Local Government (Auckland Council) Act 2009, s 85(3).

### **7.3.3 Key Programmes**

- [1] Local Government (Auckland Council) Act 2009, s 81(b).
- [2] Local Government (Auckland Council) Act 2009, s 84(1)(b).

### **7.3.4 Membership Selection**

- [1] Local Government (Auckland Council) Act 2009, Schedule 2, cl 1.
- [2] Local Government (Auckland Council) Act 2009, Schedule 2, cl 9(1).
- [3] Local Government (Auckland Council) Act 2009, Schedule 2, cls 2 and 4.
- [4] Local Government (Auckland Council) Act 2009, s 2(6).

### **7.3.5 Meeting Procedures**

[1] Local Government (Auckland Council) Act 2009, Schedule 2, cl 13.

#### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

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**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

# Auckland Council Governance Manual

## He Puka Matarau



Updated 14 February 2020

## 12. Official information

This section outlines the council's requirements for how it handles official information.

### 12.1 Council-held information

#### a. What is official information?

Official information includes material held in any format, such as:

- written documents, reports, memoranda, letters, notes and emails (this includes draft documents and hand-written notes)
- non-written documentary information, such as material stored on or generated by computers, including databases, video, or tape recordings
- information known to the council but not yet recorded, in writing or otherwise (including knowledge of a particular matter held by an officer, employee or member of the council in their official capacity)
- documents and manuals setting out decision-making policies, principles, rules or guidelines

#### b. Applying the Local Government Official Information and Meetings Act 1987

The council must hold the information for the Local Government Official Information and Meetings Act 1987 (LGOIMA) to apply. It does not matter where it originated or where it is currently located, as long as it is held by the council. For example, a third party may have created the information and sent it to the council, or it may be held in an employee's memory.

The council is not obliged to form an opinion or create new information in order to answer a request; however, it can create new information if it chooses to.

Information held by elected members, officers and employees in their official, rather than personal, capacities is deemed to be held by the council [1]. However, information held in a personal capacity can become official information if it is used subsequently for official purposes.

Auckland Council may contract private individuals, companies or other organisations to carry out work on its behalf. Similarly, information held by these individuals is also deemed to be held by the council if it is held in an official capacity [2].

## **12.2 Overview of the LGOIMA**

### **a. Purpose**

The Local Government Official Information and Meetings Act 1987 has three key purposes. They are:

1. to progressively increase the availability of official information held by local authorities and promote the open and public transaction of business at meetings. This is to enable more effective public participation in decision-making, and promote the accountability of elected members and officials
2. to provide people with proper access to official information relating to them
3. to protect official information and the deliberations of local authorities in a way that is consistent with the public interest and the protection of personal privacy [1].

### **b. Information requests**

Any individual or group [2] may make a request for official information. This can be made to anyone in the council and does not need to refer to the LGOIMA. The LGOIMA contains rules for handling requests and provides a right to complain to the Ombudsman in certain situations.

### **c. The principle of availability**

Official information should be made available unless one or more of the grounds for withholding (which are listed in LGOIMA) applies [3]. This is the 'principle of availability' and should always be kept in mind when considering how best to respond to a request.

### **d. Meetings**

The LGOIMA also contains provisions dedicated to the conduct of council meetings.

With some exceptions, Part 7 requires that:

- meetings are publicly notified
- agendas, reports and minutes are publicly available
- meetings are open to the public unless there is good reason for excluding them.
- members of the public can ask the Ombudsman to investigate if dissatisfied with the council's conduct of meetings.

### **12.3 Privacy Act**

The Privacy Act 1993 controls how agencies collect, use, disclose, store and give access to information which may lead to an individual's identification, such as names, birth dates, addresses, financial data and employment details. It does not include company or organisational information.

**a. Purpose**

The Privacy Act's aim is to promote and protect individual privacy. The focus is on purpose, not consent. When the council collects information, it must make it very clear why it is collecting their information and what it intends to do with it. Because the council only has to make individuals aware of what it will do with their information, it does not require their consent.

**b. Privacy principles**

At the heart of the Privacy Act are 12 principles:

<b>Principle</b>	<b>Summary</b>
<b>Principle 1</b> – purpose for collection	Only collect the information you need
<b>Principle 2</b> – source of information	Get it from the person concerned
<b>Principle 3</b> – what to tell an individual	Tell them what you are doing
<b>Principle 4</b> – manner of collection	Be ethical when you are doing it
<b>Principle 5</b> – storage and security	Take care of the information once you've got it



<b>Principle 6 – access</b>	They can see it if they want to
<b>Principle 7 – correction</b>	They can correct it if it's wrong
<b>Principle 8 – accuracy</b>	Make sure it is accurate before you use it
<b>Principle 9 – retention</b>	Get rid of it when you're done with it
<b>Principle 10 – use</b>	Only use if for the purpose you obtained it for
<b>Principle 11 – disclosure</b>	Only disclose the information it if that is why you obtained it
<b>Principle 12 – unique identifiers</b>	Be careful with unique identifiers

These principles reflect internationally accepted standards for handling personal information

## 12.4 Ombudsmen Act

Ombudsmen are Officers of Parliament and Commissioners for Investigations. In the local government context, they have three roles:

- a. **LGOIMA information requests** - a requestor can ask the Office of the Ombudsman to review the council's response to their request
- b. **Protected Disclosures Act 2000 (or whistle-blowers' act)** – the Office of the Ombudsman receives disclosures regarding matters of serious wrongdoing by an organisation, and has the power to investigate while protecting the whistleblower
- c. **Maladministration** - an ombudsman can investigate and make recommendations to the council on most decisions (by both elected members and council staff) where there are no formal appeal processes for that type of decision. An investigation would focus on ascertaining whether a decision was:
  - contrary to law
  - unreasonable, unjust, oppressive, or improperly discriminatory, based wholly or partly on a mistake of law or fact or was wrong
  - a discretionary power that had been exercised for an improper purpose or on irrelevant grounds.

Legal Services respond to complaints investigated by the Office of the Ombudsman on behalf of the council.

## 12.5 Archives

- a. Archives are records created or received by the council or legacy councils required to be kept permanently under the Public Records Act 2005. Good information management practices and record-keeping enables the council to:
  - know what information it holds
  - know where that information is kept
  - know that it can rely on accessing the correct version of information.
- b. Archived collections and services are available to council staff, elected members and the public. Records can be searched via the archives database (which contains descriptions of more than 311,000 records) and viewed by visiting repositories in south, west, north and central Auckland.
- c. The Government Chief Archivist has published a standard for the appropriate management of public sector records and information. This covers the:
  - creation and maintenance of records
  - classification and organisation of records
  - assignment of metadata to records and aggregations

- provision of access to records
  - appraisal of records and disposing of them appropriately
  - maintaining the integrity of records
  - managing records systematically.
- d. Council does not have to keep all the information it creates or hold it indefinitely. However, the council is obliged to take a systematic approach to records management.
- e. There are more stringent requirements for material that is defined as a protected record [2], including agendas, minute books, records of senior management meetings and other key documents. This material must be archived for posterity.
- f. In common with other entities, the council is also required to keep records for tax and employment purposes.

More information about Corporate Records & Archives can be found [here](#).

## **12.6 How the council responds to information requests**

### **12.6.1 Responding to information requests**

If you need a lot of information, or if you can't find the information on this website or from our staff, there are two types of information requests we can help you with:

1. Official information requests under the Local Government Official Information and Meetings Act 1987
2. Information privacy request under the Privacy Act 1993

You can [make a LGOIMA request](#) for any information that we hold, such as:

- a) policies and procedures
- b) reasons for a decision or our decision-making process
- c) drawings or images
- d) records.

You can make a privacy request for access to, or correction of, information that we hold about you.

### **12.6.2 Withholding information**

We may withhold or refuse to give information for reasons specified in sections 6, 7 and 17 of the [Local Government Official Information and Meetings Act 1987](#).

If we withhold or refuse to give information, we will explain the reason why.

For information about withholding personal information, see sections 27 to 29 of the [Privacy Act 1993](#).

### **12.6.3 Communicating the decision**

- a) We will provide you with a decision about your request within 20 working days.
- b) We will let you know as soon as possible if:
  - we cannot meet the deadline
  - we need more information
  - the information is held by another government organisation and we need to transfer your request.

You can ask us to treat your request as urgent. If you do, you need to provide a reason. One of our team will advise you on what is possible.

### **12.6.4 Publishing information**

- a) We regularly publish LGOIMA responses that are of interest to the general public. When we publish these responses, we withhold the names of individual requestors to protect their privacy.
- b) Published LGOIMA responses can be found on our website [here](#).

## **12.7 Footnotes**

### **12.1 Council-held information**

[1] Section 2(3) LGOIMA

[2] Section 2(6) LGOIMA

### **12.2 Overview of the LGOIMA**

[1] Sections 6, 7, 8 and 17 LGOIMA

[2] Section 10(1) LGOIMA

[3] Sections 5 LGOIMA

[4] Sections 6, 7, 8 and 17 LGOIMA

### **12.5 Archives**

[1] <http://records.archives.govt.nz/managing-records2/records-management-standard/>

[2] <http://archives.govt.nz/advice/guidance-and-standards/guidance-audience/advice-local-authorities/list-protected-records-loc>

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

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**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

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**Standing Orders**

Updated 4 March 2020

## 5. The Governing Body

Auckland Council's governance is shared between the Governing Body (the mayor and 20 councillors) and the 21 local boards. The Governing Body focuses on the region-wide, strategic decisions, making the most of the council's size and ability to deliver regionally. Every council in New Zealand has a Governing Body and there are some decisions that only a Governing Body can make. These include setting rates, appointing the chief executive, making bylaws or adopting the council's ten-year budget (the long-term plan).

### 5.1 Overview

#### 5.1.1 Membership

The council's Governing Body consists of one mayor and 20 councillors, voted for every three years. For further information see Section 4: The Mayor of Auckland.

##### a. Current representation

- The mayor is elected Auckland-wide.
- Councillors are elected from 13 wards [1]. The number of councillors per ward depends on the population, to ensure fair representation. This is currently set at:

Ward	Number of councillors
Albany	2
Albert–Eden–Roskill	2
Franklin	1
Howick	2

Manukau	2
Manurewa–Papakura	2
Maungakiekie–Tāmaki	1
North Shore	2
Ōrākei	1
Rodney	1
Waitākere	2
Waitematā and Gulf	1
Whau	1

#### **b. Review of representation**

- The number of councillors is set in legislation at 20 [2], and a law change is needed if the number is to change. This is different to other councils around New Zealand, where the number of councillors is reviewed every 6 years as part of a representation review [3]. The Auckland Council conducted a review for the 2019 elections. For further information see Section 15: The council and the law.
- If the council were to consider the option of having a Māori ward, the total number of councillors would remain at 20. The council is not due to consider the option of Māori wards until after the 2019 election, but can consider it earlier.



### 5.1.2 Decisions

- a. The Governing Body is responsible for making the following key decisions:
  - regulatory decisions (such as decisions under the Resource Management Act 1991, the Health Act 1956 and the Building Act 2004) (see Section 10: How council decisions are made)
  - decisions concerning transport networks and infrastructure
  - decisions relating to any non-regulatory activities allocated to the Governing Body [1]
  - establishing and maintaining council services and facilities (including local activities)
  - governance of council-controlled organisations (CCOs)
  - financial management [2]
- b. Agreements are reached with local boards (as set out in local board agreements) regarding local activities [3].
- c. The Governing Body is also responsible for making the following decisions, which it cannot delegate to any other body:
  - make a rate [4]
  - make a bylaw [5]
  - borrow money, or purchase or dispose of assets (other than in accordance with the Long-term Plan) [6]
  - adopt a long-term plan, annual plan, or annual report [7]
  - appoint a chief executive [8]
  - adopt policies required to be adopted and consulted on in association with the Long-term Plan or developed for the purpose of the local governance statement [9]
  - adopt a remuneration and employment policy [10]
- d. Except as noted above, these decisions can generally be, and often are, delegated to other bodies for practical reasons, or if the Governing Body considers a decision can be more appropriately made at that level. Further detail is contained in Section 10: How council decisions are made.

## **5.2 The powers, functions and responsibilities**

### **5.2.1 Democratic accountability**

#### **Accountability**

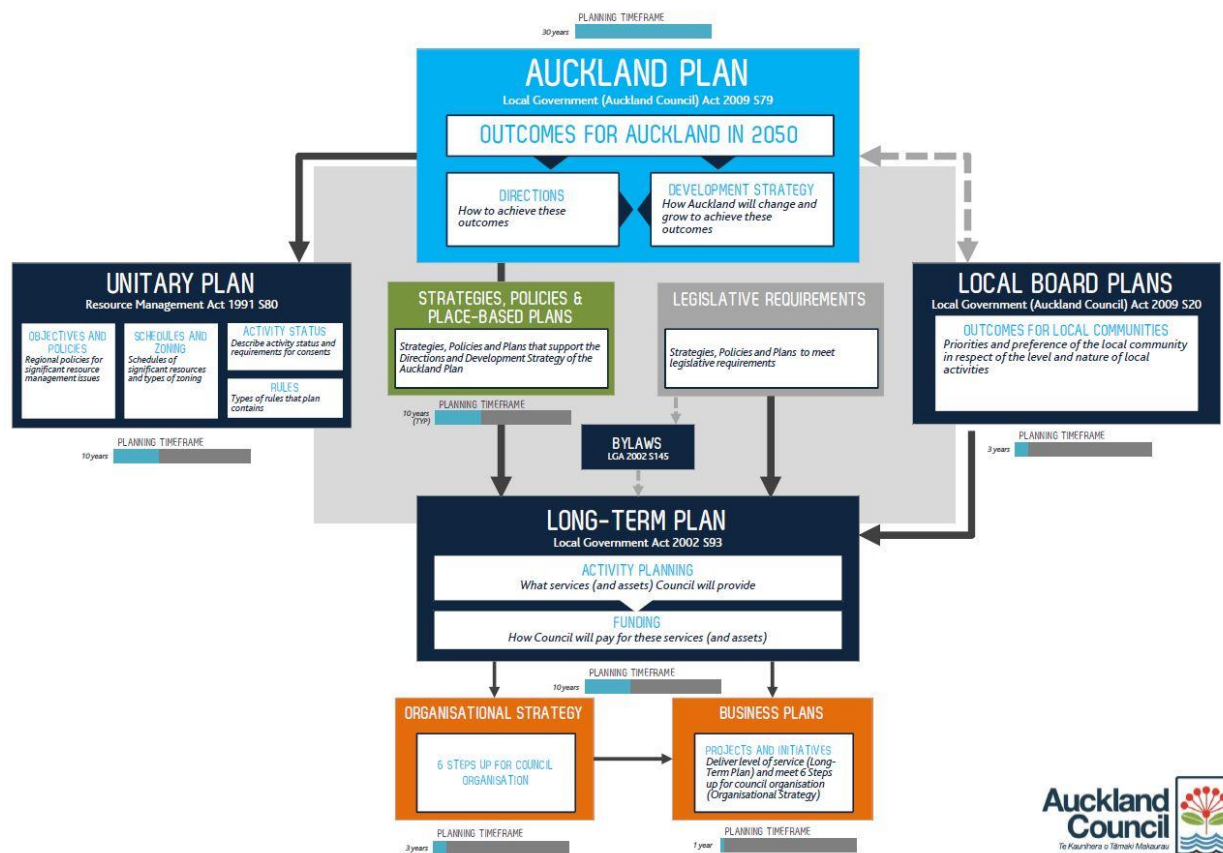
- a. The mayor and councillors are accountable to the community. Their decisions as part of the Governing Body are open for scrutiny throughout the term by the media, commentators and the public. The media play a major part in forming the community's view of members' performance and the Governing Body's performance as a whole.
- b. All decision-making by public institutions is subject to scrutiny by the courts. People affected by council decisions may ask the court to judicially review how decisions were made. There may also be avenues to object to - or appeal - council decisions through the courts, where the relevant legislation allows for this.
- c. The Minister of Local Government has powers to intervene in the affairs of a local authority where there are significant issues. The options vary according to the nature and scale of assistance or intervention required, but include: appointing a Crown review team, Crown observer, Crown manager or by appointing a commission to replace elected members [1]. This has occurred elsewhere in New Zealand in the past.
- d. There are various statutory bodies that oversee local government, including the Ombudsman and the Auditor-General. They can investigate complaints about a council decision. The Auditor-General is also the council's auditor and regularly audits the council's performance (including publishing reports on council processes and arrangements). For example, in 2016, the auditor-general published a report on the council's complaints process.

#### **Consultation and engagement**

- a. When making a decision, the Governing Body must comply with Part 6 of the Local Government Act 2002 which sets out the requirements around:
  - identifying all reasonably practical options to achieve the decision's objective
  - assessing options in terms of their advantages and disadvantages
  - engaging with Māori on significant decisions involving land or a body of water
  - considering the views and preferences of the people affected by or who have an interest in the decision.
- b. Further detail on the obligations around decision-making by council can be found in Section 10: How council decisions are made.

## 5.2.2 The council's plans and budgets

The Governing Body approves the Auckland Plan and the key region-wide plans and strategies that will deliver it. The relationship between these plans is set out in this diagram:



### a. Auckland Plan 2050

Auckland Council is required to prepare a 30-year spatial plan. The Auckland Plan is a broad long-term strategy for managing the growth and development of Auckland over the next 30 years. The council must work with stakeholders (including central government, businesses, and communities) to prepare the plan. For further information on the Auckland Plan 2050 see [The Auckland Plan](#) on Auckland Council's website.

### b. The long-term plan (known as Auckland's 10-year budget)

The council sets out the 10-year budget in its long-term plan. This is reviewed every three years, so each long-term plan has detailed information for the first three years, and then general information for years four to ten. Long-term plans describe the future focus of council activities, the intended community outcomes and provide communities with a basis for holding the Governing Body accountable [1]. The latest version is the Long-term Plan 2018 - 2028.

**c. Annual Plan**

Every year, the council must adopt an annual plan (and budget) for the following financial year. It must also identify variations from any budgets that have been allocated in the relevant long-term plan [2]. Auckland Council's annual plan also contains the 21 local board agreements, and a summary of the Maunga Authority operational plan (the annual budget and work programme description for the Maunga Authority, which was established as a result of a Treaty of Waitangi / Te Tiriti o Waitangi settlement). For more information, see Section 13.3.4: Tūpuna Maunga o Tāmaki Makaurau Authority.

**d. Unitary Plan**

The unitary plan is Auckland's planning rulebook, prepared under the Resource Management Act. It sets out what can be built and where, along with the objectives, policies and rules for the management of natural and physical resources – including urban, rural and marine environments. The plan replaced 13 district and regional plans, as well as the Regional Policy Statement.

**5.2.3 Rates and funding**

**a. How the council is funded**

The council's activities are funded through rates, fees, charges, investments and debt. Auckland Council's financial strategy and the revenue and financing policy set out the full range of funding sources. The Governing Body is responsible for adopting these policies. For further information on how the council is funded, see Local Government Funding on The Department of Internal Affairs website.

**b. Types of rates**

Auckland Council currently uses capital value to determine rates (see also Rates and Valuations on the Auckland Council website). It may set uniform rates (the same across all rateable land) or differential rates (vary according to the category of the rateable land) [1]. The council may also set a uniform annual general charge (a fixed amount per rateable unit) [2] and targeted rates (charges for particular groups who may benefit from a specific council activity) [3].

**c. Setting rates**

Rates are set each financial year by resolution at a Governing Body meeting, in accordance with the long-term plan and funding impact statement. For further information see Section 10.6.1: Decision-making on annual plans, long-term plans and rates [4]. The Governing Body may also set rates that are not in accordance with the long-term plan and funding impact statement, if revenue is urgently needed for unforeseen circumstances and cannot be met by other means. In such instances, the

council needs to notify the public of its intention at least 14 days prior to setting the rate, including an explanation for the urgency [5].

#### **5.2.4 Bylaws**

Bylaws have the effect of regulations and can be enforced by the council.

- a. The Governing Body can make bylaws to protect the public from nuisance, maintain health and safety, and minimise offensive behaviour [1]. Bylaws may also regulate activities relating to waste management, the keeping of animals, and trading in public places. Bylaws can also be used to protect land from damage or misuse (for instance, in cemeteries, parks, or reserves) [2].
- b. Further detail on bylaws can be found in Section 10.6.3: Bylaws. For more information, see Bylaws on the Auckland Council website.

#### **5.2.5 Scope of resolutions**

- a. The Governing Body may choose to pass resolutions that are outside its powers or functions, for instance, to support or criticise central government policies, or to make an aspirational statement. While it may wish to take a stance on central government policies, the Governing Body is doing so as either an advocate or an opponent, not as a decision-maker. The Governing Body may not have access to the full range of advice that it would usually require in order to make a decision and staff may not be able to give effect to the resolution.

#### **5.2.6 Relationship with the chief executive and organisation**

##### **Office of the Auditor-General comments [\[1\]](#)**

A healthy and productive relationship between the governance arm of a local authority and its chief executive is an important factor in an authority's effectiveness. This relationship is the vital link between governance and management, and between decision-making by elected representatives and operational activity. Problems in that relationship can have a significant effect at all levels of the organisation.

##### **Employing a chief executive**

- a. The Governing Body is responsible for appointing the chief executive. The chief executive is the only employee directly appointed by the Governing Body. All other employees are appointed by the chief executive [2]
- b. The minimum legal requirements for employing chief executives are set out in schedule 7 of the Local Government Act 2002 (clauses 33-36). In summary:
  - The council must appoint a chief executive for a term of no more than five years.
  - In the year before the contract expires, the council must review the chief executive's performance and skill mix and consider how this mix fits with the

local authority's expected future needs.

- Based on that review, the local authority can then decide to either reappoint the incumbent for another two years, without advertising or any other process, or advertise the pending vacancy and start afresh.
- c. Appointing a chief executive is an important decision for a local authority; it will shape how the organisation is led and managed for the term of the appointment. The Local Government Act requires a council's governing body to make this decision in recognition of its significance. It must not delegate the decision to a smaller group.
- d. The appointment process should be reasonably straightforward if it is managed carefully and systematically and supported with appropriate external advice. The Office of the Auditor General publication Guide for Local Authorities on Hiring and Managing Relationships with the Chief Executive provides useful advice.
- e. It is important for elected members to remember they have legal obligations to be good employers and provide a good and safe working environment. It is unlikely to be appropriate to raise concerns about a chief executive's performance or the terms of his/her employment in public or to make it a matter of political debate. The LGNZ guide comments that:  
*Confidentiality is paramount. It is important to remember in both recruitment and performance management processes that the local authority is dealing with the personal and professional lives of individuals. At times there is a tension between the good employer and confidentiality requirements and the political roles of councillors. (Clause 6.25)*
- f. Relative responsibilities of chief executives and Governing Body members are covered in Section 3: Elected members.

## **5.3 Conducting governance business**

### **5.3.1 How matters come before the Governing Body**

#### **a. Reports**

- There are three ways that reports can arise:
  - i) through the Governing Body or committee asking for a report
  - ii) through the chief executive arranging for a report
  - iii) through the chair providing a report.
- The chief executive may delay the commissioning of a report if it does not fall within a committee's delegations or if there is a substantial cost associated with the report's production [1].

- The chair may also bring matters to the attention of the Governing Body or committee through a report if the matter is within the committee's remit

**b. Extraordinary business**

- Items raised at a meeting that are not on the agenda are considered to be extraordinary business. Reasons for urgency and an explanation for the item not being on the agenda must be provided at the meeting.
- Extraordinary business may be raised by the chief executive or chair. A verbal report may be provided at the meeting if there is not time to provide a written report. At the chair's discretion, Governing Body or committee members may also raise items of extraordinary business [3].

**c. Minor items not on the agenda**

- The chair has the discretion to accept discussion on minor items [4]. However, the Governing Body or committee cannot make any resolutions, other than to refer to another meeting for further discussion. If the chair chooses to accept a minor item, they must acknowledge at the beginning of the public section of the meeting that this item will be discussed [5].

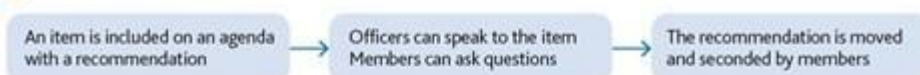
**d. Notices of motion**

- A member of the Governing Body may give notice of a motion they propose to move at a meeting. The mover must sign the notice, stating at which meeting they want it to be considered. The notice must be delivered to the chief executive at least five working days before the meeting [6].
- For further information on notices of motion, refer to standing orders 1.9 and 2.5.

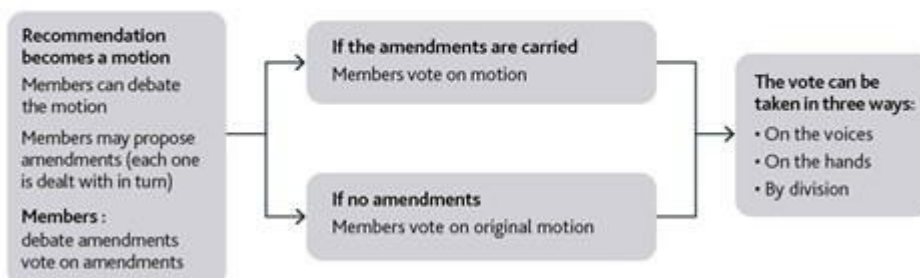
### **5.3.2 Meeting processes**

At Governing Body or committee meetings, council staff members present reports and recommendations. This is followed by questions and debate. The process is guided by the Standing Orders of the Governing Body. For a simplified guide to Auckland Council meetings, see 'What to expect at an Auckland Council meeting'.

## 1 Recommendation



## 2 Debate and voting



## 3 If the motion is passed, the motion becomes a council resolution

### a. Public access and input

- Members of the public are welcome to attend all open sections of meetings. Key meetings are webcast and available at Auckland Council live stream on Auckland Council's website. For further information on key meetings, see Agendas and Minutes.
- Members of the public can ask to speak at any open meeting of the Governing Body. Up to 30 minutes will be allocated at the start of the meeting for public input [1].
- Speaking requests need to be made to the council's democracy advisor team at least one working day before the meeting. For information on who to contact, see Committee members and contacts on Auckland Council's website.
- The request must state the subject and be directed to the appropriate committee. The same presentation cannot be made to more than one committee unless the speaker has been referred on [2].
- Once received by the democracy advisor, requests will be referred to the chair of the respective committee for his/her consideration. The chair has the discretion to accept or decline requests.

### b. Meeting frequency

- The meeting schedule of the Governing Body and its committees is adopted by the Governing Body. The Manager, Democracy Services, may be delegated the authority to make minor changes to the meeting schedule.



However, changes to the frequency of committee meetings (for instance, increasing monthly meetings to fortnightly) affect the Governing Body's terms of reference and need to be approved by the Governing Body. If an additional (extraordinary or emergency) meeting is required, the chair may request this through a letter to the chief executive [3].

### **c. Quorum**

- The quorum for Governing Body meetings is 11 members. The quorum for other committees is currently half the members if the number is even, or the majority of members if the number is odd [4]. The Governing Body sets committee quorums by resolution or through the committee's terms of reference.
- The quorum must be reached for the meeting to begin [5]. The meeting must lapse and the chairperson vacate the chair if there is no quorum within 30 minutes of the start of the meeting. However, the chair has the discretion to extend this time by up to 10 minutes if there are members travelling to the meeting who have been delayed by traffic or weather [6]. The business of lapsed Governing Body meetings will be adjourned until the next ordinary Governing Body meeting [7].
- If the members leave during a meeting and the quorum is lost, the business of the meeting will be suspended. If the quorum is not obtained within 10 minutes, the meeting must lapse and the chairperson will vacate the chair. The business of the meeting will be adjourned until the next ordinary meeting [8].

### **ci. Voting and decisions**

- Decisions of the Governing Body or committee are determined by a majority vote of members present and voting unless the Local Government Act or the standing orders provide otherwise. The Auckland Council Standing Orders of the Governing Body provide for the chair to have a casting vote if the votes are equal. Members may abstain from voting and may request their abstention be recorded in the minutes if a division is called for [9].

### **cii. Changes to officers' recommendations**

- It is not appropriate for an elected member to seek to change officer recommendations before the meeting. Recommendations reflect officer advice. The Governing Body will consider the advice at the meeting and decide how to apply it when making a decision, including by proposing different wording to that in the officer report, through amendments if

necessary. The chair can also put forward a differently worded motion at the start of the item.

### **5.3.3 Confidential information at meetings**

- a. Meetings may exclude the public if confidential information would likely be disclosed from discussing a matter of business in public, and there is a good reason for keeping the information confidential.
- b. It is not enough that the information is seen to be “confidential” – instead, the Governing Body must rely on one of the set grounds in the Local Government Official Information and Meetings Act 1987. The Governing Body must weigh up whether the reason for keeping it confidential is outweighed by other considerations that make it desirable, in the public interest, to make the information available). See Section 12: Official Information. To exclude the public, the meeting must pass a resolution to exclude the public, giving reasons for the exclusion, while the public is still there. When it is time to discuss the item, members of the public will then leave. Governing Body members will remain, together with any staff needed for the item, and any person with knowledge that is required to assist the Governing Body with that item. The resolution to exclude the public will specify the person, and describe generally the knowledge that the person has, and how it is relevant to the item [1].
- c. The Governing Body is committed to ensuring as much information is made public as possible and, in some cases, a report may be split into two so that non-confidential elements are on the public part of the agenda.
- d. Staff will advise members when information is confidential. Governing Body reports will be marked as confidential and the public excluded when the chief executive (or delegate) reasonably expects confidential information to be discussed. While the information is treated as confidential for the purposes of the meeting, it is important councillors understand whether or not the information remains confidential after the meeting. To assist, the Governing Body has a process of using restatements, i.e. where the Governing Body meeting makes a resolution noting if the information is to be restated in the public minutes.
- e. Even if the Governing Body meeting has not made a restatement, the information may still be released if there is a LGOIMA request or the reason for confidentiality no longer applies. There is no legal requirement to advise councillors when information is no longer confidential, but it can be useful to make sure there are no surprises, and that elected members know when they can discuss a matter publicly.
- f. In addition, elected members can, like any other member of the public, make a LGOIMA request for information – and these requests are subject to the same

statutory constraints as for anyone else. Information that is provided to an elected member under a LGOIMA request is public information.

#### **5.3.4 Committee membership**

##### **a. Governing Body members**

- The committees of the Governing Body are outlined in Auckland Council's Governing Body Terms of Reference. Regardless of whether they are members of the committee or not, any Governing Body member has the right to attend meetings. However, non-members are not able to vote on any matters arising at a meeting [1]. This standing order does not apply in the case of judicial or quasi-judicial deliberations [2].

##### **b. Independent Māori Statutory Board**

- In 2009, the Independent Māori Statutory Board was established to ensure that Auckland Council acts in accordance with the statutory provisions of the Treaty of Waitangi. The IMSB promotes issues of cultural, economic and environmental significance for mana whenua and mataawaka in Tāmaki Makaurau [3]. For further information on the IMSB see the Independent Māori Statutory Board website.
- The IMSB must appoint one or two representatives to each Governing Body committee that deals with the management of natural or physical resources, or to other committees at the invitation of the Governing Body. IMSB members contribute to the quorum of a committee [4].
- IMSB members are subject to standing orders when taking part in council meetings.

#### **5.3.5 Types of committees**

- a. To enable efficient decision-making, the Governing Body can delegate powers to committees; it is not expected to make all decisions for which it has responsibility itself. While the mayor determines the committee structure, the Governing Body is responsible for deciding to delegate powers to the committees. These responsibilities are outlined in the terms of reference.
- b. The practise has been for the Governing Body to delegate to committees all the powers necessary for them to perform their duties (except those powers which cannot be delegated). This delegation has occurred with the adoption of the terms of reference for each committee.

- c. The mayor, deputy mayor and all councillors are members of committees of the whole. The mayor can determine what these committees will look like and how many there are. Committees of the whole are sometimes known as parent committees as smaller committees may report to them. For more information, see Section 4: The Mayor of Auckland.
- d. Standing Orders for committees of the whole, particularly those relating to the rules of debate, may differ from those of other committees. However, these are generally consistent with the standing orders of the Governing Body [1].
- e. Parent committees delegate responsibilities and key projects to 'reporting committees' (technically sub-committees). These committees can make recommendations to parent committees on matters beyond their delegated authority. Reporting committees do not have to report to their parent committees for all decisions.
- f. Committees that do not report to parent committees are known as 'other committees' or 'standing committees'. Some of these committees may have delegations to make their own decisions.

### **5.3.6 Committee chairs**

- a. The mayor must chair all Governing Body meetings unless absent or they vacate the chair, in which case the deputy mayor presides. If neither the mayor nor the deputy mayor is available, the Governing Body must elect a chair for that meeting [1].
- b. The mayor may appoint a chair and deputy chair for each Governing Body committee. They also have the ability to become chair of any committee [2].
- c. The chairperson must chair each meeting of their respective committee, unless they are absent or vacate the chair, in which case the deputy chair presides. Deputy chairs may be appointed by the mayor or by committees at their first meetings. If neither the chair nor the deputy is present, the committee will elect a chair for that meeting [3].

## **5.4 Civil defence and emergency management**

- a. The Civil Defence Emergency Management (CDEM) Act 2002 outlines the roles and responsibilities of elected members in emergency management in New Zealand. The CDEM Group Committee is a statutory committee of Auckland Council comprised of Governing Body members and observers from CDEM key partners and stakeholders. The committee's role is to provide strategic direction and leadership across the CDEM sector. The committee oversees the delivery of coordinated CDEM

arrangements across the Auckland region. Members of the CDEM Group Committee have a number of important statutory roles and responsibilities including:

### **Declaring a state of emergency**

- b. When an emergency happens, or has the potential to occur, a state of local emergency may be declared under section 68 of the CDEM Act 2002. Declaring a state of local emergency provides a number of important powers to CDEM Groups during times of an emergency. The mayor is authorised to declare a state of emergency. If the mayor is absent, the following members are empowered to declare an emergency: Deputy mayor; Chair of the Auckland CDEM Group Committee; other Governing Body members of the CDEM Group Committee.
- c. Local board members, as representatives and decision-makers on local matters, provide leadership and help to support strong local communities. Local board members are integral to working to create resilient local communities. The work of local boards is closely aligned to the 4Rs framework (Reduction, Readiness, Response, Recovery) and the Auckland-specific goal of Resilience. Local board members contribute in a number of ways to these goals and in particular provide local leadership and help to integrate resilience into communities and support those communities affected by local emergencies.

## **5.5 Footnotes**

### **5.1.1 Membership**

[1] Auckland Council Local Governance Statement 2014, s5.1.

[2] Section 8 Local Government (Auckland Council) Act

[3] Local Government Commission <http://www.lgc.govt.nz/representations-reviews/>; Local Electoral Act 2001 s19H.

### **5.1.2 Decisions**

[1] In accordance with Local Government (Auckland Council) Act 2009, s17.

[2] In compliance with Local Government Act (2002), s101.

[3] Local Government (Auckland Council) Act, s15.

[4] The Governing Body cannot delegate this power to anyone else.

[5] The Governing Body cannot delegate this power to anyone else.

[6] The Governing Body cannot delegate this power to anyone else.

[7] The Governing Body cannot delegate this power to anyone else.

[8] The Governing Body cannot delegate this power to anyone else.

[9] The Governing Body cannot delegate this power to anyone else.

[10] The Governing Body cannot delegate this power to anyone else.

#### **5.2.1 Democratic accountability**

[1] Local Government Act 2002, s253 – 258ZA.

#### **5.2.2 The Council's plans and budget**

[1] Local Government Act 2002, s93.

[2] Local Government Act 2002, s95.

#### **5.2.3 Rates and Funding**

[1] Local Government (Rating) Act 2002, s14.

[2] Local Government (Rating) Act 2002, s15.

[3] Local Government (Rating) Act 2002, s16.

[4] Local Government (Rating) Act 2002, s23 (1 and 2).

[5] Local Government (Rating) Act 2002, s23 (3).

#### **5.2.4 Bylaws**

[1] Local Government Act 2002, s145 and s147A.

[2] Local Government Act 2002, s146.

#### **5.2.6 Relationship with the Chief Executive and organisation**

[1] Most of this section is from <http://www.oag.govt.nz/2012/local-govt/part6.htm>.

[2] Most of this section is from <http://www.oag.govt.nz/2012/local-govt/part6.htm>.

#### **5.3.1 How matters come before the Governing Body**

[1] Auckland Council Standing Orders of the Governing Body, SO1.1.4.

[2] Auckland Council Standing Orders of the Governing Body, SO2.4.7.

[3] Auckland Council Standing Orders of the Governing Body, SO2.4.5.

[4] Section 46A LGOIMA.

[5] Auckland Council Standing Orders of the Governing Body, SO2.4.6.

[6] Auckland Council Standing Orders of the Governing Body, SO2.5.1.

### **5.3.2 Meeting Processes**

- [1] Auckland Council Standing Orders of the Governing Body, SO7.7.1.
- [2] Auckland Council Standing Orders of the Governing Body, SO7.7.2.
- [3] Auckland Council Standing Orders of the Governing Body, SO2.3.1.
- [4] Auckland Council Standing Orders of the Governing Body, SO3.1.1.
- [5] Auckland Council Standing Orders of the Governing Body, SO3.1.3.
- [6] Auckland Council Standing Orders of the Governing Body, SO3.1.4.
- [7] Auckland Council Standing Orders of the Governing Body, SO3.1.5.
- [8] Auckland Council Standing Orders of the Governing Body, SO3.1.6.
- [9] Auckland Council Standing Orders of the Governing Body, SO1.8.1 to 1.8.3

### **5.3.3 Confidential information at meetings**

- [1] Section 48(5) and (6) Local Government Official Information and Meetings Act 1987

### **5.3.4 Committee Membership**

- [1] Auckland Council Standing Orders of the Governing Body, SO4.1.3.
- [2] Auckland Council Standing Orders of the Governing Body, SO 4.1.4
- [3] Local Government (Auckland Council) Act 2009, s81.
- [4] Auckland Council Governing Body Terms of Reference, s1.2

### **5.3.5 Types of committees**

- [1] Auckland Council Standing Orders of the Governing Body, SO1.4

### **5.3.6 Committee chairs**

- [1] Auckland Council Standing Orders of the Governing Body, SO1.2.1.
- [2] Local Government (Auckland Council) Act 2009, s9 (3d).
- [3] Auckland Council Standing Orders of the Governing Body, SO1.2.2.

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**



Reviewed 11 January 2021

## 4. The Mayor of Auckland

The mayor is elected Auckland-wide. Under the legislation that established Auckland Council, the mayor plays a leadership role, principally through articulating and promoting a vision for Auckland and leading the development of council plans, policies and budgets.

### 4.1 Role and functions

#### 4.1.1 Leading and influencing the council's work

- a. The mayor is the council's elected leader and chair of the Governing Body [1]. The mayor's role is outlined in legislation and has also developed over time by convention. To perform the role, the mayor is provided with staff and resources, as well as specific statutory powers. Each mayor of Auckland has a degree of flexibility in how to interpret and perform the role.
- b. The mayor has a strong leadership role with substantial influencing and procedural powers in relation to the council's work. However, the entities legally and democratically responsible for the council's formal decisions are the Governing Body and the local boards [2] [3]. The mayor does not have executive powers to make decisions instead of the Governing Body or local boards, nor the power to prevent (or veto) Governing Body or local board decisions.

Articulating and promoting a vision for Auckland:

- c. The mayor's foremost role, as outlined in legislation, is to articulate and promote a vision for Auckland, and to provide leadership to achieve objectives that will contribute to that vision [4]. This role relates to the mayor's function within the council, as well in the broader public sphere.
- d. In practice, one of the ways the mayor has articulated a vision for Auckland has been through leading the development of the council's spatial plan for Auckland – the Auckland Plan [5].

#### 4.1.2 Leading the development of council plans, policies and budgets

- a. The mayor has a role to lead the development of the council's plans (including long-term plans and annual plans), policies and budgets for consideration by the Governing Body [1].

- b. The mayor has broad scope to initiate, develop and propose draft plans and policies, both before and after any public consultation process. The mayor may also lead any public consultation process.
- c. The mayor has flexibility in undertaking these tasks, e.g. by deciding who is involved in the development of these proposals. In practice, the mayor receives assistance from staff (from the council and the Office of the Mayor) with the development of policy and proposals. The mayor may also choose to commission independent advice.
- d. Generally, the council's plans, policies and budgets must be adopted by a majority vote of the Governing Body. A majority vote of the Governing Body may also amend the mayor's proposals [2].
- e. The mayor may use their leadership role and procedural powers as chair of the Governing Body to influence the council's plans, policies and budgets. However, the mayor does not have executive powers to make these decisions instead of the Governing Body, nor the power to prevent (or veto) Governing Body decisions.

#### **4.1.3 Ensuring effective engagement with the people of Auckland**

- a. The mayor has a role to ensure there is effective engagement between the council and the people of Auckland, including those too young to vote [1].
- b. To perform this role the mayor has the power to establish processes and mechanisms for engaging the people of Auckland [2]. This power may be used, for example, to establish or disestablish advisory panels, boards or reference groups that identify and communicate the interests of specific groups [3]. The mayor can decide which panels or other mechanisms to establish, including a method to make the mayor personally available to constituents as appropriate. This power may also be used to initiate consultation on a particular issue the mayor considers important.
- c. Statutory consultation undertaken by the council will normally be organised by staff. The mayor may work with council staff in formulating the scope and nature of major policy or planning processes.

#### **4.1.4 Leading and chairing the Governing Body**

- a. The mayor has an important role in maintaining and coordinating the council's governance. The mayor is a member and the chair of the Governing Body and must preside at each Governing Body meeting at which they are present unless they vacate the chair [1].

- b. The mayor, like any other Governing Body member, can vote at Governing Body meetings and also holds a casting vote [2]. The mayor may fully participate in Governing Body discussions without vacating the chair [3].
- c. As chair of the Governing Body, the mayor upholds the Governing Body's Standing Orders and rules on all procedural questions not dealt with understanding orders [4]. The mayor must conduct the business of Governing Body meetings in accordance with the standing orders [5] and to exercise that function fairly, reasonably and legally. The mayor should not prevent council business from being debated and decided by the Governing Body, and cannot veto Governing Body decisions [6].
- d. As chair of the Governing Body, the mayor may permit and enable local board and public input that is relevant to the purpose of a Governing Body meeting [7].

#### **4.1.5 Appointing the deputy mayor, Governing Body committees and establishing an office**

- a. The mayor may appoint the deputy mayor, establish Governing Body committees and appoint their chairs [1].
- b. The mayor's power to establish Governing Body committees is taken to include the power to determine their names and terms of reference, and to appoint the committees' members, chair and deputy chair [2]. The mayor also has the power to disestablish committees [3].
- c. The Governing Body does not have the power to substitute its own decisions for those of the mayor [4]. However, the Governing Body does have the power to appoint or discharge committee members by a majority vote [5]. And, importantly, the Governing Body must make any delegations of power to a committee [6].
- d. In practice, the mayor's proposed membership of committees has been approved by the Governing Body, together with their terms of reference and delegations. This reflects the convention that the establishment of committees results from a cooperative engagement between the mayor and the Governing Body.
- e. The mayor is a member of each Governing Body committee [7].
- f. The mayor may (in consultation with and acting through the chief executive) establish and maintain an appropriately staffed Office of the Mayor. This office receives a budget of no less than 0.2% of the council's total operating expenditure (set in the Annual Plan) [8]. The mayor may use these resources to fulfil the mayoral role.

#### **4.1.6 Representing and speaking for the council**

- a. The mayor is the council's principal representative to the public. In certain contexts, he/she is also the region's public representative.
- b. By convention, the mayor represents the council at public events and ceremonies, to central government and to other external groups (such as Local Government New Zealand, iwi and foreign dignitaries and organisations). The mayor may approve delegates (including other council elected members) to perform this role, but it is not appropriate for elected members to usurp the mayor's public representative role without their agreement [1].
- c. The mayor also represents the council at various international forums, such as mayoral and sister cities forums. These relationships are generally city-based rather than involving central government.
- d. The mayor has a leadership role in maintaining the council's relationships with council organisations. They represent the council's governance arm with CCOs and the Independent Māori Statutory Board.
- e. The mayor's role as the council's leader and representative is distinct from Their own political views. The mayor will clarify in which capacity they are speaking as appropriate.
- f. The mayor is able to perform other functions consistent with their statutory role, including exercising any powers or functions delegated by the Governing Body.

#### **4.1.7 Exercising civil defence and emergency management powers**

- a. The mayor has an important role in Auckland's civil defence and emergency management, in terms of both planning and response.
- b. The mayor has the power to declare a state of local emergency that covers Auckland, as well as a leadership role in responding to emergencies [1].
- c. The mayor, or delegate, represents the council on the Auckland Civil Defence Emergency Management Group, a group comprising the council, emergency services and other public organisations set up by legislation to deliver effective civil defence emergency management within the region [2].

#### **4.1.8 Election and tenure**

- a. The mayor is elected as an office-holder by the people of Auckland every three years as part of local body elections [1]. The mayor comes into office on the day following public notice of the official result [2]. The previous mayor's term expires at the same time.

- b. The Office of the mayor becomes vacant if they resign, die, are disqualified from office (which can occur if the mayor is convicted of an offence with a maximum penalty of more than two years imprisonment or is disqualified for registration as an elector under the Electoral Act 1993) [3], or are absent without leave for four consecutive ordinary meetings of the Governing Body [4]. In these cases, the vacancy must be filled in accordance with the process outlined in legislation, which involves either a by-election or an appointment by the Governing Body, depending on the time until the next triennial election [5].
- c. The mayor cannot be removed from office by the Governing Body.

## **4.2 The deputy mayor**

### **4.2.1 Appointment, Resignation and Removal**

- a. The mayor may appoint the deputy mayor [1]. However, the Governing Body can also do so using one of the voting systems outlined in legislation if the mayor does not make the appointment [2].
- b. The mayor can remove the deputy mayor from office if they have made the appointment [3]. The Governing Body can also remove the deputy mayor from office using a statutory process that requires a meeting called for that purpose [4]. In both cases, the former deputy mayor remains an elected member.
- c. If the deputy mayor resigns or is removed from office, the mayor or the Governing Body may make a new appointment using the same powers as for the initial appointment [5].

### **4.2.2 Performing the role of the mayor in some circumstances**

- a. With the mayor's consent, the deputy mayor may perform the role and exercise mayoral powers during a temporary absence [1]. If the mayor gives consent to the deputy mayor to perform these responsibilities, they should record that consent in writing and inform the Governing Body.
- b. If the office of the mayor is vacant [2] or if the mayor is prevented from performing and exercising their powers (e.g. as a result of being physically or mentally incapacitated), the deputy mayor must perform the role and may exercise mayoral powers. In cases of uncertainty, it may be necessary for the council to apply to the High Court to resolve whether this situation has occurred.
- c. The mayor and deputy mayor may agree that the deputy mayor will assist the mayor by undertaking certain mayoral duties.

- d. The practice has been for an additional council staff member to support the deputy mayor in this work, funded through the mayoral budget. The Office of the Mayor may also provide communications and other support to the deputy mayor, as agreed to by the mayor.

## **4.3 Delegation of the mayor's roles and powers**

### **4.3.1 Non-delegable and delegable powers**

- a. The mayor cannot delegate the following powers: [1]
  - establishing processes for the council to engage with the people of Auckland
  - appointing the deputy mayor
  - establishing Governing Body committees and appointing the chairs of those committees
  - establishing the Office of the Mayor.
- b. This rule does not affect the deputy mayor's ability to exercise these powers during a temporary absence and with the mayor's consent [2], if the office of mayor is vacant [3], or the mayor is prevented from performing and exercising the role, in each case as discussed in Section 4.1.8: Election and tenure.
- c. Otherwise, the mayor may approve delegates (including other elected members) to perform aspects of the mayoral role that are not restricted to the mayor by council's bylaws, resolutions, policies or standing orders.
- d. The mayor must preside at each Governing Body meeting at which they are present unless they specifically vacate the chair [4].

## **4.4 The mayor's relationship with the Governing Body and local boards**

### **4.4.1 General overview – the mayor as “first among equals”**

- a. The mayor's relationship with the other elected members can be described as “first among equals”.
- b. The legal and democratic responsibility for the council's governance is shared between the Governing Body and local boards [1]. The mayor is a member and the chair of the Governing Body but not of any local board. The mayor does not have executive powers to make decisions instead of the Governing Body or local boards, nor the power to prevent (or veto) Governing Body or local board decisions.
- c. The mayor is the council's elected leader and has an important role in maintaining and coordinating its governance, including the shared relationship between the

Governing Body and the local boards. The mayor has powers of influence and leadership to fulfil this role. The mayor may use these powers to obtain the support of elected members to achieve objectives that will contribute to his/her vision for Auckland [2].

- d. The mayor is also the main representative of the council's governance arm, internally and externally.

#### **4.4.2 The mayor's relationship with the Governing Body**

- a. The mayor is a member and chair of the Governing Body and holds several formal roles and powers as set out elsewhere in this chapter:
  - as chair of the Governing Body as a member of all committees
  - appointing the deputy mayor, committees and committee chairs
  - leading the development of the council's plans, policies and budgets for consideration by the Governing Body.
- b. Like all public officials, the mayor must exercise these powers fairly, reasonably, and in accordance with law [1], and the democratic principles that underpin local government. The mayor may use the mayoral powers to obtain and build support among members of the Governing Body to achieve the objectives that will contribute to their vision for Auckland (including, for example, in favour of a particular proposal or vote) [2].
- c. As leader of the Governing Body, the mayor represents and speaks for the Governing Body's official position, internally and externally. The mayor may also refer a matter to the relevant committee chair to speak on the Governing Body's position.

#### **4.4.3 The mayor's relationship with local boards**

- a. As leader of the Governing Body, the mayor cannot be a member of any local board and does not have the right to participate in their decision-making (such as voting at meetings), nor to direct a local board in the exercise of its functions.
- b. The local board chair is responsible for local board meetings, in accordance with any standing orders or adopted meeting procedures [1]. The mayor may attend a local board meeting and may speak at the meeting with the chair's leave and in accordance with the board's standing orders or meeting procedures.
- c. The mayor has an important role in maintaining the Governing Body's shared governance relationship with local boards. The mayor may represent the

Governing Body to the chair and other members of a local board in relation to the council's governance and decisions, including the Local Board Agreements and Plans. When doing so, the mayor will generally involve the members of the Governing Body who represent the particular area to present a consistent position. In addition, there has been a practice of quarterly informal meetings of Governing Body members and local board chairs to discuss items of shared interest.

- d. Given the mayor's role to articulate and promote a vision for Auckland [2], they may speak for the council's governance arm when a decision has been made on a matter of importance to Auckland, or where the matter relates to both Governing Body and local board responsibilities. However, by convention, in acting as council spokesperson, the mayor respects the board chair's role to represent the local perspective, (including where council decisions have been made by the local board). A consistent position on behalf of the council should be presented by the local board chair and the mayor where possible, although the mayor may generally take a broader, Auckland-wide focus.
- e. The mayor, as chair of the Governing Body, has the power to determine the participation of local boards at Governing Body meetings [3]. However, local board chairs (or their nominee) have a right to speak at a meeting of the Governing Body about matters on the agenda that affect the board's area, communities or responsibilities [4]. Additionally, as long as the local board gives one day's notice, the board may provide general input at the allocated time, near the beginning of each public Governing Body meeting [5].
- f. As chair of the Governing Body, the mayor decides whether the local board chair has the right to speak on an agenda item and waive the one day notice requirement [6]. The mayor may also uphold the standing orders that govern the topics on which a local board chair may address the Governing Body and their conduct at the meeting [7].
- g. The mayor may use their powers, as well as leadership and influence, to build local board support for the objectives that will contribute to the mayor's vision for Auckland [8].

#### **4.4.4 The mayor's role in relation to the conduct of elected members**

- a. The mayor has a broad role in upholding the integrity and expected conduct of members generally, and a specific formal role as chair in regulating the conduct of elected members during Governing Body meetings.
- b. At Governing Body meetings, the mayor is the chair of the meeting, and has all the usual powers and responsibilities of a chair to run the meeting.



- c. The mayor does not have a formal role or powers in relation to regulating conduct of elected members outside Governing Body meetings. However, as the leader of the council the mayor has a particular interest in the integrity and conduct of elected members.
- d. The mayor also has specific powers that may be used to respond to conduct issues and so influence the conduct of elected members generally.
  - If the mayor is of the opinion that an elected member has breached the Code of Conduct of Elected Members, the mayor may raise the issue by making a formal complaint to the chief executive.[1]
  - The mayor may also refer a matter to the Office of the Auditor-General if it relates to conflicts of interests (especially financial interests) [2], concerns the use of the council's resources [3], or has resulted in the council suffering financial loss or damage [4].
  - The mayor may take various action in response to elected member conduct that is in breach of the Code of Conduct of Elected Members, or otherwise inappropriate.
  - i) The mayor may remove an elected member from any Governing Body committee (or sub-committee), from the role of chair of any Governing Body committee, or from the role of deputy mayor [5] (noting that a local board member may be appointed on a Governing Body committee [6]).  
ii) The mayor may censure the member publicly or instigate the Governing Body taking that action.
  - Generally these mayoral powers should be exercised following a formal complaint process outlined in the Code of Conduct of Elected Members [7]. Were the mayor to exercise these powers unilaterally, this exercise would need to be lawful, fair and reasonable in the circumstances, and take account of the interests of the elected member in natural justice.
- e. The mayor conducts meeting of the Governing Body in accordance of standing orders.
- f. The mayor may also raise persistent non-attendance at Governing Body meetings by a member as amounting to a breach of the Code of Conduct of Elected Members [8], by making a formal complaint to the chief executive [9].

## **4.5 The relationship between the mayor and chief executive**

### **4.5.1 General principle – mutual respect of institutional roles**

- a. The mayor is leader of the council's governance arm and the chief executive is the leader of the council's operational and service delivery arm. A professional boundary is maintained between these functions. For more information see Section 3.2.9: Relative responsibilities of the chief executive and elected members.
  - Elected members, including the mayor, are responsible for governance and for setting council policies. This includes making appropriate delegations to the chief executive.
  - The chief executive is responsible for the council's administration, operations and service delivery.
- b. As the council's elected leader, it is critical the mayor maintains the integrity of institutional boundaries and respects the impartiality and professionalism of council staff.

### **4.5.2 The mayor and the chief executive**

- a. The chief executive is responsible to the Governing Body for the fulfilment of their functions. The chief executive, who is appointed and employed by the Governing Body [1], is responsible for employing council staff [2], implementing Governing Body and local board decisions, and providing advice to the Governing Body and local boards [3].
- b. The relationship between the mayor and the chief executive is significant and important and is managed largely by convention. The style and frequency of contact develops according to the mayor's preferences, but is governed by the following principles:
  - The council operates effectively if the mayor and chief executive maintain a close working relationship based on mutual recognition of respective roles, dialogue and cooperation.
  - The mayor cannot direct the chief executive in the performance of his or her functions, except in relation to the establishment of the Office of the Mayor [4]. However, the mayor will represent the position of the council's governance arm to the chief executive, including the Governing Body's decisions the chief executive is required to implement. The mayor may discuss governance issues with the chief executive as they arise.

- The relationship between the mayor and the chief executive is not a relationship of direct employment. The chief executive's formal performance is the responsibility of the Governing Body or appropriate committee [5]. However, the mayor may informally raise issues relating to the chief executive's role and performance with them, including concerns raised with the mayor by another elected member [6].
  - The chief executive ensures that council staff cooperate with and assist the mayor on issues directly concerning the mayor's role.
  - The chief executive should be guided by a no surprises principle. They should inform the mayor (and other elected members where appropriate) promptly of significant council operational or service delivery matters, particularly where these matters may be controversial or may become the subject of public debate.
  - It is appropriate for the chief executive to discuss the advice they will provide the Governing Body or local boards with the mayor.
  - The chief executive should exercise judgement when deciding whether to inform the mayor of any matter for which the chief executive has statutory or delegated responsibility especially where it relates to regulatory decision-making. In all cases, both the mayor and the chief executive should act to maintain the independence and professionalism of the chief executive's (or their staff's) decision-making process.
  - The mayor and chief executive should maintain a clear understanding on who is responsible for media or other public comment on particular issues.
- c. The mayor's chief of staff and office will facilitate the relationship.
- d. The chief executive may make a complaint about the conduct of the mayor or other elected member by alleging a breach of the Code of Conduct [7].

#### **4.5.3 The mayor and the other council staff**

- a. The chief executive is the main point of contact between the mayor and council staff. The mayor respects the chief executive's role as the employer of council staff. The mayor cannot specifically direct council staff in relation to their day-to-day work.
- b. On a day-to-day basis, the mayor and their office will have contact with senior council staff best able to provide the necessary information or advice, particularly as it relates to the mayor's role. The scope of this working relationship operates within parameters agreed to between the chief executive and the chief of staff.

- c. Council staff and the mayor's office should keep the chief executive informed, at least in general terms, of contact between staff and the mayor. This information helps to keep clear lines of accountability between the mayor and the chief executive.
- d. The mayor and senior staff are likely to benefit from ongoing discussion about council strategy, capability and performance. This is especially so where it relates to the mayor's role (including, for example, the annual plan).
- e. The mayor should bear in mind that they have the capacity to exercise considerable influence over council staff. The mayor should take care to ensure that they do not inappropriately influence staff or become involved in matters that are not their responsibility. This is part of the mayor's duty to maintain the integrity of council's institutional boundaries and avoid compromising staff impartiality.
- f. The mayor must avoid undermining the chief executive in the performance of their role and respect the impartiality of council staff.
  - If the mayor has concerns about the performance of any staff member, they must raise this only with the chief executive and not directly with the individual staff member. The mayor should avoid publicly criticising any staff member or doing anything that compromises a staff member's impartiality. These principles equally apply to all elected members with concerns about council staff.
  - The same principles do not apply to the mayor's concerns and criticisms of other elected members, which may appropriately be raised directly or publicly and are not usually the concern of the chief executive.

#### **4.6 The mayor's relationship with IMSB and Māori**

- a. The mayor maintains a professional relationship with the IMSB and may facilitate its relationship with the Governing Body. The style and frequency of contact between the mayor and the IMSB may develop according to the preferences of both parties at the time.
  - The mayor has a role in ensuring that the council fulfils its duties to the IMSB [1].
  - The mayor should consult the IMSB where the exercise of the mayoral powers will affect mana whenua groups and mataawaka [2].
  - The mayor should take into account the IMSB's advice to ensure the input of mana whenua groups and mataawaka is reflected in the council's strategies, policies, and plans. This obligation particularly impacts on the mayor's role in leading the development of the council's plans, policies and budgets [3], and

in establishing processes and mechanisms for engaging the people of Auckland [4].

- b. The mayor represents the governance arm of the council to mana whenua and mataawaka groups. This role is performed in a manner that reflects the mana of the mayor as the leader of the council.

## **4.7 The mayor's relationship with council-controlled organisations**

### **4.7.1 The mayor's role in the council's governance relationship with CCOs**

- a. The Governing Body is responsible for the council's decision-making in relation to the governance of council controlled organisations (CCOs) [1]. The council is the shareholder of the CCOs.
- b. The Governing Body's CCO governance role includes establishing CCOs and their constitution [2], appointing directors [3], receiving statements of intent [4], undertaking performance monitoring and [5] receiving half-yearly and annual reports [6]. In respect of the council's substantive CCOs, it also includes specifying expectations, as well as reporting, planning and other accountability requirements [7].
- c. Importantly, the council cannot direct CCOs in their operational decision-making [8].
- d. The mayor has an important role in maintaining the Governing Body's governance relationship with CCOs.
- e. The mayor may represent the Governing Body to the chair and other CCO directors in relation to the council's governance (for example, in relation to the CCO's statement of intent or other reporting or accountability requirements). In this capacity, the mayor may maintain a relationship with a CCO's chair or directors.
- f. The mayor's and governing body's relationships with CCOs are concerned with governance and are therefore distinct from the operational and regulatory relationships that the chief executive and staff may have with the same CCOs. The latter relationships will relate to council operations that fall within chief executive or staff roles and that interact with CCO operations. It is appropriate that the mayor, the Governing Body and the chief executive are mindful of these distinctions between governance and operations.

### **4.7.2 The mayor's role in appointment of CCO directors**

- a. The appointment of CCO directors is governed by the council's Appointment and Remuneration Policy for Boards Members of Council Organisations.

- b. By convention, the mayor plays a key role in nominating potential directors of CCOs, for consideration by the nomination panel. This panel comprises the mayor's chief of staff or representative, the council chief executive, chair of the relevant CCO board, a member of the Independent Māori Statutory Board and up to two Councillors appointed by the Governing Body CCO committee [1]. The nomination panel is responsible for preparing a short list of candidates for consideration by the Governing Body CCO committee [2]. Ultimately that committee appoints CCO directors according to its delegations from the Governing Body and its established processes.
- c. In some cases, the mayor may be empowered by legislation or deed to directly make appointments to CCOs. By convention, the mayor makes such appointments on the advice of the Governing Body (or its CCO committee) where these appointments are made on behalf of the council [3].

## **4.8 Mayoral conduct, public duty and personal interests**

### **4.8.1 General expectations of mayoral conduct**

- a. The mayor holds a public office, with public duties and stature. The mayor is expected to conduct themselves in a manner appropriate to the office.
- b. In the mayor's different capacities – mayoral, political and personal – they are expected to act lawfully and to behave in a way that upholds high ethical standards. The mayor should bear in mind that even when they act in their personal or political capacity, their conduct may impact on the council's reputation.
- c. Care needs to be taken to not blur the distinctions between the capacities in which the mayor may act. The mayor's role and powers should not be used to assist the mayor in their personal capacity. While this role and powers provide a platform for the mayor to succeed (or fail) in their *political* capacity, the mayor should take care not to use them to gain an unfair or improper advantage over other political actors.
- d. When acting in a mayoral capacity, the mayor must comply with the Code of Conduct for Elected Members [1]. Breaches of this code may result in a complaint that leads to the member's censure by the Governing Body (including the mayor) [2]. The Governing Body does not have other powers to sanction the mayor for such breaches.
- e. Ultimately, the mayor is democratically accountable to the public for their conduct. In certain circumstances the mayor's conduct may be subject to investigation by the Auditor-General, e.g. where concerns are raised relating to conflicts of interests (especially relating to financial interests) [3], the use of council's resources [4], or the mayor's conduct resulting in the council suffering financial loss or damage [5]. The mayor's exercise of powers may also come under scrutiny by the courts in judicial

review.

#### **4.8.2 Personal Interests**

- a. As with all elected members, the mayor must exercise (and be seen to exercise) the mayoral role and powers in the interests of the public, based on the merits of the matter, and unaffected by their own personal interests.
- b. This principle gives rise to the rules relating to conflicts of interest. This means that the mayor must:
  - fully disclose actual or potential conflicts of interest
  - not participate in any decision in which they have a conflict of interest.
- c. These principles apply to the mayor and other elected members. However, the mayor needs to be particularly conscious of conflicts of interest due to the breadth and influence of the mayoral role and powers. The mayor must ensure actual or potential conflicts of interest that affect the mayoral role are promptly addressed.

#### **4.8.3 Gifts**

- a. The mayor may receive gifts in their mayoral, political or personal capacity but needs to be mindful of the perception that accepting a gift can bring. As with all elected members, the mayor must declare every gift received of more than NZ\$300 (this is the current limit), excluding gifts from family members [1].
- b. The mayor will receive assistance from the mayor's office in completing this task, while other elected members are assisted by Democracy Services. The mayor's office and Democracy Services should ensure that the protocols for doing so are consistent.
- c. The mayor should not accept any gifts (including hospitality or entertainment) from parties to any regulatory or procurement process with the council (such as a tendering) [2].
- d. The mayor may receive civic gifts from visiting officials, e.g. foreign governments or cities. This is an accepted practice and refusal is likely to cause offence. Such gifts are more in the nature of gifts to the office than to the incumbent mayor. If they are significant gifts, they should be relinquished by the mayor to the council before or at the time of leaving office [3].
- e. The mayor is from time to time offered cultural gifts, such as koha, melofa, lafo or quanxi. Cultural gifts are traditionally offered to honour and show respect for

relationships, and reflect concepts such as service to others, reciprocity, hospitality, and responsibility.

- f. Although cultural gifts may be offered to a mayor with the best of intentions, accepting such gifts may create a perception of a conflict of interest or accusations of double-dipping. The mayor should return gifts of cash or funds immediately, with a respectful statement explaining that they honour the intent behind the gift, but that it is their job to serve, and that they are already well remunerated for the work. Acceptance of other cultural gifts, such as fine mats or food is unlikely to create the same perception problems.
- g. Key principles for all elected members to consider before accepting a gift include the following (for further information see Section 3.2.10: Gifts, fees, endorsements and outside activities):
  - their declaration on taking office to act in the best interests of Auckland as a whole or their local board area [4]
  - possible public perception that receiving the gift might affect their ability to approach decisions fairly and without a conflict of interest
  - that Auckland Council needs to “conduct its business in an open, transparent, and democratically accountable manner” [5]

#### **4.8.4 Fees, endorsements and outside activities**

- a. The position of mayor is a full-time occupation and is remunerated as such. Accordingly, accepting additional payment for doing anything that could be regarded as a mayoral function is not appropriate. In particular, the mayor often speaks at conferences or other gatherings to discuss the council’s policies and plans. This is an integral part of the mayoral role and no appearance fee should be expected or accepted.
- b. The mayor should take care before accepting any appearance fee or other personal payment relating to a non-mayoral activity. The mayor should consider whether the payment reflects on their mayoral role, or could give rise to a perceived conflict of interest.
- c. It is not appropriate for the mayor to take part in the day-to-day management or operation of any business. However, provided no conflicts of interest arise, the mayor is not required to dissolve professional partnerships, allow practising certificates to lapse, or dispose of a business. The mayor may also continue to advise on family trusts, or similar matters of personal interest.



- d. As with other elected members, the mayor should take care before endorsing any product or service, or to allow their presence at an event to be perceived as an endorsement. For more information see Section 3.2.3: Conduct - mandatory relationships and behaviours.

#### **4.8.5 Remuneration**

- a. The mayor's remuneration is determined annually by the Remuneration Authority, including allowances and expenses [1]. The mayor's office liaises with the Remuneration Authority in relation to this determination, while Democracy Services does so on behalf of other elected members.
- b. Democracy Services and the mayor's office should coordinate this approach to ensure consistency.

#### **4.8.6 Ceremonial aspects of the mayoral role: openings, chain, robe, portrait**

- a. By convention, the mayor is the council's primary representative at public events. It is not appropriate for other elected members to usurp the mayor's representative role without their agreement.
- b. The mayor will from time to time perform ceremonial functions. In relation to the opening of council projects, the mayor and the chair of the relevant local board may share this function. Arrangements should be agreed in advance and respect the division of responsibilities between the Governing Body and local boards, as well the mayor's primary leadership role.
- c. When performing ceremonial functions the mayor may wear the mayoral robe and the mayoral chains as a symbol of his or her office, as well as the importance and dignity of the occasion. The council does not have its own mayoral chain but owns the mayoral chains inherited from the legacy councils. The protocol is that the mayor uses the mayoral chain that relates to the area the ceremony takes place in.
- d. Further information about ceremonial aspects is contained in Section 12: Official Information.

#### **4.8.7 Media**

- a. The mayor is the council's primary spokesperson to the public and may speak to the media to represent the official position of the council and Governing Body. The mayor may also refer a matter to the relevant committee or local board chair.
- b. The mayor may also speak to the media in a political capacity but must clarify their position should there be any ambiguity.

## 4.9 The Office of the Mayor

### 4.9.1 Establishing the Office of the Mayor

- a. The mayor may establish an Office of the Mayor in consultation with, and acting through, the chief executive [1]. The office must be established within the budget adopted in the relevant annual plan [2].
- b. Within these constraints, the mayor directs the chief executive on establishing the office and does not need to consult anyone else in doing so. At the mayor's direction, the chief executive employs the mayor's office staff on behalf of the council and arranges the office space, equipment and related support services.
- c. The mayor may, in consultation with and acting through the chief executive, reorganise the office in the course of a mayoral term.

### 4.9.2 Role of the Office of the Mayor

- a. The role of the Office of the Mayor is to assist them in performing mayoral duties professionally and effectively.
- b. The Office of the Mayor performs several functions:
  - **Administrative assistance** - supporting the mayor in managing the full range of issues and responsibilities arising in the course of a day. These include diary management, correspondence, travel arrangements, liaison with other elected members and council staff, and generally managing the flow of mayoral business.
  - **Communications assistance** - providing public relations, publicity and information services, including communications advice, preparing speeches and media releases, media liaison and social media.
  - **Policy and political advice** - providing free and frank policy and political advice to the mayor, maintaining a strategic overview of council business, liaising with council staff, and consulting with other groups. Staff may also assist in gathering support for the mayor's proposals and policies within the council.
- c. Staff members, including political staff, are subject to council policies on involvement in elections and politics. The office of the mayor should not be directly involved in election campaigns run by the mayor (e.g. organising campaign events or fundraising) during work hours. The office's role is not to assist the mayor's re-election but to support them in performing the role professionally and effectively.

#### **4.9.3 Staff and budget**

##### **Staff**

- a. The chief of staff leads the Office of the Mayor.
- b. The chief executive manages general employment and administrative matters in relation to the chief of staff; the chief executive should also bring significant issues to the mayor's attention.
- c. The Office of the Mayor may include political appointments and general staff. These staff members are council employees or contractors and are subject to council employment policies.

##### **Budget**

- a. The Governing Body allocates the office a budget in each annual plan or long-term plan; this cannot be less than 0.2% of the council's total budgeted operating expenditure for the year [1]. The office must be established within this budget, including staff, contractors and administration.
- b. The mayor and the office may use this budget to support the mayoral role and may retain funds for specific projects.

#### **4.9.4 Relationships with the chief executive, staff and other elected members**

- a. The chief executive establishes the Office of the Mayor and formally employs its staff on behalf of the council [1]. The mayor may direct the chief executive in performing some aspects of this role; this differs from the chief executive's usual autonomy in employing council staff [2]. As noted above, the incoming or incumbent mayor retains political staff for a particular role for the duration of that mayor's term. The chief executive retains general staff as permanent council employees but they do not expect to remain in the same role during the next mayor's term.
- b. The chief executive and chief of staff maintain an important working relationship, based on mutual recognition of their respective roles. By convention, the chief of staff independently manages the Office of the Mayor without the chief executive's day-to-day involvement.
- c. Council staff have an important role in advising the office on aspects of the mayor's role. For example, they may assist the mayor in developing plans, budgets and policies.
  - Council staff will often have a direct working relationship with the office when assisting the mayor in their role. The scope of this working relationship

operates within parameters agreed to between the chief executive and the chief of staff.

- The Office of the Mayor cannot specifically direct council staff in their day-to-day operation. It is expected the chief executive will ensure that council staff assist the office on issues directly concerning the mayor's role.
- d. Other elected members do not have access to the resources or advice of the mayor's office, except as agreed to by the mayor and chief of staff.
- e. The mayor's office may facilitate this relationship, e.g. by arranging meetings or discussing the mayor's view with elected members.
- f. Elected members may request information from the mayor's office. It will generally be appropriate for the Office to cooperatively provide this information if the office judges the information relevant to the elected member's role.

#### **4.9.5 Official information held by the mayor's office**

- a. The mayor's office is part of the council and therefore the information it holds is subject to LGOIMA [1]. This includes information of a political or personal nature to the mayor [2]. Such information may be able to be withheld to protect privacy, an obligation of confidence, or free and frank expression of opinions [3]. A question may arise whether information is actually held by the office or staff member as an agent of the mayor personally [4].
- b. The office should ensure there are appropriate protocols in place so that local government official information can be identified and disclosed, consistent with council LGOIMA policies. These arrangements are operational, and so need to be made in coordination with the chief executive.

#### **4.10 Footnotes**

##### **4.1.1 Leading and influencing the council's work**

[1] Local Government Act 2002 sch 7, cl 26.

[2] Local Government (Auckland Council) Act, s 14(2); Local Government Act 2002, sch 7, cl 24.[3] Local Government Act 2002 sch 7 cl 26.

[4] Local Government (Auckland Council) Act 2009 s 9(1).

[5] Local Government (Auckland Council) Act 2009 ss (9)(2)(a), 79.

##### **4.1.2 Leading the development of council plans, policies and budgets**

[1] Local Government (Auckland Council) Act 2009 s 9(2)(a).

[2] Local Government (Auckland Council) Act 2009 s 15(1)(c) and (d); Local Government Act 2002, ss 93, 95, sch 7 cl 24.

#### **4.1.3 Ensuring effective engagement with the people of Auckland**

[1] Local Government (Auckland Council) Act 2009 s 9(2)(b).

[2] Local Government (Auckland Council) Act 2009 s 9(3)(a).

[3] Local Government (Auckland Council) Act 2009 s 9 (3)(a); Local Government (Auckland Transitional Provisions) Act 2010 ss 86(1) and (5).

#### **4.1.4 Leading and chairing the Governing Body**

[1] Local Government Act 2002 sch 7 cl 26.

[2] Standing Orders 1.8.2. (Clause 24(4)(b), Schedule 7, Local Government Act 2002).

[3] There is no requirement of chair-neutrality in the legislation or standing orders.

[4] Local Government Act 2002, sch 7, cls 16, 27. Standing Orders 1.2.4, 1.7.5.

[5] Local Government Act 2002, sch 7, cl 16.

[6] See Mayor of Dannevirke v Ries (1908) 27 NZLR 751 (SC); Wishart v Henneberry (1962) 3 FLR 171.

[7] Standing Orders 2.4.2 and Standing Orders 6.

#### **4.1.5 Appointing the deputy mayor. Governing Body committees and establishing an office**

[1] Local Government (Auckland Council) Act 2009 s 9(3)(b),(c) and (d).

[2] The Mayor has a specific statutory power to appoint committee chairs. Local Government (Auckland Council) Act 2009 s 9(3)(d).

[3] Interpretation Act 1999 s 12.

[4] Local Government (Auckland Council) Act 2009 s 9(3)(c) and 9(7)(c), Local Government Act 2002 Sch 7 cl 30.

[5] Local Government (Auckland Council) Act 2009 s 9, Local Government Act 2002 Sch 7 cl 31.

[6] Local Government Act 2002 Sch 7 cl 32.

[7] Local Government (Auckland Council) Act 2009 s 9(6).

[8] Local Government (Auckland Council) Act 2009 s 9(3)(e).

#### **4.1.6 Representing and speaking for the council**

[1] Code of Conduct, cl 7.5.

#### **4.1.7 Exercising civil defence and emergency management powers**

[1] Civil Defence Emergency Management Act 2002 s 25(5).

[2] Civil Defence Emergency Management Act 2002 s 13(4).

#### **4.1.8 Election and tenure**

[1] Local Government (Auckland Council) Act 2009 s 8 and Local Electoral Act 2001 s 10.

[2] Local Electoral Act 2001 s 115.

[3] Local Government Act 2002 sch 7 cl 1; Electoral Act 1993, s 80.

[4] Local Government Act 2002 sch 7 cl 5.

[5] Local Government Act 2002 sch 7, cl 5. Local Electoral Act 2001 ss 117 - 120.

#### **4.2.1 Appointment, resignation and removal**

[1] Local Government (Auckland Council) Act 2009 s 9(3)(b).

[2] Local Government (Auckland Council) Act 2009 s 9(3)(b), s 9(7)(a). Local Government Act 2002 sch 7 cls 17, 25.

[3] Interpretation Act 1999 s 12.

[4] Local Government Act 2002 Sch 7 cl 18. Local Government Act 2002, s 41A(4)

[5] Interpretation Act 1999 s 16; Local Government (Auckland Council) Act 2009 s 9(3)(b), s 9(7)(a); Local Government Act 2002 sch 7 cls 17, 25.

#### **4.2.2 Performing the role of the mayor in some circumstances**

[1] Clause 17(3)(a), Schedule 7, Local Government Act 2002.

[2] Local Government Act 2002, Sch 7 cl 17(3)(b) and (c).

#### **4.3.1 Non-delegable and delegable powers**

[1] Local Government (Auckland Council) Act 2009 s 9(5).

[2] Local Government (Auckland Council) Act 2009 s 9(3)(b), s 9(7)(a); Local Government Act 2002 sch 7 cls 17, 2

[3] Clause 17(3)(a), Schedule 7, Local Government Act 2002.

[4] Local Government Act 2002, Sch 7 cl 17(3)(b) and (c) .

[5] Local Government (Auckland Council) Act 2009 s 9(5).

#### **4.4.1 General overview – the mayor as “first among equals”**

[1] Local Government (Auckland Council) Act 2009, s 14(2); Local Government Act 2002, Sch 7, cl 24.

[2] Local Government (Auckland Council) Act 2009 s 9(1).

#### **4.4.2 The mayor's relationship with the Governing Body**

[1] Sir Robin Cooke "Third Thoughts on Administrative Law" [1979] Recent Law 218 at 225; Sir Robin Cooke "The Struggle for Simplicity in Administrative Law" in M Taggart (ed) Judicial Review of Administrative Action in the 1980s: Problems and Prospects (Oxford University Press, Auckland, 1986) at 5; New Zealand Fishing Industry Assoc Inc v Minister of Agriculture and Fisheries [1988] 1 NZLR 544 (CA) at 552.

[2] Local Government (Auckland Council) Act 2009 s 9(1).

#### **4.4.3 The mayor's relationship with local boards**

[1] Local Boards have their own standing orders: Local Government (Auckland Council) Act 2009, s 29; Local Government Act 2002, Sch7, cl27.

[2] Local Government (Auckland Council) Act 2009 s 9(1).

[3] Local Government (Auckland Council) Act 2009, s 29; Local Government Act 2002, Sch7, cl27.

[4] Standing Orders 6.1.

[5] Standing Orders 6.2.1.

[6] Local Government Act 2002, sch 7, cls 16, 27. Standing Orders 1.2.4, 1.7.5, 6.2.2.

[7] Standing Orders 6.2.3.

[8] Local Government (Auckland Council) Act 2009 s 9(1).

#### **4.4.4 The mayor's role in relation to the conduct of elected members**

[1] Code of Conduct, cl 8.2.

[2] Members Interests Act, s 8. The Auditor-General has a specific role in administering the Members Interests Act relating to financial interest, but may also report on non-financial interests.

[3] Public Audit Act 2001, a 18.

[4] Local Government Act 2002, s 48.

[5] Local Government (Auckland Council) Act 2009 s 9(3)(b),(c) and (d); and Interpretation Act 1999, s 12. It is also notable that the governing body itself may appoint and remove elected members from Governing Body committees. Local Government Act 2002 Sch 7 cl 31.

[6] Local Government Act 2002, Sch 7

[7] Code of conduct complaints are dealt with initially by the chief executive, then a panel, followed (potentially) by the Governing Body or member's local board. cl 8.

[8] Standing Orders 7.9.2.

[9] Code of Conduct, cl 8.2.

#### **4.5.2 The mayor and the chief executive**

[1] Local Government Act 2002, s 42(1), Sch 7 cls 33-35.

[2] Local Government Act 2002, s 42(2)(g).

[3] Local Government Act 2002, s 42(2)(a), 42(2A).

[4] Local Government (Auckland Council) Act 2009, Section 9(3)(e) and (4).

[5] Local Government Act 2002, s 42(1), Sch 7 cls 33-35.

[6] Code of Conduct, cl 7.2.

[7] Code of Conduct for Elected Members, cl 6.3.2.

#### **4.6 The mayor's relationship with IMSB and Māori**

[1] Local Government (Auckland Council) Act 2009, s 88.

[2] Local Government (Auckland Council) Act 2009, s 88(b).

[4] Local Government (Auckland Council) Act 2009 s 9(2)(a).

[5] Local Government (Auckland Council) Act 2009 s 9(3)(a).

#### **4.7.1 The mayor's role in the council's governance relationship with CCOs**

[1] Local Government (Auckland Council) Act 2009, s15(1)(ca).

[2] Local Government Act 2002, s 56.

[3] Local Government Act 2002, s 57.

[4] Local Government Act 2002, s 64.

[5] Local Government Act 2002, s 65.

[6] Local Government Act 2002, ss 66, 67.

[7] Local Government (Auckland Council) Act 2009, ss 90, 91.

[8] Local Government Act 2002, s 60.

#### **4.7.2 The mayor's role in appointment of CCO directors**

[1] Appointment and Remuneration Policy for Boards Members of Council Organisations cl 4.4.2.



[2] Appointment and Remuneration Policy for Boards Members of Council Organisations cl 4.4.2.

[3] Appointment and Remuneration Policy for Boards Members of Council Organisations, cl 8.1.

#### **4.8.1 General expectations of mayoral conduct**

[1] Local Government Act 2002, s 15(a).

[2] Code of Conduct, cl 8.8.

[3] Members Interests Act, s 8. The Auditor-General has a specific role in administering the Members Interests Act relating to financial interest, but may also report on non-financial interests.

[4] Public Audit Act 2001, a 18.

[5] Local Government Act 2002, s 48.

#### **4.8.3 Gifts**

[1] Conflict of Interest Policy, cl 10.14.

[2] Code of Conduct, cl 10.8, 10.9.

[3] Civic Gifts Policy.

[4] Local Government Act Schedule 7, Clause 14.

[5] Local Government Act 2002, Section 13(a)(1).

#### **4.8.5 Remuneration**

[1] Local Government Act 2002, Sch 7, cl 6.

#### **4.9.1 Establishing the Office of the Mayor**

[1] Local Government (Auckland Council) Act 2009, s 9(3)(e) and (4).

[2] Local Government (Auckland Council) Act 2009 s 9(3)(e) and (4).

#### **4.9.3 Staff and budget**

[1] Local Government (Auckland Council) Act 2009 s 9(3)(e) and (4).

#### **4.9.4 Relationships with the chief executive, staff and other elected members'**

[1] Local Government (Auckland Council) Act 2009 Section 9(3)(e) and (4).

[2] Local Government Act 2002 s 42(2)(g).

#### **4.9.5 Official information held by the mayor's office**

[1] Local Government Official Information and Meetings Act 1987, s2, definition of official information.

[2] There is no exception in LGOIMA relating to political information.

[3] Local Government Official Information and Meetings Act 1987, s7(2)(a), (c), (f).

[4] Local Government Official Information and Meetings Act 1987, s2, definition of official information.

### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

Updated 11 January 2021

## 17. Elections

Auckland Council runs elections for the mayor, ward councillors and local boards. It also manages elections for the Auckland region's three district health boards (Auckland, Counties Manukau and Waitematā) and five licensing trusts (Birkenhead, Mount Wellington, Portage, Waitakere and Wiri).

Elections are held every three years, on the second Saturday in October [1].

### 17.1 Elections Administration

#### 17.1.1 Running the elections

- a. Auckland Council is required to appoint an electoral officer to exercise the powers and carry out election-related duties as established and mandated by the Local Electoral Act 2001 [1].
- b. Most councils in New Zealand use a contracted private company to manage the processing of nominations and votes, and typically appoint either a staff member or the principal of that company as electoral officer. For the 2016 elections, Auckland Council contracted Independent Elections Services to run the elections, and the Governing Body appointed Dale Ofoske, a director of Independent Election Services, as the electoral officer. He in turn appointed Warwick Mc Naughton, Principal Advisor Democracy Services, as the deputy electoral officer. These appointments continue until the electoral officer is replaced.

#### 17.1.2 Duties of electoral officer and officials

- a. The electoral officer has the powers and duty to [1]:
  - conduct elections or polls within the Auckland local government area
  - compile and certify the electoral rolls
  - publish any public notice relating to elections and polls and the calling of nominations
  - receive nominations, candidate profile statements, and required deposits
  - issue and receive ordinary and special votes and other official documents
  - process and count votes
  - declare the results

- receive returns of electoral donations and expenses
  - investigate possible offences and report alleged offences to the police.
- b. The electoral officer is required to appoint a deputy electoral officer to perform these duties if they become incapable of doing so. The deputy electoral officer has the full powers of an electoral officer and must continue to act until the electoral officer regains capability or a new electoral officer is appointed [2].
  - c. Electoral officials must make declarations before they can fulfill their duties under the Local Electoral Act [3]. Declarations remain current until 31 January of the year of the next election [4].
  - d. To prevent any political intervention in the elections process, the exercise of powers under the act is legally protected from any direction by the Governing Body or local boards [5]. The electoral officer, deputy electoral officer, and other electoral officials perform their functions and duties independently of the council. Candidates for election cannot be appointed or act as electoral officials [6].
  - e. The chief executive should not act as an electoral official unless there are no other reasonably practicable options available [7].

### 17.1.3 Key dates for an elections period

- a. Each election has a number of key dates to enable best practice and ensure legislative and procedural timeframes are met.

Date	Activity
Not later than 28 days before the earlier of the close of the roll or the close of nominations [1]	Public notice of election calling for nominations and announcing roll open
57th day before election day [2]	Nominations close
Between 17–23 days prior to election day [3]	Delivery of voting documents
Second Saturday in October [4]	Election day
For booth voting, 7pm on election day; for postal voting, 12pm on election day [5]	Voting closes

As soon as practicable after all valid votes have been counted [6]	Public notice of declaration of results
Within 55 days after election results are declared [7]	Return of election expenses and donations form

## 17.2 Candidate information

### 17.2.1 The roles people can stand for in Auckland local elections

- a. Elections are held every three years for the following roles:
  - Auckland Council's governing body, consisting of:
    - i. the mayor
    - ii. 20 ward councillors – elected from 13 wards
  - 149 Auckland Council local board members – elected from 21 local boards
  - District Health Board members (Auckland, Counties Manukau, Waitematā) – 7 per board
  - Licensing Trust members: Birkenhead – 6 members; Mt Wellington – 6 members; Portage – 10 members; Waitakere – 7 members; Wiri – 6 members.

### 17.2.2 Who can stand

- a. To qualify as a candidate for the positions of mayor, ward councillor, local board member, district health board member or licensing trust member, a person must be [1]:
  - a New Zealand citizen
  - aged over 18
  - enrolled on the parliamentary electoral roll.
- b. Candidates do not need to reside in the area in which they are standing but will need to disclose that fact in their candidate profile statement [2].
- c. Candidates need two people to nominate them. These people must be aged over 18 and enrolled to vote at an address in the area the candidate wants to represent [3]. Candidates can obtain information on rules and procedures from the nomination forms and in the candidate information handbook. These are available

from the electoral officer, via service centres, and on the council's website [4] once the nomination period has opened.

### **17.2.3 Standing for more than one position**

- a. A candidate cannot stand for more than one governing body ward or one local board subdivision [1].
- b. If a candidate is elected to the position of mayor and governing body member, they take the position of mayor [2]. A candidate elected as a governing body member and local board member takes the governing body position [3].
- c. A person can only be a member of one local board. They can stand for election in more than one but have to declare in their profile statement [4] which local board they will choose if they are elected to more than one.

### **17.2.4 Campaigning**

There are rules on how candidates are to behave to ensure elections are fair and transparent. Rules include using council resources (see section 5), campaign costs and electoral signage (see below).

#### **a. Electoral donations**

Electoral donations are money, goods or services given to a candidate (or other person on the candidate's behalf) for use in the candidate's campaign [1]. Electoral donations, and contributions to donations, of more than \$1,500 (incl. GST) must be declared in the candidate return of donations and expenses [2]. A series of donations made by one person that adds up to more than \$1,500 must also be declared.

The following are not deemed to be donations [3]:

- volunteer labour
- goods or services provided free of charge to a candidate, or to any person on the candidate's behalf, that have a reasonable market value of \$300 or less
- money provided by the candidate for their campaign.

If a person or organisation pays for goods or services that would otherwise be candidate election expenses, then the reasonable market value of those items should be recorded as an election expense. If the value exceeds \$300 it should also be recorded as a donation.

Candidates are not allowed to retain anonymous donations exceeding \$1,500 [4].

## **b. Campaign expenses**

The amount a candidate can spend on his or her campaign relates to the population of the area they stand for and should not exceed the limits in the Candidates' guide on electoral donations and expenses (for further information see Elections on the Auckland Council website).

## **17.3 Election results**

- a. Progress results are announced as soon as possible after 12 noon on election day.
- b. Preliminary results are announced once all votes received at service centres and libraries up until 12 noon on election day have been processed and delivered to the Electoral Officer. Final results are announced after all votes, including special votes, have been counted [1].
- c. Successful candidates are advised of progress and preliminary results as soon as possible by email or phone. Progress and preliminary results are released to the media and placed on the council's website [2] as soon as possible after 12pm on election day.
- d. The declaration of results can be challenged through:
  - a judicial recount, on application to a District Court Judge from a candidate up to three days after the public declaration [3]
  - or
  - a judicial inquiry, by petition filed in the District Court by a candidate or 10 electors, within 21 days of the public declaration [4].
- e. Anyone wishing to challenge the results has to provide reasons and a deposit of \$750 with the application to the Auckland District Court [5].

## **17.4 Voter Information**

### **17.4.1 How voting works**

- a. The electoral roll for a local election includes residential and ratepayer electors.
- b. A person is qualified to vote in Auckland's local elections as a residential elector if they are enrolled on the parliamentary electoral roll for the area [1]. To be eligible for enrolment, a person must be [2]:
  - over 18 years
  - a New Zealand citizen or a permanent resident.
- c. The enrolment process is the same as for national elections [3].

- d. A person who owns property within the Auckland Council area but who lives outside this area (and is on the electoral roll at a residence outside the area) can enrol as a ratepayer elector for the election of the mayor and governing body members [4]. A person who owns property within a local board area but who lives outside the local board area can enrol as a ratepayer elector for the election of the local board members. To go on the ratepayer roll, a person needs to apply to the electoral officer for the local council area in which they own property but does not usually live. The electoral officer will send a form to complete, sign and return to check eligibility.
- e. If someone is registered on the unpublished electoral roll, they will need to apply to the electoral officer to receive voting papers [5].
- f. Voters who are overseas can take part in local elections. They must ensure they are correctly enrolled with an overseas postal address to receive their voting papers. Voting papers for local elections cannot be downloaded.

**g. Voting methods**

Local elections may use postal voting, booth voting, electronic voting or a combination [6]. Auckland Council's elections are held by postal vote. Voting papers are posted to all enrolled voters about a month before voting starts. The postal voting period starts three weeks in advance of Election Day.

#### **17.4.2 Voting Systems**

- a. The first past the post electoral system is used for Auckland Council elections (mayor, ward councillors and local board members) and the five licensing trust elections.
- b. Under this system, a voter ticks the circle next to the candidate they wish to elect; the candidate(s) with the most votes wins [1].
- c. The district health boards are elected using the single transferrable vote (STV) voting system. Under the STV system, a voter ranks as few or as many candidates as he or she likes [2].
- d. First preferences are counted and any candidate whose votes exceed a set amount is elected. If all positions are not filled, the surplus proportion of votes for successful candidates are redistributed among the other candidates according to voters' preferences. If the positions are not filled, the candidate with the fewest votes is excluded and the second preferences of those who voted for that candidate are counted. This process of redistributing votes continues until all positions are filled. For more information about how STV works, go to <http://www.stv.govt.nz/STV/how.htm>



### 17.4.3 Order of candidate names on voting documents

- a. The council may resolve that candidate names are arranged on the voting document in alphabetical order of surname, pseudo-random order or random order [1]. With pseudo-random order of names, the same random order appears on each voting document. With random order of names, a different random order appears on each voting document.
- b. Auckland Council has used alphabetical order printing to date for mayoral, ward councillor and local board member candidates.
- c. Alphabetical order is easier to use and understand, and matches the way candidate names are displayed in the candidate directory.
- d. A potential disadvantage of alphabetical order printing is that there is some documented evidence, mainly from overseas, of voter bias to those at the top of a voting list. This analysis of booth voting is based on two criteria: 1) the impact on vote share and 2) the impact on election outcome. Auckland's local elections are administered by postal voting which allows for a more considered approach than booth voting. Analysis of previous election results shows that any potential advantage to those at the top of alphabetical voting lists is very small.
- e. The district health boards and licensing trusts make their own decisions about the order of names.

### 17.4.4 Kids Voting Ngā Pōti ā-Taiohi (Youth Voting)

- a. **Auckland Council runs** a Youth Voting programme which falls into the wider remit of the Voter Participation Initiative, to encourage and boost civic participation in ways that are innovative, wide-reaching and fit for purpose. Further, it also seeks to foster long-term behavioural and intergenerational voter participation change. **This gives young people aged 11 to 15 (school years 7 to 10) the opportunity to experience an election first-hand.**
- b. **Students learn about Auckland Council, why voting is important and how elections work. At the end of the programme, they vote for real candidates on real issues and then they see how their results compare to the official election results.**
- c. **In the 2016 election year, Auckland Council received a record number of registrations with more than 11,500 students taking part from 55 schools. The council plans to run more of these programmes in future election years.**
- d. During the 2019 election year, more than 12,000 students from more than 70 schools participated in the Youth Voting initiative.

## 17.5 Incumbent members standing as candidates

### **17.5.1 Election Year Policy for Elected Members**

- a. In an election year, an incumbent member standing as a candidate has two roles:
  - as an elected member, continuing to take part in council decision-making for which they are provided the necessary resources

- as a candidate campaigning for re-election.
- b. Council resources must not be used for any electoral advantage. The Election Year Policy for Elected Members, adopted by the governing body after feedback from local boards, outlines the rules for managing the use of council resources during election time.
- c. The chief executive also develops a policy for the conduct of staff during an election year.

## **17.5.2 Terms of office and transitions**

- a. Members who are elected at a triennial election come into office the day after the public notice of the official declaration of results [1]. Current members' terms of office expire at the same time [2].
- b. Election day is the second Saturday in October and the public notice of results is usually one week later. Elected members take up office but are unable to fulfil their duties until they have made their declarations [3]. There may be one or two weeks between commencing office and making their declarations.
- c. The governing body and local boards typically pass resolutions setting out how decisions are to be made between the final meetings in September and the inaugural meetings. This period of time is often referred to as the interregnum period. While current members are still in office, decision-making may be delegated to a few members. During the 2016 interregnum period the governing body delegated urgent decision-making power to any two of either the mayor, the deputy mayor and a chairperson of a committee of the whole. Local Boards delegated urgent decision-making power to their chair and deputy chair.
- d. The chief executive will also make decisions during this period under existing delegations.

For information on what happens if a vacancy occurs during a political term see Section 3.3: Resignations and vacancies.

## **17.6 Inaugural meetings following an election**

### **17.6.1 Statutory declarations**

- a. The chief executive calls the first meetings following an election for the governing body and each of the 21 local boards [1].
- b. They also chair the governing body's inaugural meeting until the mayor has made the declaration [2]. The mayor then chairs the meeting and the other members make their declarations.

- c. The chief executive, or nominee (usually a member of the Executive Leadership Team), chairs local board inaugural meetings and each member makes a declaration, confirmed by the chief executive (or nominee). The members then elect a local board chairperson, who makes a chairperson's declaration and chairs the meeting.
- d. The form of the declaration is prescribed in legislation. It is essentially a signed public statement that the member will perform their responsibilities in the best interests of the area (being the Auckland Council area for the mayor and Governing Body members and the local board area for each local board).

### **17.6.2 Explanation of laws affecting members**

- a. There is a legal requirement [1] for the chief executive to arrange an explanation of the Local Government Official Information and Meetings Act 1987 and other laws affecting members including:
  - the appropriate provisions of the Local Authorities (Members' Interests) Act 1968
  - sections 99, 105, and 105A of the Crimes Act 1961
  - the Secret Commissions Act 1910
  - the Financial Markets Conduct Act 2013
- b. These laws relate to pecuniary interest, corruption and bribery, improper gain, interest in contracts, use of confidential information for personal benefit (insider knowledge) and non-misleading offers of securities.
- c. In 2016 the explanation of these laws, as well as a number of other core legal requirements, was provided to elected members by way of a report presented at the first business meeting of the governing body on 1 November 2016 and the first meeting of each local board.
- d. Elected members also underwent an extensive induction programme that focused on:
  - good governance and the role of elected members as decision-makers
  - the role of staff in providing advice
  - an overview of elected members' legal obligations
  - trust and confidence in Auckland Council
  - obligations to Māori and the role of the Independent Māori Statutory Board
  - Auckland Council's shared governance model and how it works in practice.

### **17.6.3 Welcome by mana whenua**

- a. It is customary for mana whenua to welcome newly-elected local government members. At Auckland Council, this has included a formal pōwhiri for all governing body and local board elected members, prior to inaugural meetings, and a whakatau mihi at each of the inaugural meetings.

### **17.7 Referenda**

- a. Under Section 9 of the Local Electoral Act 2001, the electoral officer may be directed by the council to hold a referendum on matters such as:
  - current or future services
  - current or future policies
  - proposals relating to current or future activities or objectives of council
  - current or future wellbeing of its local government area.
- b. The council determines whether the referendum subject matter affects all or part of the Auckland local government area. Defining the area the matter relates to is important to ensure the electoral officer is able to identify all the local electors who need to be included in the referendum. Multiple referenda can be conducted at the same time or in conjunction with other elections or polls.
- c. The result of any referendum is not binding on Auckland Council unless it resolves otherwise or another law provides otherwise [1].

### **17.8 Footnotes**

#### **17. Elections**

[1] Local Electoral Act 2001, section 10(2)

#### **17.1.1 Running the elections**

[1] Local Electoral Act 2001, section 12(1)

#### **17.1.2 Duties of electoral officer and officials**

[1] Local Electoral Act 2001, sections 15 to 19

[2] Local Electoral Act 2001, section 13

[3] Local Electoral Act 2001, section 14(2)

[4] Local Electoral Act 2001, section 14(3)

[5] Local Electoral Act 2001, section 14(1)

[6] Local Electoral Act 2001, section 14(4)

[7] Local Electoral Act 2001, section 14(5)

### **17.1.3 Key dates for an elections period**

[1] Local Electoral Act 2001, section 52

[2] Local Electoral Act 2001, section 5

[3] Local Electoral Regulations, clause 51

[4] Local Electoral Act 2001, section 10

[5] Local Electoral Act 2001, section 5

[6] Local Electoral Act 2001, section 86

[7] Local Electoral Act 2001, section 112A

### **17.2.2 Who can stand**

[1] Local Electoral Act 2001, section 5

[2] Local Electoral Act 2001, section 61(2)(ca)

[3] Local Electoral Act 2001, sections 26 and 55

[4] [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)

### **17.2.3 Standing for more than one position**

[1] Local Electoral Act 2001, section 57A

[2] Local Electoral Act 2001, section 88

[3] Local Electoral Act 2001, section 88A

[4] Local Government (Auckland Council) Act 2009, section 11AAB

### **17.2.4 Campaigning**

[1] Local Electoral Act 2001, section 103A

[2] Local Electoral Act 2001, section 112A

[3] Local Electoral Act 2001, section 103A

[4] Local Electoral Act 2001, section 103J

### **17.3 Election results**

[1] Local Electoral Regulations 2001, clause 58 and Local Electoral Act 2001, sections 85 and 86

[2] [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)

[3] Local Electoral Act 2001, section 90

[4] Local Electoral Act 2001, section 93

[5] Local Electoral Regulations 2001, clauses 139 and 140

#### **17.4.1 How voting works**

[1] Local Electoral Act 2001, section 23

[2] Electoral Act 2001, section 74

[3] <http://www.elections.org.nz/voters/enrol-check-or-update-now/how-enrol>

[4] Local Electoral Act 2001, section 24

[5] Local Electoral Act 2001, section 21

[6] Local Electoral Act 2001, sections 5 and 36

#### **17.4.2 Voting Systems**

[1] Local Electoral Act 2001, section 5A

[2] Local Electoral Act 2001, section 5B

#### **17.5.2 Terms of office and transitions**

[1] Local Electoral Act 2001, section 115

[2] Local Electoral Act 2001, section 116

[3] Local Government Act 2002, Schedule 7, clause 14

#### **17.6.1 Statutory declarations**

[1] Local Government Act 2002, schedule 7, clause 21

[2] Local Government Act 2002, schedule 7, clause 14

#### **17.6.2 Explanation of laws affecting members**

[1] Local Government Act 2002, schedule 7, clause 21

#### **17.7 Referenda**

[1] Local Electoral Act 2001, section 9(7)

### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**





## 9. The chief executive and council staff

The roles, responsibilities and delegations of the chief executive and council staff, and the relationship with elected and appointed members.

### 9.1 Chief Executive

#### 9.1.1 Appointment and tenure

- a. The chief executive is appointed by the council through the Governing Body [1] and the Governing Body may not delegate this responsibility to any other decision-making body or person [2]. To discharge its duties the Governing Body is supported by council staff and, where appropriate, external recruitment consultants.
- b. When appointing the chief executive, the council, through the Governing Body, must look for a person who will: [3]
  - discharge the specific responsibilities of the chief executive
  - instil in council employees a spirit of service to the community
  - promote efficiency in the council
  - be a responsible manager
  - maintain appropriate standards of integrity and conduct among council employees
  - ensure the council is a good employer
  - promote equal employment opportunities.
- c. The chief executive is initially appointed for a term of up to five years [4], with the possibility of being appointed for a second term of up to two years following a review of their employment [5].
- d. A review must be completed at least six months before the end of the chief executive's first term [6], unless the incumbent advises the Governing Body they do not wish to be considered for appointment for a second term [7].
- e. A subcommittee of councillors [8] reviews the chief executive's employment on behalf of the Governing Body. During a review, the committee will assess the following

factors before making a recommendation on the chief executive's employment to the Governing Body: [9]

- the chief executive's performance
  - the chief executive's skills and attributes, and the degree of alignment with the Governing Body's requirements
  - any other factors the Governing Body considers relevant.
- f. Following a review, and before the end of the incumbent's term, the council, through the Governing Body, must either appoint the incumbent for a second term of up to two years or advertise a vacancy [10]. If a vacancy is advertised, the incumbent may apply for the position. The council must give due consideration to the incumbent's application [11].
- g. The chief executive has no right or expectation of re-appointment at the end of any term [12].

#### **9.1.2 Roles and responsibilities**

- a. The chief executive has overall responsibility for Auckland Council's operational management. As the administrative head, they may be referred to as the council's principal administrative officer [1].
- b. The chief executive is expected to be apolitical and not to make political or policy decisions. This is the role of the elected members. The chief executive may engage with politicians (including Ministers of the Crown and their offices) on matters in which the council has an interest and is often the 'face of the council'.
- c. The chief executive also has a number of specific roles and responsibilities set out in legislation [2] which should be carried out within the budgetary constraints set by the council in the Long-term and Annual Plans.

##### **d. Implementing council decisions**

- One of the chief executive's main roles is to implement the council's decisions, [3] i.e. decisions made by the Governing Body or their delegated committees, local boards and co-governance entities[4].
- As the employer, the Governing Body can direct the chief executive. However, as the operational head of the council the chief executive has autonomy as to how those directions are carried out, provided they act within the scope of their powers.

#### **e. Advising elected members**

- It is also part of the chief executive's role to provide advice to Governing Body or their delegated committees, co-governance groups and local board members [5].
- The chief executive and/or council staff attend Governing Body (including committees) meetings, local board meetings and co-governance entities to advise members in person.
- Council staff also advise elected members, either informally [6] or through formal reports provided prior to meetings. Where reports are provided, the council employee may also attend the relevant meeting to answer questions or speak to the report.
- The chief executive is responsible for ensuring the best possible advice is provided to elected members.

#### **f. Supporting local boards**

- Each local board makes an agreement with the Governing Body every year covering the delivery and funding of services in the relevant local area. The chief executive is responsible for implementing each of these local board agreements on behalf of Auckland Council [7].
- The chief executive must provide the necessary administrative facilities for each local board to carry out its functions and duties [8].
- While the chief executive is accessible to all elected members, it is not practical, given their number, to maintain regular personal engagement with all members. For general matters, the chief executive engages with local board members through the Local Board Chairs Forum [9] and is accessible by email or writing for specific matters.

#### **g. Management of Auckland Council**

- The chief executive is ultimately responsible for the management of Auckland Council, including its administration, operations and service delivery. In particular, it is the chief executive's role to ensure the proper performance and exercise of all responsibilities, duties and powers delegated to, imposed or conferred (by an Act, regulation or bylaw) on them or any council employee [10].
- It is also up to the chief executive to ensure that the council's activities are managed effectively and efficiently [11]. This includes ensuring powers and functions are appropriately delegated to ensure effective and efficient conduct of council business.

- Similarly, the chief executive is responsible for maintaining systems to enable effective planning and accurate reporting of Auckland Council's financial and service performance [12].
- The chief executive must also ensure, so far as practicable, that the council's management structure reflects and reinforces the separation of regulatory responsibilities and decision-making processes, and can deliver adequate advice to facilitate the explicit resolution of conflicting objectives [13].
- This statutory role gives effect to the principle of separating governance functions, which requires responsibility for regulatory functions to be distinct from other non-regulatory functions [14]. It also emphasises that any trade-offs between conflicting objectives should be made in an open and transparent manner.
- Council staff (such as the Audit and Risk units) can investigate where such conflicts arise; processes are in place to manage such conflicts.

#### **h. Leadership and management of staff**

- The chief executive is responsible for employing and negotiating the terms of staff employment [15]. This is carried out by the chief executive on behalf of and in the name of Auckland Council, and must be done in accordance with the council's recruitment and remuneration policies.
- The chief executive is also responsible for providing leadership to staff [16]. Attributes for this role are set out in statute, particularly the chief executive's responsibility to instil a spirit of service to the community in staff and maintain appropriate standards of integrity and conduct [17].
- The chief executive's leadership role is implemented through various mechanisms, including the council's business planning, organisational strategy and performance plan, standards of employment, and various policies and staff code of conduct.

#### **i. Other powers conferred by statute**

- The chief executive also has a number of other powers conferred directly under various statutes.
- For example, under the Public Works Act 1981, the chief executive is given specific powers, including signing certain documents [18] and executing certificates of grants of land [19].

- Where a statute directly confers a power on the chief executive, they may delegate that power to any other council officer (there can be exceptions to this general rule) [20].

### **9.1.3 Delegation of powers and responsibilities from Governing Body to chief executive**

- a. The Governing Body and local boards have delegated to the chief executive many of their responsibilities, duties and powers. This is referred to as the general delegation [1]. Local board delegations to the chief executive are also subject to the local board delegation protocols.
- b. In exercising delegated powers, the chief executive respects the institutional boundary between their role as the council's operational head (with responsibility for administration, operations and service delivery) and elected members' governance role. The chief executive may refer a matter [back] to the entity which delegated the power in the first place, i.e. Governing Body, a local board [2] or a committee or subcommittee of the Governing Body or local board for a decision [3].
- c. This may be appropriate where, for example, in the chief executive's opinion a matter is contentious, or political input is needed because of the high degree of policy involved. The Governing Body, local board or committee may also request the chief executive to refer a matter for a decision.
- d. In exercising their delegated authority, the chief executive must comply with any relevant conditions (e.g. financial limits [4], local board protocols and reporting or other procedural requirements), and all applicable council policies [5].

### **9.1.4 Relationship with other parts of council**

#### **a. Relationship between mayor and chief executive**

- The relationship between the mayor and chief executive is a significant and important relationship largely governed by convention.
- The style and frequency of contact between the mayor and chief executive develops according to the mayor's preferences but is governed by the following principles:
  - i. The council operates more effectively if the mayor and chief executive maintain a close working relationship based on mutual recognition of their respective roles, healthy dialogue and cooperation.
  - ii. The mayor cannot direct the chief executive in the performance of their functions. The mayor will represent the position of the council's governance arm to the chief executive, including Governing Body

decisions the chief executive is required to implement. The mayor may discuss governance issues with the chief executive as they arise.

iii. The relationship between the mayor and the chief executive is not a relationship of direct employment. Formal performance matters are the responsibility of the Governing Body or the appropriate committee. However, the mayor may informally raise with the chief executive issues relating to their role.

iv. The chief executive should be guided by a 'no surprises' principle. They should inform the mayor (and the Governing Body) promptly of matters of significance relating to the council's operation or service delivery, particularly where they may be controversial or become the subject of public debate. It is appropriate for the chief executive to discuss with the mayor the advice they will provide to the Governing Body or local boards.

v. The chief executive should exercise judgement when deciding whether to inform the mayor of any matter for which they have statutory or delegated responsibility, especially where it relates to regulatory decision-making. In all cases, the chief executive should ensure the mayor knows why the matter is being raised; both parties should act to maintain the chief executive's (or their staff's) independence and professionalism in making decisions.

#### **9.1.5 Remuneration**

- a. The council sets the chief executive's remuneration through the Governing Body.
- b. The process of reviewing and setting the chief executive's pay is managed by the relevant committee [1]. This committee considers a range of factors when considering appropriate remuneration for the chief executive, including the chief executive's level of experience and performance, performance objectives and achievement of objectives. The Governing Body may also seek external advice and market comparisons to assist with their decisions, such as the latest State Services Commission annual review of public and state sector chief executives. The committee then makes a recommendation to the Governing Body, which has the final decision.
- c. Information relating to the chief executive's total remuneration (including the value of any non-financial benefits) must be included in the council's Annual Plan [2].

## 9.2 Council staff

### 9.2.1 Employment of council staff

- a. All council staff, including those working in the Office of the Mayor [1], are employed by the chief executive [2] or a person acting under his/her delegated authority.
- b. Staff may be employed as permanent employees, whether full or part-time, or temporary employees on a fixed-term, temporary, part-time or casual basis, to best meet operational needs.
- c. All employment decisions must be made in accordance with the council's recruitment and remuneration policies.
- d. Public Service Association (PSA)
  - Auckland Council has entered into a Relationship Agreement with the Public Service Association, the largest union representing council staff.
  - Employees can choose to join the PSA; those up to Band H will be covered by a PSA collective employment agreement with Auckland Council, rather than an individual employment agreement.

### 9.2.2 Roles and responsibilities of council staff

- a. By convention, council staff (other than the Mayoral Office's political staff) are expected to be apolitical. That is, staff must maintain political impartiality at all times [1]. This is particularly important when giving advice and information to the council and the public.
- b. Council staff are also expected to comply with all applicable policies and must be [2]:
  - **Professional, impartial, ethical and honest** – this includes acting lawfully and in accordance with the council's policies, disclosing potential conflicts of interests, and acting honestly and ethically.
  - **Respectful and courteous** – this includes ensuring that language and behaviour are not threatening, offensive, abusive, harassing or bullying; protecting the privacy of individuals and maintaining confidentiality; and valuing and accepting diversity and treating all people with equity and fairness.
  - **Accountable, trustworthy and responsible custodians of Auckland's assets and funds** – this includes never misusing or misappropriating council or CCO property or funds; considering the safety and security of others and council or CCO property and resources; treating information with care and



using it only for authorised and appropriate purposes; and abiding by the council's Gifts and Inducements policy.

**c. Delegations**

- Council employees act under the chief executive's delegated authority.
- The details of these delegations to staff are set out in the Chief Executive's Delegation Register.

**9.2.3 Relationship of council staff with elected members**

- a. A key part of the role of council staff is to provide elected members with comprehensive advice to enable informed and competent decision-making.
- b. Therefore, a high level of cooperation and mutual respect between elected members and staff is essential for the council's effective performance. To ensure such cooperation and trust is maintained, elected members are expected to: [1]
  - recognise the chief executive's role as the employer of council staff
  - make themselves aware of the obligations the council and chief executive have as the employer and observe those requirements at all times
  - treat all employees with courtesy and respect
  - observe any guidelines the chief executive puts in place regarding contact with employees
  - not do anything which compromises, or could be seen as compromising, an employee's impartiality
  - avoid publicly criticising an employee, especially in ways that reflect on the staff member's competence and integrity
  - raise concerns about employees only with the chief executive and concerns about the chief executive only with the mayor or the relevant committee
  - not seek to improperly influence staff in the normal undertaking of their duties.
- c. If an elected member (including the mayor) has an issue with a council employee, they should raise this with the chief executive and not with the staff member directly. This can be done by speaking with or writing to the chief executive. Significant or on-going issues may also be raised with the chief executive through the CEO Review Committee.

## **9.3 Footnotes**

### **9.1.1 Appointment and Tenure**

[1] Local Government Act 2002 s 42.

[2] Local Government Act 2002 Sch 7, cl 32(1)(e).

[3] Local Government Act 2002 Sch 7, cl 33.

[4] Local Government Act 2002 Sch 7, cl 34(1).

[5] Local Government Act 2002 Sch 7, cl 34(4).

[6] Local Government Act 2002 Sch 7, cl 35(1).

[7] Local Government Act 2002 Sch 7, cl 35(4).

[8] The Governing Body committee structure and the terms of reference for each committee are determined by the mayor (see [Section 4.2(a)(iv)]) and are, therefore, subject to change.

[9] Local Government Act 2002 Sch 7, cl 35(2).

[10] Local Government Act 2002 Sch 7, cl 34(5).

[11] Local Government Act 2002 Sch 7, cl 34(6).

[12] Local Government Act 2002 Sch 7, cl 34(7).

### **9.1.2 Roles and responsibilities**

[1] Local Government Act 2002 s 42(4).

[2] Local Government Act 2002 s 42.

[3] Local Government Act 2002 s 42(2)(a) and (2A)(a).

[4] See [section 5.2(c)] regarding the allocation of decision-making responsibilities between the Governing Body and local boards.

[5] Local Government Act 2002 s 42(2)(b) and (2A)(c).

[6] See [section 8.3(b)] regarding the relationship between council staff and elected members.

[7] Local Government Act 2002 s 42(2A)(b).

[8] Local Government Act 2002 s 42(2A)(d).

[9] This is subject to change.

[10] Local Government Act 2002 s 42(2)(c).

[11] Local Government Act 2002 s 42(2)(d).

[12] Local Government Act 2002 s 42(2)(e).

[13] Local Government Act 2002 s 42(3).

[14] Local Government Act 2002 s 39(c).

[15] Local Government Act 2002 s 42(2)(g) and (h).

[16] Local Government Act 2002 s 42(2)(f).

[17] Local Government Act 2002 Sch 7, cl 33(b) and (e).

[18] Including compensation certificates (s 19), requests for proclamation (s 26), requests to the Minister to set aside land for another local work (s 52), and certificates and notices of discharge (s 115).

[19] PWA s 109.

[20] Local Government Act 2002 Sch 7, cl 32B(1). Also see [Section 9.4] on delegations.

The exceptions include powers delegated to the chief executive under the Resource Management Act or the Local Government (Rating) Act which cannot be sub-delegated.

### **9.1.3 Delegation of powers and responsibilities from Governing Body to chief executive**

[1] See [section 9.4] on delegations generally, and [section 5] and [section 6] on the functions and responsibilities of the Governing Body and local boards that cannot be delegated. The exceptions to the chief executive's general delegation are set out in the Chief Executive's Delegation Register.

[2] Where the power was originally delegated to the chief executive by a local board.

[3] Auckland Council Delegations: Chief Executive Officer, General Delegation, 23 June 2011 (GB/2011/123).

[4] Auckland Council Delegations: Chief Executive Officer, General Delegation – Schedule 1, 23 June 2011 (GB/2011/123).

[5] General rules applying to all delegations - Auckland Council, 9.

### **9.1.5 Remuneration**

[1] The Governing Body committee structure and the terms of reference for each committee are determined by the mayor (see [Section 4.2(a)(iv)]) and are, therefore, subject to change.

[2] Local Government Act 2002 Sch 10, cl 32.

### **9.2.1 Employment of council staff**

[1] For information about Mayoral Office staff see [Section 4.3].

[2] Local Government Act 2002 s 42(2)(g).

### **9.2.2 Roles and responsibilities of council staff**

[1] See [Sections 10.2 to 10.4].

[2] Auckland Council Code of Conduct.

[3] Auckland Council Code of Conduct.

### **9.2.3 Relationship of council staff with elected members**

[1] Code of Conduct for Elected Members, 7.2.

#### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 14. Ceremonies and other conventions

This section outlines conventions around elected member involvement in different types of ceremonies and includes an outline of the different Māori ceremonies.

### 14.1 Elected members' community profile

- a. A council is the heart of government at the local level, representing and advocating for its community to the outside world. Elected members are community leaders; with the mayor the community's chosen leading citizen.
- b. Elected members are often invited to be guests of honour at community functions, host visiting dignitaries, represent central government, and officiate at formal events. If the mayor is unable to attend a function, he/she may ask the deputy mayor, a councillor or local board member to attend.
- c. Staff planning openings and events will facilitate discussions with elected members and their support departments about roles and responsibilities at the function.

### 14.2 The mayor

- a. The mayor has a duty to support local initiatives that benefit Auckland and its communities. In this role, he/she can speak and act in multiple capacities - as ambassador, facilitator, promoter and encourager. This may involve highlighting initiatives or championing issues of the day and helping local communities gain recognition.
- b. On occasion the mayor will often be accompanied by a kaikōrero (competent speaker of te reo and oratory) to provide cultural advice and support at Māori functions and events.
- c. By convention, the mayor is the council's primary representative at public events. It is not appropriate for other elected members to usurp the mayor's representative role without his/her agreement. The mayor may delegate some of these duties to the deputy mayor, another Councillor or local board members.

### 14.3 Mayoral regalia – chains and robes

- a. Wearing a chain of office is a historical British custom continued by mayors in Canada, Australia and New Zealand. Auckland Council inherited the chains of the seven legacy councils when it was formed and the decision was made not to create

an Auckland Council mayoral chain. Current practice is for the mayor not to wear any chains when chairing Governing Body meetings but may wear the chain of a former legacy council when officiating at an event in the corresponding area. The chains may be worn when officiating Citizenship Ceremonies and when attending ANZAC services.

- b. Other legacy ceremonial practices, such as having a mace at meetings, have been discontinued.
- c. Mayoral robes for Auckland Council have also not been created. However, the mayor may wear a korowai (cloak), presented as a gift by Māori in recognition of the mayor's mana. A korowai may be given to the mayor as an individual, or for the mayor's use in recognition of the role. The korowai is handed back at the retirement of the mayor and another gift provided for the outgoing mayor in recognition of service.

#### **14.4 Photo galleries**

- a. Most councils maintain photo galleries of past mayors and members of the council. These are available on the council's website.
- b. Photos of the current Governing Body are displayed at the council's headquarters; historical photos of Auckland's past mayors are in the Town Hall Reception Lounge.
- c. Photos and other items associated with legacy councils remain in their original locations, usually close to, or within, the previous council chambers.

#### **14.5 Heraldry and logo**

- a. Heraldry in a local government context usually refers to a coat of arms, consisting of a helmet, shield and crest. It may also include a motto. Its usage dates back to ancient times in Britain. A coat of arms is a mark of identification and can serve to distinguish one council from another. The College of Arms in London approves designs on behalf of the Crown.
- b. Auckland Council has not designed any heraldic items. In line with modern organisations, it has developed its own brand (signified by the pōhutukawa logo), which can be used only with the council's permission.

#### **14.6 Citizenship ceremonies**

- a. The Department of Internal Affairs makes decisions on citizenship.[1]  
Local authorities host citizenship ceremonies on behalf of the Department of Internal Affairs.
- b. Under the council's allocation of decision-making, citizenship ceremonies are the responsibility of local boards as part of their planning, policy and governance

activities. As a representative of the local authority, the chairperson of the local board is able to administer the Oath or the Affirmation of Allegiance.

- c. The number of citizenship ceremonies Auckland Council organises depends upon the number of candidates applying and the location in which the candidates reside. The ceremonies are held between monthly and quarterly.
- d. The format of ceremonies includes:
  - karakia and mihi by Kaumatua
  - local board chairperson address/welcome
  - kapa haka
  - administration of oath or affirmation of allegiance to candidates
  - presentation of certificates to candidates
  - video messages from the Governor General, Minister of Internal Affairs and Mayor
  - singing of the national anthem
  - final blessing by Kaumatua
  - light refreshments
- e. The ceremony's focus is to celebrate and acknowledge the new citizen's commitment to New Zealand. Local board members, ward councillors and the mayor are invited to attend and form part of the official party on the presentation stage.

#### **14.7 Freedom of the city, charter parades and mayoral escorts**

- a. The freedom given to armed forces to march through a city has its origins in ancient Rome. Troops were forced to remain outside city gates and if trust was established with the city, they were then given the freedom to march through it.
- b. This ceremonial honour is now bestowed by a city council and demonstrates the respect and the trust citizens have in the military to protect their democratic institutions. It is typically demonstrated through regular parades, with the mayor having the honour of inspecting the troops. These are formally agreed to through a signed charter which also provides for two uniformed officers to attend the mayor on important official occasions, e.g. ANZAC Day.
- c. The right to march is exercised through organised charter parades and is agreed to with each of the armed forces, army, navy and airforce.

#### **14.8 ANZAC day services**

- a. Auckland Council supports a number of services including those organised by local boards, the Royal New Zealand Returned and Services' Association (RSA), and community groups. The mayor and other elected members may be invited to lead,

Speak, or attend these services.



## **14.9 Customary Māori ceremonies**

### **14.9.1 Pōhiri/pōwhiri (customary welcome)**

- b. A formal customary welcome of manuhiri/manuwhiri (visitors) by tangata whenua (people of this land) is called a pōhiri/pōwhiri (some iwi spell this and pronounce it with a 'wh' and some with just an 'h').
- c. Pōwhiri follow a formal process of whaikōrero (formal speechmaking) which requires a high level of proficiency in te reo. Once welcomed, guests are bound to a new level of relationship, similar to being accepted as one of the whānau.
- d. Pōwhiri are usually conducted on marae but can take place elsewhere and are also used to welcome elected members to their new responsibilities, at governing body meetings, at civic events involving mana whenua and at the openings of regional strategic assets and initiatives.

### **14.9.2 Whakatau (customary welcome)**

- a. The whakatau follows a less formal, shorter, process from a pōwhiri and can be undertaken at any location.
- b. Whakatau can be used at occasions such as council committee meetings or workshops hosting Māori, meetings on marae, Māori gatherings and workshops held away from a council venue.

### **14.9.3 Tangihanga (customary funeral)**

- a. A tangihanga is a customary funeral.
- b. From time to time it might be appropriate for council representation to attend. Similar protocols to pōhiri/pōwhiri are followed and tribal conventions are acknowledged and included in briefings.
- c. Auckland Council will consider its involvement and participation in tangihanga events for staff, elected members, Māori and community leaders who have contributed towards Auckland communities and served the public interest. Consideration will also be given to the loss of a spouse or an immediate family member.

- d. Tangihanga are usually held on the marae. However in some instances the tangihanga may be held at the deceased person's home or a venue equipped to host a tangihanga event.

#### 14.9.4 Karakia

- a. Karakia are conducted to remove tapu (imposed restriction), when dedicating or blessing areas for specific purposes, or for opening or reopening facilities.
- b. When the tapu is removed, there is a state of noa (without restriction) allowing for full utilisation of the area or facility.
- c. A dedication/ blessing can occur when mana whenua or the council decide a ceremony needs to be conducted. This may be conducted when celebrating the beginning or ending of a project, completing a programme, launching a facility or event, commissioning or decommission taonga (anything cherished), *rāhui* (restricted access), gifting, welcoming new people or saying farewell, moving office, naming places or things, or any other occasion that does not warrant a pōwhiri or mihi whakatau.
- d. Blessings may take many forms and may be determined by the person conducting the ceremony, such as a tohunga, minister or the person leading the proceedings.
- e. Karakia are usually conducted at the beginning and end of a ceremony and may include mihi.

#### 14.9.5 Detail for pōwhiri and whakatau

This table sets out more detail relating to powhiri and whakatau

	Pōwhiri	Whakatau
<b>Stage one:</b> <b>Whakaritenga</b> (preparing)	The purpose and expected outcomes are confirmed to ensure correct procedures are communicated to participants and protocols are followed.	The purpose and expected outcomes are confirmed to ensure that a whakatau is appropriate, that this is communicated to participants and that protocols are followed.

<p><b>Stage two:</b> <b>Whakaekenga</b> (beginning)</p>	<p><b>Te taenga</b> (arrival)</p> <p>Manuhiri assemble outside the waharoa (marae entrance) to confirm speakers and organise koha. Manuhiri may conduct karakia to ensure people's cultural safety and for the pōwhiri to be carried out without disturbance [1].</p> <p>When the manuhiri are ready, the women lead the group to the waharoa, indicating to the tangata whenua they are ready to be received.</p> <p><b>Wero</b> (challenge)</p> <p>Traditionally wero were carried out to ascertain the visiting group's intentions and were executed by the tangata whenua's best warriors. The wero requires that a taki (dart) is placed down by the tangata whenua and picked up by the most senior male of the manuhiri.</p>	<p><b>Te taenga</b> (arrival)</p> <p>Tangata whenua greet manuhiri into the space being utilised for the whakatau.</p> <p>All manuhiri and tangata whenua then take their seats. This follows a similar pōwhiri format, with tangata whenua and manuhiri sitting in their respective groups.</p>
<p><b>Stage three:</b> <b>Whiringa</b> (proceedings)</p>	<p><b>Karanga</b> (call)</p> <p>The tangata whenua caller (kaikaranga) calls first [2]. The manuhiri caller responds to the tangata whenua caller [3].</p> <p><b>Haka pōhiri/pōwhiri</b> (ritual</p>	<p><b>Mihi and Waiata</b></p> <p>Tangata whenua open up the speeches and greet the manuhiri with karakia and mihi.</p> <p>Singing a waiata after a speech is optional but highly recommended. At this point the</p>

	<p>welcome) [4]</p> <p>This practice is normally reserved for esteemed guests or dignitaries to acknowledge the visitor's or group's mana. A haka is performed by the tangata whenua. Following these steps, the manuhiri are guided to their seats to enable the whaikōrero (formal speeches) to commence</p> <p><b>Whaikōrero</b> (speeches)</p> <p>Traditionally only experts in the art of whaikōrero will stand to speak, although an esteemed guest may sometimes be asked to speak [5]. This role is carried out by men. Depending on where the pōwhiri takes place, the kawa (order of speaking protocols) may be either paeke [6] or tū atu, tū mai [7].</p> <p><b>Waiata/oriori</b> (song/chant)</p> <p>The purpose of the waiata is to complement what has been said, including the kaupapa (reason for the occasion/ meeting).</p> <p><b>Koha</b> (unconditional gift)</p> <p>After all manuhiri speakers have spoken, the last of their speakers presents the koha</p>	<p>visitors are given the opportunity to respond.</p> <p>In these instances it is usually men who speak. However, because of the nature of a whakatau, women may speak, depending on the context and situation.</p>
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	<p>to the tangata whenua on the marae ātea, by laying it on the ground in front of the tangata whenua speakers.</p> <p><b>Hongi</b> (customary greeting)</p> <p>The hongi is the first physical contact between the two groups [8]. This is the light pressing of noses and sharing of breath.</p>	
<p><b>Stage four:</b></p> <p><b>Whanaungatanga</b></p> <p>(connecting)</p>	<p>At the conclusion of the hongi, people are free to connect, mix and mingle and foster relationships. Manuhiri merge with tangata whenua to become part of the marae's whānau for the duration of the occasion.</p> <p><b>Kaitahi</b> (shared meal)</p> <p>Food is shared to complete the formal engagement process. The tangata whenua will normally deliver a karanga to invite the manuhiri to be seated in the wharekai (dining room). A karakia for the kai is said before eating.</p>	<p><b>Kai</b></p> <p>Food is shared to complete the whakatau process. This is traditionally lighter than for a powhiri</p>

## **14.10 Footnotes**

### **14.6 Citizenship ceremonies**

[1] [https://www.dia.govt.nz/diawebsite.nsf/Files/CIT\\_Operational\\_Policy/\\$file/Citizenship-Guidance-November-2020.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/CIT_Operational_Policy/$file/Citizenship-Guidance-November-2020.pdf)

### **14.9.5 Detail for pōwhiri and whakatau**

[1] Both manuhiri and tangata whenua can say karakia to bring people together and focus on the occasion.

[2] A woman's voice is the first to be heard at a pōwhiri. The karanga sets the process in action and establishes the reason for the pōwhiri.

[3] The exchange of information through the karanga gives the manuhiri safe passage to enter the marae. It affirms the gathering's purpose, identifies who is coming and their intention. References to the fabric of creation and those who have passed on are woven to fashion a metaphoric rope which is cast to the visitors to bind them to their symbolic waka which is dragged ashore by the tangata whenua. The karanga is a lament and can be a very moving experience.

[4] Haka pōwhiri actions and words complement the imagery around dragging a waka and its crew ashore.

[5] A whaikorero's purpose is to acknowledge and weave together past, present and future by acknowledging the source of creation, guardians, the hunga mate (the dead), the hunga ora (the living) and laying down the take or kaupapa (reason for the gathering).

[6] Paeke: The tangata whenua speak first, one orator following the next. The manuhiri then speak. When the last manuhiri orator finishes, the speaking goes back to the tangata whenua to complete the kōrero.

[7] Tū atu, tū mai: The tangata whenua speak first and then speakers alternate between tangata whenua and manuhiri. Tangata whenua give the final speech.

[8] Hongi is an ancient practice by which people greet each other through gently pressing noses and foreheads. Hands are often placed on forearms or shoulders, although it is more common now to accompany hongi with a rūrū (hand shake).

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

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**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

Updated 10 March 2021

## 16. Representation and reorganisation

This section explains what is involved with reorganisation proposals, as well as for reviews of representation – which councils are required to carry out at least once every six years.

### 16.1 Representation reviews

#### 16.1.1 Representation arrangements

- a. Representation arrangements relate to the way that councillors and local board members are elected.
- b. The council is required to conduct representation reviews at least once every six years [1]. The council resolved its initial representation proposal on 18 October 2018 [2]
- c. Auckland Council's Governing Body resolved at its 27 February 2020 meeting that no further action be taken to review representation arrangements for the 2022 elections [3]. The next representation review will be prior to the 2025 local elections. Any review must be conducted in accordance with the timeframes set out in legislation [4].
- d. Representation arrangements that must be reviewed include [5]:
  - whether councillors are elected on a ward (i.e. division of the district) basis, or for the district as a whole
  - if applicable, the name and boundaries of each ward and the number of councillors to be elected in each ward
  - whether local board members are elected on a subdivision (i.e. division of the local board area) basis or for the local board area as a whole, and the number of members in each local board (between five and 12 [6])
  - if applicable, the name and boundaries of local board subdivisions, and the number of members to be elected in each subdivision
  - the names of local boards.
- e. While other councils can review the number of councillors, the number for Auckland Council is fixed in legislation at 20 [7].
- f. Councils also have a power to consider dividing the district into one or more Māori



wards for electoral purposes [8].

- g. Auckland Council's boundaries and the boundaries and number of local boards can be reviewed only through a local government reorganisation process.

### **16.1.2 Election at large or by wards and subdivisions**

- a. It is possible for some members to be elected on an at-large basis and others on a ward or subdivision basis.
- b. Election 'at-large' means that members are elected from the whole area (whether the whole district or whole local board area) and not on a ward or subdivision basis. This can encourage the member to act in the interests of the area as a whole.
- c. Election on a ward basis (or subdivision basis for local boards) ensures there is an even spread of members, preventing a majority of members being elected from the same area.

### **16.1.3 Requirements for effective and fair representation for wards and subdivisions**

#### **a. Effective representation**

- When conducting representation reviews (except in relation to the naming of local boards), the council must ensure that the manner in which councillors and local board members are elected will provide "effective representation of communities of interest within the district" [1].
- The Local Government Commission Representation Review Guidelines provide further detail [2].

#### **b. Fair representation**

- When looking at representation arrangements, the council must ensure that electors of any wards or local board subdivisions receive fair representation [3].
- This relates to the population of each ward and subdivision compared to the number of elected representatives for each ward and subdivision. The ratio should be no more than 10% greater or smaller than the average [4].
- The council may propose a scheme that does not comply with the ratio required for fair representation in certain circumstances, including where [5]:
  - i) non-compliance is needed to ensure effective representation of communities of interest within island or isolated communities
  - ii) compliance would limit effective representation of communities of interest within the district [6], for example the rural wards of Rodney and Franklin.

### **16.1.4 Māori wards**

- a. Auckland Council may, by resolution, divide the district into one or more Māori wards. If the Council decides to do so, it must give public notice of the right to demand a poll

in which electors can vote on whether the district should be divided into Māori wards [1].

- b. The council may decide to hold a poll [2] or it may be demanded by a specified number of electors [3]. If a valid demand is received, there are set time frames for when the poll must be held and when it would take effect [4].
- c. There are some limitations, for example if a poll was already held at the last triennial election, or will be held at the next one, or if another enactment requires the district to be divided into Māori wards [5].
- d. If the result of a poll requires the division of the district into one or more Māori wards, there are set times when this must take effect [6].
- e. If the district is to be divided into one or more Māori wards for the purposes of an election, the council must determine [7]:
  - whether all members are to be separately elected from Māori wards and general wards, or whether some members are to be elected 'at large' with some separately elected on a ward basis; and, if so, how many of each
  - the number of members to be elected from Māori wards, and the number of members to be elected from general wards, determined in accordance with the formula set out in the legislation [8]
  - the names and boundaries of each Māori ward
  - the number of members to be elected from each Māori ward and the number of members to be elected from each general ward.
- f. Decisions in relation to the division of the district into one or more Māori wards must comply with the same requirements as when deciding on representation arrangements for general wards. The ratio of members to the Māori electoral population in each Māori ward must produce a variance of no more than plus or minus 10% [9].
- g. The Council must also have regard to the boundaries of any existing Māori electoral district, communities of interest and tribal affiliations [10].

## **16.2 Reorganisation**

### **16.2.1 The Process for reorganization proposals**

- a. A local government reorganisation proposal may deal with any or all of the following matters [1]:
  - combining districts or regions

- creating a new district or region, including a new local authority for it
  - abolishing a district or region, including the local authority
  - altering the boundaries of any district or region
  - transferring a responsibility, duty, power conferred by an enactment or a discretionary function from one local authority to another
  - a proposal that a territorial authority assume the responsibilities, duties and powers of a regional council
  - the performance and exercise by a local authority of the responsibilities, duties, and powers of a regional council in respect of a region and a territorial authority in respect of a district that constitutes a part only of that region
  - establishing one or more joint committees and the delegation of responsibilities, duties, and powers to those committees
  - establishing, abolishing or altering the boundaries of a local board area
  - combining two or more local board areas.
- b. Local government reorganisation applications are made to the Local Government Commission. There is a prescribed process for how the Commission must consider applications [2].
- c. In the application stage, the commission first makes a decision whether to assess the application, before considering the affected area and whether there is community support for reorganisation. Alternative applications are called for and considered alongside both the original application and the existing arrangements before the commission determines and notifies its preferred option.
- d. If the current arrangements are the preferred option, the process for that application ends.
- e. If the preferred option is something other than the current arrangements, the application progresses to the proposal stage. At this stage, the commission prepares and consults on a draft proposal before deciding whether or not to issue a final proposal; it may also issue a new draft proposal (which is then consulted on again). Final proposals are publicly notified, including notice to affected electors that they have the right by petition to demand a poll, in which electors will vote on the final proposal.
- f. If a poll is held and more than 50% of valid votes oppose the final proposal, it will not proceed. If more than 50% of valid votes support the proposal (or if no poll is called for) the final proposal will be confirmed by way of Order in Council; a transition agency is set up, and a reorganisation scheme prepared.
- g. Another option for reorganisation applications available to local authorities is a 'local authority-led reorganisation application' [3]. This empowers one

or more local authorities to develop and publicly consult on a reorganisation plan, and submit the plan to the Commission for approval.

- h. Further information on the process can be found on the Local Government Commission's website [4].

#### **16.2.2 Current applications for reorganization in Auckland**

- a. The Local Government Commission has received two applications for reorganisation in the Auckland Council district since the Auckland Council was established in 2010.

- **Application from the Northern Action Group for a unitary authority for North Rodney** – On 1 November 2013, the commission received an application for a North Rodney Unitary Council from the Northern Action Group. The commission agreed to assess the application in August 2015. On 14 April 2016, the commission determined that the affected area is the Auckland Council area and that there is demonstrable community support in the area for reorganisation. The commission therefore called for alternative applications for local government reorganisation in the Auckland Council area to be submitted by 24 June 2016. The Northern Action Group submitted a supplementary proposal in June 2016.
  - **Application from Our Waiheke for a unitary authority for Waiheke Island** – The commission received an application for a unitary authority for Waiheke Island from Our Waiheke in December 2015. In March 2016, the commission agreed to assess the application, and then subsequently agreed, on 29 May 2016, to consider the application as an alternative application in the Auckland Council reorganisation process initiated by the North Rodney reorganisation application.
- b. The Commission ran a community engagement programme from September to December 2016 to provide the Auckland community, particularly people from Rodney and Waiheke Island, with an opportunity to provide feedback on local government arrangements and performance in Auckland. The Commission then released a report authored by Morrison Low to assist the Commission in identifying the “reasonably practicable options” for local government in Auckland as part of the current reorganisation process.
  - c. On 10 November 2017, the Commission determined its preferred option for local government in the Auckland Council affected area was the existing local government arrangements in Auckland – the status quo. Northern Action Group Incorporated (NAG) and Our Waiheke, whose proposals for a North Rodney Unitary Authority and a Waiheke Unitary Authority respectively were not considered to meet the statutory requirements for reasonably practicable options for local government in Auckland, appealed the Commission’s decision to the High Court.
  - d. In June 2018, the Commission received Auckland Council’s initial response to its report Enhancing local government for Aucklanders: Recommendations to Auckland Council. In November 2018, the Commission received a further update from Auckland Council on its responses to its report and recommendations.
  - e. On 30 April 2020, the High Court released its judgement on the Northern

Action Group's appeal against the Commission's decision not to establish a North Rodney unitary authority. The High Court found in favour of the Commission on each point of appeal raised.

- f. For more information about the commission's consideration of the local government arrangements in the Auckland Council area, see the Local Government Commission's website [1].

## **16.3 Footnotes**

### **16.1.1 Representation arrangements**

[1] Local Electoral Act 2001, section 19H

[2] <https://www.aucklandcouncil.govt.nz/have-your-say/topics-you-can-have-your-say-on/consultation-on-electoral-boundaries-and-representation/Pages/default.aspx>

[3] Resolution number GB/2020/11 clause g

[4] Local Electoral Act 2001, sections 19K to 19S

[5] Local Electoral Act 2001, section 19H

[6] Local Electoral Act 2001, section 19EA

[7] Local Government (Auckland Council) Act 2009, section 8

[8] Local Electoral Act 2001, section 19Z

### **16.1.3 Requirements for effective and fair representation**

[1] Local Electoral Act 2001, section 19T

[2] <http://www.lgc.govt.nz/assets/Uploads/Representation-Review-Guidelines-2020-v2.pdf>

[3] Local Electoral Act 2001, section 19V

[4] The population of each ward or subdivision divided by the number of members to be elected by that ward or subdivision must produce a figure no more than 10% greater or smaller than the total population of the district or local board area divided by the total number of elected members (other than those members elected 'at large', and the mayor).

[5] Local Electoral Act 2001, section 19V(3)

[6] The Local Government Commission, when deciding on the initial ward boundaries for Auckland Council governing body members, sought to achieve an appropriate balance between fair representation and recognising communities of interest. It stated in its decision: "We received a number of submissions seeking more equal representation ratios for electing councillors across Auckland. We carefully considered options to achieve this in terms of closer compliance with the '+/-10% fair representation rule' while still ensuring effective representation of communities of interest."

#### **16.1.4 Māori Wards**

[1] Local Electoral Act 2001, section 19Z

[2] Local Electoral Act 2001, section 19ZD

[3] Local Electoral Act 2001, section 19ZB

[4] Local Electoral Act 2001, section 19ZC

[5] Local Electoral Act 2001, section 19ZE

[6] Local Electoral Act 2001, section 19ZG

[7] Local Electoral Act 2001, schedule 1A, clause 1

[8] Local Electoral Act 2001, schedule 1A, clause 2

[9] Local Electoral Act 2001, schedule 1A, clause 6(a).

[10] Local Electoral Act 2001, schedule 1A, clause 6(b)

#### **16.2.1 The Process for reorganization proposals**

[1] Local Government Act 2002, section 24

[2] Local Government Act 2002, sections 24A to 27B and schedule 3.

[3] Local Government Act 2002, Schedule 3 Part 2 subpart 1B

[4] [Local government reorganisation | Local Government Commission \(lgc.govt.nz\)](#)



### **16.2.2 Current applications for reorganization in Auckland**

[1] <http://www.lgc.govt.nz/local-government-reorganisation/previous-applications/view/auckland-reorganisation-application?step=main>

#### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

# Auckland Council Governance Manual

## He Puka Matarau



Updated 21 January 2022

### 3. Elected members

Information relevant to elected members' individual responsibilities rather than their collective role.

#### 3.1 Role and responsibilities

- a. Elected members have different roles and responsibilities. They are elected to represent communities in their area and make decisions for and on behalf of those communities. In practice, this can include dealing with queries and issues from constituents, exploring the impacts of a particular proposal, developing policy and plans, reviewing council decisions, working with other elected members, chairing committees, representing the council's view to central government, engaging with the public, iwi, other stakeholders, making decisions on the use of council land, and agreeing on budgets and council priorities.
- b. Members are active within the communities they represent. This includes belonging to community organisations and owning property. When making decisions as elected members, they must take care that they are acting, and are perceived to be acting, in the interests of their community and the public, not their own interests.

#### 3.2 Conduct, roles and personal interests

##### 3.2.1 Elected Members Conduct

- a. There are expectations of how elected members act, and interact, with other members, staff and the public when they are carrying out their duties. An important part of this is balancing duties and personal interests to minimise or avoid any conflicts of interest.
- b. This section describes the relationship and behavioural expectations of elected members, as set out in the council's Code of Conduct. Conflicts of interest between elected member's duties and personal interests, as set out in legislation and in case law, are discussed in detail in Section 10: How council decisions are made.
- c. Elected members have two key roles, and at times they will need to carefully balance these:

- **as a member of the Governing Body or local board** - making decisions on

a range of matters

- **as a representative of the community** - elected members represent Auckland's diverse communities as a region and in local board areas.
- d. A ward councillor is required to act in the interests of the whole region while at the same time representing their ward. Where there is a conflict, the councillor is required to act in the best interests of the region, which is what councillors promise to do when they make their statutory declarations. A similar situation exists for a local board member who is elected on a subdivision basis.
- e. It can be difficult to separate a member's public and private roles. For example, members may be asked for their views on a council decision when out with family, or they may wish to sign a petition in their individual capacity. Members should refer to the Council's Code of Conduct for guidance.

### 3.2.2 Code of Conduct

- a. The Local Government Act 2002 requires the council to adopt a Code of Conduct that publicly sets out expectations for members [1]. Any changes require the approval of 75% or more of the Governing Body's members [2]. The most recent version was adopted by the Governing Body in May 2021.
- b. The Code applies to all Governing Body members and all local board members [3]. It sets out the following:
- **Two principles** – an ethical principle “trust” and a relationship principle “respect” [4].
  - **Attachments** – the Code has various attachments and these are summarised in this section. They include various policies, protocols and guidelines that all relate to the conduct of elected members [5].
  - **Material breaches** are defined. Material breaches are more serious in nature. Complaints about material breaches are referred to an external Conduct Commissioner [6].
  - **Complaints** – an elected member, a member of the public or the chief executive on behalf of staff, may lodge a complaint that an elected member has breached the Code. This section sets out the process and roles for investigators and Conduct Commissioners [7]. .

### 3.2.3 Conduct

- a. The expected conduct of elected members is contained in the two principles and in the attachments.

b. The two principles are:

- **Trust principle** – the community trusts elected members to conduct themselves ethically and act in the community's interest. An elected member will:
  - make decisions on their merits, in the interests of the public and unaffected by illegitimate considerations such as personal interest or other duties or relationships
  - disclose personal and outside interests, relationships and duties
  - declare a conflict of interest and step aside from a decision when unable to approach a decision on its merits or it might appear the member will not approach a decision on its merits, in the interests of the public and unaffected by a personal or outside interest, relationship or duty
  - when making decisions, have an open mind to the views of others and to alternatives, and be prepared, despite any predisposition, to change their mind
  - ensure the member is not under an obligation to those who might inappropriately try to influence them in the performance of their duties
  - be accountable for the decisions they make and enable appropriate public scrutiny
  - make an equitable contribution, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars
  - act and make decisions openly and transparently
  - be truthful and demonstrate honesty and integrity
  - use council resources prudently and lawfully and not for their own purposes
  - uphold the law, and promote and support high standards of conduct by leadership and example
  - comply with the policies and protocols adopted with the Code
- **Respect principle** - a member will respect the people the member works with: other elected members, staff and the public. An elected member:
  - encourages mutual respect and maintains the dignity of each individual
  - recognises others' roles and responsibilities

- is inclusive
- enables the co-existence of individual and collective responsibility
- allows for robust discussion and debate focusing on issues rather than personalities
- is not derogatory
- encourages thoughtful analysis
- maintains public confidence in the office to which I have been elected
- is open and honest
- maintains the confidentiality of confidential information provided to me
- complies with the policies and protocols adopted with the Code

c. The attachments to the Code are:

- **Conflict of interest policy** – sets out the tests, and the requirements to declare, financial and non-financial conflicts of interest; and the tests for, and consequences of, predetermination.
- **Confidential information, policy and protocol** – sets out the need to manage the distribution of confidential information to those who need to know it and provides a protocol for elected members to use when requesting confidential information.
- **Working with staff** – sets out the requirement for elected members to treat staff with respect.
- **Election year policy** – sets out the principles that apply in an election year, particularly around elected members' use of council resources.
- **Communications policy** – acknowledges that council funds can be used by the council to communicate with its communities and sets out principles that apply such as not being used to give an elected member undue prominence, particularly in an election year.
- **Media protocols** – sets out that the mayor is the spokesperson for the Governing Body, committee chairs the spokespersons for committees and local board chairs the spokespersons for their local boards but provides for individual members to give their personal views to media if they make it clear it is their personal view.
- **Social media guidelines** – provides guidance on dealing with abuse and notes issues around members using social media in their official capacity.
- **Governance roles and responsibilities** – explains the various roles held by elected members.
- **Expenses policy** – sets out expenses members are entitled to claim; it is relevant to conduct but is adopted separately.
- **Legislation relevant to the conduct of members** – summarises various legislation that is relevant to elected member conduct:

- Local Government Act 2002
- Local Government (Auckland Council) Act 2009
- Local Authorities (Members Interests) Act 1968
- Local Government Official Information and Meetings Act 1987
- Health and Safety at Work Act 2015
- Secret Commissions Act 1910
- Crimes Act 1961
- Financial Markets Conduct Act 2013
- Public law decision-making principles
- Council decision-making requirements
- Personal liability of elected members

### **3.2.4 Breaching the code**

- a. A breach of the Code occurs if either or both of the principles of trust and respect are breached or if a provision in a policy which explicitly provides for a breach has been breached.
- b. The Code provides for formal complaints which allege that a member has breached the Code. The Code states that a formal complaint should be a last resort. The Code contains the expectations and understandings of conduct which members have agreed and if a member's conduct is not in line with these a first approach might be to simply remind the member of the expected conduct that is set out in the Code.
- c. A complaint may be made by an elected member, the chief executive acting on behalf of staff, or a member of the public and must be made in writing, lodged with the Chief Executive and provide evidence of the breach. It must relate to a member's conduct when acting in the capacity of a member. It should not relate to conduct at a meeting held under standing orders, since standing orders are for the conduct of meetings. Nevertheless if the conduct was not properly addressed at a meeting it may be raised in a complaint under the Code.
- d. If a complaint relates to a conflict of interest it is referred for legal advice, otherwise a complaint is initially assessed by an Investigator who must refer the complaint to a Conduct Commissioner if it relates to a material breach.
- e. If the complaint relates to a non-material breach the Investigator may make non-binding recommendations.
- f. If the complaint relates to a material breach, the Conduct Commissioner may arrange mediation or investigate the complaint more fully to determine whether a breach has occurred. A Conduct Commissioner has the power to impose specified sanctions and the report of the investigation will be made public.

### 3.2.5 Declaration when taking office

- f. All elected members must make an oral declaration when taking office.
- g. "I, *AB*, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, the best interests of (*region or district*), the powers, authorities, and duties vested in, or imposed upon, me as (*mayor, chairperson or member*) of the (*local authority*) by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act" [1].
- h. This public declaration signals the high standards to which elected members are to be held. They are charged with making decisions in the best interests of the entire community, being the whole Auckland region for Governing Body members and the whole local board area for local board members.

### 3.2.6 Register of declarations

- a. In the interests of transparency and accountability, the Code of Conduct requires all elected members to make a full and complete declaration of their interests as at 30 June each year. These are recorded in the council's Register of Interests.
- b. Each declaration should set out the member's interests, including company directorships and controlling interests, shares and bonds in companies and business entities, any employment, beneficial interests in trusts, membership of community organisations, appointments to outside entities, interests in land, debtors, creditors, travel costs paid by third parties, gifts (including hospitality) received over \$100 in value and discharged debts over \$500 paid for by other parties (existing limit - refer to policy). For further information, on registered members interests, see Elected member declarations on Auckland Council's website.

### 3.2.7 Access to confidential information

- a. One of the foundations of local government is openness and transparency. All information held by council is public by default [1]. Confidential information is information that is able to be legally withheld from request by the public. It is information which could cause harm to the council or other parties if made public and elected members have an obligation to keep confidential any confidential information to which they have access.
- b. In the course of their duty, elected members are entitled to have access to all necessary information to allow them to properly discharge their duties and carry out their role. This can include confidential information [2]. This is referred to as the "need to know" principle. This information is generally provided through council

reports, staff answering questions and providing advice at meetings, and informally in workshop briefings.

- c. Elected members are obliged (under the Code of Conduct) to ensure any confidential information provided to them is kept confidential. Failure to observe this requirement may expose the council to litigation. It may also inhibit information flow and undermine confidence in the council. For example, releasing information about an individual could result in a Privacy Act breach, while releasing commercially sensitive information around commercial negotiations could result in the council being disadvantaged in those negotiations.
- d. The attachment to the Code on access to confidential information provides a protocol for a member to challenge a decision that the member does not have a need to know the confidential information the member has requested.

### **3.2.8 Relationship with the chief executive and council staff**

- a. The Local Government Act requires the Governing Body to appoint a chief executive and cannot delegate the decision to a smaller group. The chief executive is the only employee directly appointed by the Governing Body. All other employees are appointed by the chief executive [1].
- b. Elected members need to be aware that their position can come across to junior staff members as having more power than they individually possess [2]. As governors, elected members should interact mainly with senior staff or designated staff providing them with advice or support.
- c. A healthy and productive relationship between governance and management, and between decision-making by elected representatives and operational activity, is essential to an authority's effectiveness. Problems in this relationship can have a significant effect on all levels of the organisation.

### **3.2.9 Relative responsibilities of the chief executive and elected members**

- a. The chief executive, who is appointed and employed by the Governing Body [1], is responsible for employing council staff [2], implementing Governing Body and local board decisions, and providing advice to the Governing Body and local boards [3].
- b. Elected members and the chief executive need to have a clear and shared understanding of their different roles and responsibilities. In broad terms, the elected members have a governance role and the chief executive is responsible for managing the organisation and implementing governance decisions. However, in practice it is not always easy to identify where the line falls.

- c. The Auditor-General has commented on the difference between local authority



governance and operational roles:

*"[Having a] representational role and connection with the community is part of the role of an elected member, but so is the responsibility for steering and governing a substantial organisation with complex responsibilities."*

*"The governance role is about maintaining the broad view. It is about setting direction and policy, making significant decisions, testing advice to ensure that it is sound, monitoring the activities of management to ensure that what is being implemented will achieve the objectives, keeping an eye on risks of all kinds, and safeguarding the overall quality of the relationship between a council and its community. When members of a governing body become too involved in operational matters, the risk is that nobody maintains the broad view for the organisation and checks that the overall direction is still appropriate..." [4]*

- d. Elected members should not play too limited a role or leave too much to managers, nor should they get too involved in day-to-day managing. Both situations create risks.

### **3.2.10 Gifts, fees, endorsements and outside activities**

- a. Elected members may receive gifts in their political or personal capacity, but need to be mindful of the perception that accepting a gift can bring. They must declare every gift received of more than NZ\$100 (this is the current limit), excluding gifts from family members. The Code of Conduct states that where they are part of the decision-making process, they should not accept any gifts from parties tendering for contracts or taking part in a regulatory process.
- b. Key principles for elected members to consider before accepting a gift include:
  - their declaration on taking office to act in the best interests of Tāmaki Makaurau as a whole or their local board area [1]
  - possible public perception that receiving the gift might affect their ability to approach decisions fairly and without a conflict of interest
  - that Auckland Council needs to “conduct its business in an open, transparent, and democratically accountable manner” [2]
- c. Public confidence in elected members’ ability to carry out their duties impartially will be enhanced if information on gifts, fees, endorsements and outside activities received or undertaken by elected members is readily available. This is generally provided through:
  - an elected member declaring an interest in a particular agenda item at a business meeting, withdrawing from the debating table and taking no part in the discussion or voting on an item

- the annual declaration of interests (see Elected member declarations on Auckland Council's website [3])
- d. The perception of a conflict of interest is as important as the reality when it comes to gifts, fees, endorsements and outside activities. A perceived conflict of interest undermines the public's confidence in elected members and their ability to make decisions lawfully and fairly.
  - e. The laws around bribes and inappropriate gifts or rewards are covered in the Secret Commissions Act 1910 and the Crimes Act 1961, and are listed in the Code of Conduct.

### **3.2.11 Remuneration**

- a. All elected members are expected to invest time in their governance and constituency roles in serving the Auckland public and are paid for their role.
- b. Salaries are set by the Remuneration Authority [1]. This independent body determines remuneration, allowances and expenses payable to:
  - the mayor and the minimum allowable remuneration for members of the Governing Body
  - chairs and members of local boards [2].
- c. As a result of a comprehensive review in 2018, a governance remuneration pool was established to reflect the size of the total governance roles of councils rather than the number of councillors. The pool is the total amount that must be paid in remuneration to councillors. The pool does not include remuneration for the mayor and local board members.
- d. Auckland Council is required to make recommendations to the Remuneration Authority on how the governance remuneration pool should be allocated between the councillors. The recommendations must include a rate for base councillor remuneration and rates for positions of additional responsibility that the governing body wishes to recognise.
- e. The Remuneration Authority considers the mayor, other Governing Body members and local board chairs to be full-time. All other local board members are part-time. The Remuneration Authority determination and elected members' remuneration for the current year can be viewed on Auckland Council's [website](#).
- f. In making its determination, the Remuneration Authority needs to consider a number of factors [3]. These are:
  - fair relativity with comparable positions

- the need to be fair to the individuals whose pay is being set and to ratepayers
  - the requirements of the job
  - the need to recruit and retain competent individuals
  - any prevailing adverse economic conditions (which may lead the authority to set remuneration at a rate lower than might otherwise have been the case)
  - the requirement to minimise the potential for types of remuneration to distort behaviour [4].
- g. For further information on the Remuneration Authority's local government process, see Remuneration Setting for Local Authorities on the Remuneration Authority's [website](#).
- h. Remuneration is set annually and includes:
- salaries (of differing roles)
  - vehicle mileage allowance when travelling on council business
  - travel time allowance (for journeys over one hour duration)
  - communications allowance (when using their own equipment).
  - childcare allowance

In the years between the assessments of the 'governance pool', all local government elected member remuneration will be changed on an annual basis using the same public sector equivalent formula that the Remuneration Authority uses for parliamentary remuneration.

- i. The Remuneration Authority also requires Auckland Council to develop and adopt an expense and allowance policy for elected members. This needs to set out policies and procedures around issues such as:
- principles and scope
  - allowances and benefits
  - travel rules and processes
  - land and sea transport
  - air travel
  - accommodation
  - travel expenses
  - professional development programmes and conferences
  - catering, hospitality and entertainment

- approval processes
  - breach of expense and reimbursement rules.
- j. Under current legislation, elected members are treated as self-employed and are subject to withholding tax, responsible for paying their own ACC levies and do not receive council contributions to Kiwisaver or superannuation schemes.

### **3.2.12 Provision of offices, technology and support staff**

- a. The whole organisation supports the governance structure as appropriate. In addition, there is dedicated support provided for the mayor, Governing Body and local boards.
- b. The provision of offices and support staff differs depending on an elected member's role. The mayor has an office and staff working directly to support their statutory and constituency roles. See Section 4.9: The Office of the Mayor for more information. The Local Government (Auckland Council) Act 2009 sets a minimum level of the council's overall budget to fund the mayoral office (at least 0.2% of the budget).
- c. Each Governing Body member is provided with an office and office equipment, along with support and politically neutral advice for their governance and constituency roles through the councillor support advisor team.
- d. The support provided for local board members varies. The local board chair will usually be supplied with an office and equipment, while local board members have a shared work space. Support for local board chairs and local board members are provided by each board's local board services team.
- e. Elected members are also offered an integrated technology solution to help them in their roles and minimise the use of paper [1].
- f. All information on council-supplied technology remains the council's property and is subject to the Local Government Official Information and Meetings Act (LGOIMA). Council information held by an elected member on a privately-owned device may still be subject to LGOIMA, depending on the facts. See Section 12: Official Information for more information.
- g. The policy prohibits elected members using council supplied technology for electioneering purposes. The technology is also not available for use by an elected member's family or friends.
- h. Elected members may supply their own technology provided it is compatible with council's systems and standards. Members can claim an allowance, depending on the personal technology used.

### 3.2.13 Engaging with the public

- a. Traditionally members interact with the public in two ways:
  - **Governance decision-making** - many governance decisions require consideration of the views of those affected or interested in the decision. This can include giving the public the opportunity to comment on council proposals and ensuring those comments are carefully considered prior to a decision being taken. More detail on how the council consults its communities can be found in the Significance and Engagement Policy. See also Section 10: How council decisions are made.
  - **Constituency role** - members of the public are free to contact an elected member with questions, queries or complaints. Depending on the issue, the public could contact a local board member, a ward councillor or the mayor. In general, if an issue is purely local it is best to approach a local board member; if an issue is of regional consequence it may be more appropriate to approach a ward councillor or the mayor.
- b. Elected members should act in a manner that encourages and values community involvement in local democracy [1].
- c. The mayor has an important statutory role in leading council engagement with the public. In addition to the role shared with all other elected members, the mayor is charged with ensuring there is effective engagement between the council and the people of Tāmaki Makaurau (including those too young to vote, of different ethnicities, cultures, interests and location) [2].
- d. Local boards have a statutory role to engage with their communities as part of their role to make decisions on local matters, provide local leadership and support strong local communities [3].

### 3.2.14 Protocols around media and speeches

- a. The media naturally has a keen interest in many aspects of council decision-making and service delivery. To fulfill its role it needs access to accurate, timely information. All elected members will receive approaches from the media for comment and should follow the Code of Conduct's protocols:
  - The mayor is the first point of contact for the official view on any issue. When the mayor is absent matters will be referred to the deputy mayor or relevant committee chair. The mayor can also refer matters to the relevant committee or local board chairs.
  - The local board chair (or their delegate) may comment on behalf of the local

board in relation to local matters where decision-making, public consultation or advocacy is the responsibility of the local board.

- No other member of the Governing Body or local board may comment on behalf of the council unless they have first obtained the approval of the mayor or local board chair (depending on whether the matter relates to the Governing Body or a local board). See Auckland Council's media policy.
- b. Elected members may choose to respond immediately to media inquiries and assistance from the council's communications team is available to ensure that media releases and responses are accurate.
- c. Elected members can express a personal view to the media at any time. It should be made clear, however, that:
- they are not representing the views of the Governing Body or local board
  - statements do not represent the majority view if they are contrary to a Governing Body or local board decision or council policy
  - any media comment made in a personal capacity must also observe other requirements of the Code of Conduct, e.g. not disclosing confidential or legally privileged information, compromising the impartiality or integrity of staff, or denigrating other elected members
- d. Comments made by members in their personal capacity are not covered by the qualified privilege of those made during business meetings.
- e. Help is available to elected members speaking on behalf of the council. This support may include drafting speeches or speaking notes. These will present information in a fair and politically neutral manner. Council communications assistance will not promote or be perceived to promote a sitting member's re-election prospects or personal profile.

### **3.2.15 Pre-election period**

- a. Members standing for re-election will, in effect, wear two hats during the pre-election period, i.e. three months prior to local body elections - firstly, in their role as an

elected member making decisions on behalf of their community and, secondly, their personal capacity as a candidate running for elected office.

- b. Elected members must comply with the council's Local Government Election Year Policy for Elected Members [1]. This requires that elected members do not use council resources for electioneering and ensures that a clear distinction is drawn between their two roles. Further information can be found in Section 16: Representation and reorganisation.

### **3.3 Resignations and vacancies**

#### **3.3.1 Resignations**

- a. Elected members are able to resign their office by notice in writing addressed and delivered to the chief executive. A resignation takes effect on the day on which it is delivered to the chief executive.
- b. If a member of the Governing Body or a local board resigns prior to the end of the term, an extraordinary vacancy arises. Section 117 of the Local Electoral Act 2001 (LEA) sets out the options and process for filling the vacancy or allowing the vacancy to remain until the end of the term.

#### **3.3.2 Vacancy more than 12 months before the next triennial election**

- a. If a vacancy occurs more than 12 months before the next local government triennial election, it must be filled by an election (by-election) under section 117(1) of the LEA. For further information see Section 17: Elections.
- b. The election must be held not later than 89 days after the date the electoral officer receives notice of the vacancy from the council's chief executive (section 120).
- c. If no-one is nominated for a by-election, the Governing Body or local board may (by resolution) fill the vacancy by appointment (section 117A).

#### **3.3.3 Vacancy within 12 months of the next triennial election**

- a. A vacancy can be filled by appointment or left vacant if it occurs within 12 months of the next local government triennial election [1]. The procedure is:
  - upon being made aware of the vacancy, the council's chief executive must immediately notify all remaining members of the Governing Body or local board concerned (section 117(2))
  - the Governing Body or local board must at its next ordinary meeting or, if that is not practical, at the subsequent ordinary meeting determine by resolution either

- i) that the vacancy will be filled by appointment by a person named in the resolution who is qualified to be elected as a member, or
  - ii) that the vacancy is not to be filled (section 117(3)).
- b. If the person named in a resolution is not available, the vacancy remains and the process begins again (section 117(4)).
- c. The Governing Body or local board must immediately give public notice of its decision if it resolves not to fill the vacancy (section 119).
- d. A vacancy in the office of mayor must be filled. See Section 4: The Mayor of Auckland for further information.

### **3.3.4 Appointment process**

- a. It is up to the Governing Body or local board to determine the process for selecting an appointee as there is no statutory process. This may include calling for expressions of interest, determining reasonable criteria for any person who wishes to be considered for appointment, selecting an interview panel (which may be the entire Governing Body or local board), interviewing candidates, and deliberating before making a decision.
- b. As there is limited time before a resolution must be made under section 117(3), the Governing Body or local board may need to hold an extraordinary meeting to determine whether it wishes to begin an appointment process and how it will select the candidate.
- c. However, it is equally open for the Governing Body or local board to simply decide to appoint the next highest polling candidate in the relevant ward or local board area, or to adopt any other reasonable process for selecting the appointee. Democracy Services, Local Board Services and Legal Services are available to assist the Governing Body or local board determine an appropriate process.
- d. The Governing Body or a local board must immediately give public notice of the resolution, and the appointment process or criteria if it fills a vacancy under section 117(3) or section 117A.
- e. The Governing Body or local board must confirm the appointment by resolution no later than 30 days after the date of this public notice. The appointed person is treated as having been elected to fill the vacancy on the date on which the resolution is made (section 118(2)).



### **3.4 Personal liability, insurance and qualified privilege**

#### **3.4.1 Personal liability**

##### **Indemnity of members**

- a. Members of Auckland Council (including local board members [1] and appointees to council committees or other subordinate decision-making bodies) are indemnified by Auckland Council for the following [2]:
  - costs and damages for any civil liability, as long as the member was acting in good faith and in pursuance of the responsibilities or powers of Auckland Council (or relevant committee or other subordinate decision-making body)
  - costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member

##### **Personal liability for losses incurred**

- a. Elected members may be liable (jointly and separately) for the losses of Auckland Council where [3]:
  - council money has been unlawfully spent
  - an asset has been unlawfully sold or otherwise disposed of by the council
  - a liability has been unlawfully incurred by the council
  - the council has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.
- b. Members are only liable for such losses if the Auditor-General issues a report on those losses to the Minister of Local Government [4]. The Auditor-General has not issued a report on losses incurred by a local authority since the Local Government Act was enacted in 2002 (although the possibility has been considered) [5].
- c. If the Auditor-General issues such a report and members do not pay the amount of the loss to the Crown or to Auckland Council within a reasonable time, the Crown may take proceedings against any or all of the members to recover the losses [6]. Any amount recovered by the Crown is payable to Auckland Council (less any costs of recovery incurred by the Crown) [7].
- d. However, individual members are not liable if they prove the act (or failure to act) that resulted in the loss occurred [8]:
  - without their knowledge
  - with their knowledge but against their protests made at or before the time when the loss occurred

- contrary to the manner in which they voted on the issue
  - in circumstances where they acted in good faith and in reliance on reports, information, or professional or expert advice given by
    - i) an Auckland Council employee whom they reasonably believed was reliable and competent in relation to the matters concerned
    - ii) a professional adviser or expert in relation to matters that they reasonably believed to be within the person's professional or expert competence.
- e. A local board member can be liable only in respect of a matter that is the responsibility of their local board [9].

### **Personal liability for costs**

- a. Members may also be liable to pay the costs and expenses of a proceeding commenced by the Attorney-General, where Auckland Council is held to have disposed of or dealt with property wrongfully or illegally, applied its property to an unlawful purpose, or permitted the reserves it manages to be used for unlawful purposes [10].
- b. Such costs must be paid, by order of the court, by the members who, by voting or otherwise, agreed to the acts concerned [11].
- c. A member will not be liable where they prove that, in doing the act concerned, they [12]:
  - acted in good faith and in accordance with written legal advice from a lawyer acting for Auckland Council or
  - acted honestly and reasonably, and having regard to all the circumstances of the case, it would be fair for the member to be excused.

### **3.4.2 Insurance**

- a. Elected members are included as an insured party under Auckland Council's various insurance policies. This means members are granted protection under the council's insurance cover when fulfilling their official roles.
- b. Some of the policies under which elected members are protected include:
  - Public liability insurance – elected members are indemnified against claims by a third party arising from personal injury and/or property damage.

- Professional indemnity insurance – elected members are indemnified against claims for breach of professional duty (legal duty of care owed by the elected member) arising out of a negligent act, error or omission in respect of a number of activities. This includes local authority meetings, resolutions arising from local authority meetings and any matter upon which the elected member has a statutory duty or power to provide information, advice or approval or perform any duties and arising out of such information advice, approval or performance.
- Business travel insurance – insurance cover in relation to overseas travel and travel within New Zealand involving more than a 50km radius (other than commuting).

### **3.4.3 Qualified privilege**

- a. Auckland Council meetings must generally be held in public [1]. Therefore, in order to allow free and frank discussion, oral statements and matters published in meeting agendas and minutes supplied to members of the public are covered by qualified privilege [2].
- b. Qualified privilege is a legal defence to a claim of defamation. Qualified privilege allows certain people in a position of authority or trust to make statements or communicate or publish statements that would otherwise be considered defamatory.
- c. Statements made or matters published will only be protected from liability for defamation as long as they are made in accordance with the relevant standing orders and where [3]:
  - The speaker is not predominately motivated by ill will.
  - The speaker is not otherwise taking improper advantage of the opportunity to have a matter published.

### **3.5 Removal from office**

- a. The mayor and councillors are voted in to office for a three-year term. They cannot be removed by Governing Body resolution, by the Local Government Commission, or by the Minister of Local Government [1] (or any other central government minister). However, the mayor or councillor will no longer hold office if they:
  - resign
  - die or become mentally incapable [2]
  - are absent without leave from four consecutive meetings (other than extraordinary meetings)

- are disqualified from office. This occurs if the member
  - i) is convicted of voting or taking part in a council decision in which they have a financial interest (if the member does not successfully appeal the decision) contracts with the council and the value of the contract(s) is more than \$25,000 in any one financial year
  - ii) no longer qualifies as an elector (i.e. is no longer a New Zealand citizen or permanent resident)
  - iii) is convicted of an offence punishable by two years or more imprisonment [3], (the two year timing reflects a policy decision to make sure that individual minor offences do not disqualify a Governing Body member).
- b. There will be a new election for a vacant position if a vacancy occurs more than 12 months before the next triennial general election [4]. This is referred to as a by-election. Depending on timing, there is the option that the role remains vacant, or a person is appointed without an election.

## **3.6 Footnotes**

### **3.2.2 Code of Conduct**

[1] Schedule 7, clause 15.

[2] Schedule 7, clause 15(6).

[3] The Code does not apply to Independent Māori Statutory Board member appointees to committees (see the definition of “member” in the Local Government Act 2002 and the application section of the Code of Conduct). Some parts of the code (e.g. conflicts of interest and confidentiality) will apply to IMSB members through other means, for example, through standing orders.

[4] Section 1 of the Code.

[5] “Auckland Council Elected Members Code of Conduct - Attachments –“ is a separate document to the Code.

[6] Section 3 of the Code.

[7] Section 4 of the Code.

### **3.2.5 Declaration when taking office**

[1] Local Government Act 2002 Schedule 7, Part 1, Clause 14.

### **3.2.7 Access to Confidential Information**

[1] Local Government Official Information and Meetings Act 1987

[2] Elected Members Code of Conduct Section 7.6 Confidential Information

### **3.2.8 Relationship with the chief executive and council staff**

[1] Most of this section is from <http://www.oag.govt.nz/2012/local-govt/part6.htm>.

[2] Unless a decision has been delegated to an individual elected member (or is otherwise set out in statute, e.g. the role of the mayor) elected members' power is exercised through their collective decisions at formal meetings.

### **3.2.9 Relative Responsibilities of the chief executive**

[1] Local Government Act 2002, s 42(1), Sch 7 cls 33-35.

[2] Local Government Act 2002, s 42(2)(g).

[3] Local Government Act 2002, s 42(2)(a), 42(2A).

[4] Auditor-General's Inquiry into the Mangawhai Community Wastewater Scheme (Kaipara) (2013), para 25.20 and 25.22.

### **3.2.10 Gifts, fees, endorsements and outside activities**

[1] Local Government Act Schedule 7, Clause 14.

[2] Local Government Act 2002, Section 13(a)(1).

[3] See above sub-section on Register of Declarations.

### **3.2.11 Remuneration**

[1] <http://remauthority.govt.nz/>.

[2] Local Government Act 2002, Schedule 7 Clause 6.

[3] Remuneration Authority Act 1977 Section 18. 18A and Local Government Act 2002, Schedule 7 Clause 7

[4] E.g. if elected members were to receive an allowance for attending part of a meeting, this could provide an unintended incentive to leave a meeting as soon as the attendance allowance had been earned.

[5] <https://www.remauthority.govt.nz/assets/Uploads/REM/remuneration-setting-for-local-authorities.pdf>

### **3.2.12 Provision of offices, technology and support staff**

[1] See Attached file

### **3.2.13 Engaging with the Public**

[1] Code of Conduct section 7.3 Relationships with the community.

[2] Local Government (Auckland Council) Act 2009 Section 9.

[3] Ibid, sections 13 & 16.

### **3.2.14 Pre-election period**

[1] <https://www.dia.govt.nz/Resource-material-Our-Policy-Advice-Areas-Local-Government-Policy>

### **3.4.1 Personal Liability**

[1] Local Government Auckland Council Act 2009 s 11A(1).

[2] Local Government Act 2002 s 43(1).

[3] Local Government Act 2002 ss 44(1) and 46(1), LGACA09 s 11A(1).

[4] Local Government Act 2002 ss 44 and 46(1).

[5] Auditor-General *Kaipara District Council: The Auditor-General's decision on requests to make a report under section 44 of the Local Government Act 2002* (19 August 2015) at 6.1.

[6] Local Government Act 2002 s 46(2).

[7] Local Government Act 2002 s 46(3).

[8] Local Government Act 2002 s 46(4).

[9] Local Government Auckland Council Act 2009 s 11A(2).

[10] Local Government Act 2002 s 47(1).

[11] Local Government Act 2002 s 47(2).

[12] Local Government Act 2002 s 47(3).

### **3.4.3 Qualified privilege**

[1] Local Government Official Information Meetings Act 1987 ss47.

[2] Local Government Official Information Meetings Act 1987 ss 52 and 53; Standing Order 1.3.9 of the Standing Orders of the Governing Body; and Standing Order 3.16 of the Local Board Standing Orders.

[3] Local Government Official Information Meetings Act 1987 ss 52 and 53; Standing Order 1.3.9 of the Standing Orders of the Governing Body; and Standing Order 3.16 of the Local Board Standing Orders.

### **3.5 Removal from Office**

[1] The Minister of Local Government can decide to intervene in council matters including by appointing a commission for the Auckland region (to act in place of all the governing body

elected members). The Minister can be asked to exercise this power at the written request of governing body: Local Government Act 2002, 258F(1)(d) This would have the effect of removing all Governing Body members.

[2] This requires the member to be subject to a property order made under section 31 of the Protection of Personal and Property Rights Act 1988: Local Government Act 2002, Schedule 7, cl5.

[3] Local Government Act 2002, Schedule 7, cl 1-5.

[4] Local Electoral Act 2001, section 117(1).

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

# Auckland Council Governance Manual

## He Puka Matarau



Updated 5 May 2022

## 6. Local Boards

Auckland Council's governance is shared across the Governing Body and local boards. Broadly speaking, the Governing Body focuses on the big picture and on region-wide strategic decisions. The 21 local boards represent their local communities and make decisions on local issues, activities and facilities.

Decisions made regionally will inevitably have local impacts, and local boards are legislatively mandated to have input into regional decisions, meaning that they take positions and comment on a broad range of regional issues.

### 6.1 Overview

#### 6.1.1 Establishment of local boards

- a. Local boards were introduced to Tāmaki Makaurau (and New Zealand) as part of Tāmaki Makaurau's local governance reforms, effective from 1 November 2010. At that time, the Government described the Governing Body / local board model as "*a new and different form of local governance and the parties have been empowered to work together to ensure that an effective and appropriate balance is reached between regional and local interests* [1]"
- b. Local boards have a significant and wide-ranging role that spans many council services and activities. Local boards make decisions on local matters, provide local leadership and enable strong local communities.
- c. The purpose of local boards is to:
  - enable democratic decision making by, and on behalf of, communities within the local board area
  - better enable the purpose of local government [2] through ensuring the 21 local boards cover all communities in Auckland Council's region.

#### 6.1.2 Membership

- a. Twenty-one local boards cover the Auckland region, ranging in population size from Howick (140,970 at the last census) to Āotea/Great Barrier (930).
- b. The number of local boards, geographic boundaries, and number of elected members were decided prior to the council's formation by the Local Government Commission, acting under the Local Government (Auckland Council) Act 2009.



- c. Some local boards are split into subdivisions – for example, the Franklin Local Board stretches from Waiuku (on the west coast) to Maraetai (on the east coast) and has three subdivisions. Together, the local board members elected from each subdivision make up the Franklin Local Board, which makes decisions across the Franklin Local Board area. Local board members act in the best interests of people in the local board areas, not just people in their local board subdivision.
- d. Local board members can serve on only one local board. Candidates can stand for multiple local boards; however, they must indicate their preferred choice in their election profile [1].
- e. Each local board elects a chair and deputy chair from among its members.
- f. The current membership numbers for each of the 21 boards is set out below

Local board areas, subdivisions and number of members

Local Board Areas	Subdivisions (if they exist)	Number of members
Albert-Eden	Ōwairaka	4
	Maungawhau	4
Devonport-Takapuna		6
Franklin	Pukekohe	4
	Wairoa	3
	Waiuku	2
Āotea/Great Barrier		5

Henderson-Massey		8
Hibiscus and Bays	East Coast Bays	4
	Hibiscus Coast	4
Howick	Botany	3
	Howick	3
	Pakuranga	3
Kaipātiki		8
Mangere-Otahuhu		7
Manurewa		8
Maungakiekie-Tāmaki	Maungakiekie	3
	Tāmaki	4
Ōrakei		7
Ōtara-Papatoetoe	Ōtara	3
	Papatoetoe	4

Papakura		6
Puketāpapa		6
Rodney	Dairy Flat	1
	Kumeu	4
	Warkworth	3
	Wellsford	1
Upper Harbour		6
Waiheke		5
Waitakere Ranges		6
Waitematā		7
Whau		7

## Auckland Council local board areas



- g. For further information on each local board, see [Your local board](#) on Auckland Council's website [2]. Information on the individual role of local board members is set out in Section 3: Elected Members.
- h. Auckland Council is required to review the representation arrangements for local boards at least once every six years [3]. The representation review can consider whether the number of local board members for each local board should change. The legislation provides for between 5 and 12 local board members for a local board, however the highest number currently is nine. The representation review cannot change local board boundaries - this can only occur through a local government reorganisation proposal, or through a law change [4].

### 6.1.3 Legal Status

- a. A local board is part of Auckland Council and not a local authority in its own right. It is an unincorporated body and does not have separate legal standing.

- b. Local boards cannot (in their own right) acquire, hold or dispose of property, enter into contracts, appoint, suspend or remove employees, or commence, be a party to or be heard in legal proceedings [1].
- c. A local board is not a community board or a committee of the Governing Body.
- d. Although not a local authority, the legal requirements around decision-making in the Local Government Act 2002 apply to local boards as if they are a local authority. In practice, when making decisions, this means that local boards will take all steps that a local authority would take.

## **6.2 Local board powers, functions and responsibilities**

### **6.2.1 Overview**

- a. Local boards have a significant and wide-ranging role; they make decisions on local matters, provide local leadership and enable strong local communities. Local boards have a strong connection to their communities and play an important role in shaping the place that they have been elected to serve. There are three ways that legislation gives decision-making responsibilities to local boards:
  - directly by legislation
  - by allocation from the Governing Body, in the case of non-regulatory activities
  - by delegation from the Governing Body (in the case of regulatory activities) or Auckland Transport (in the case of transport activities).
- b. Local boards are responsible for:
  - decisions on non-regulatory local activities as allocated by the Governing Body through the long-term plan or annual plan process, for which local boards are fully autonomous and accountable to their communities
  - adopting local board plans every three years in consultation with their communities and monitoring progress
  - negotiating annual local board agreements with the Governing Body and monitoring local board agreements
  - developing and monitoring annual work programmes
  - identifying community preferences and priorities, representing their communities and building strong local communities
  - engaging with their communities

- identifying and communicating the interests and preferences of local people on the content of regional strategies, policies, plans and bylaws to the Governing Body
  - providing input to council-controlled organisation (CCO) plans and initiatives
  - identifying and developing bylaws for the local board area and proposing them to the Governing Body collaborating with other local boards if their communities will be better served by doing so
  - undertaking any additional responsibilities delegated by the Governing Body or Auckland Transport
  - making delegations to the Chief Executive that relate to the responsibilities of local boards.
- c. Local boards are accountable to the community for their allocated and statutory decision-making. Their decisions are open for scrutiny throughout the term by the media, commentators and the public. The media play a major part in forming the community's view of members' performance and the local board's performance as a whole.

### **6.2.2 Allocation of non-regulatory responsibilities to local boards**

- a. The Governing Body is required to allocate responsibility for non-regulatory decision making to either itself or to local boards in line with the principles set out in section 17 of the Local Government (Auckland Council) Act 2009.
- b. Under the allocation principles in the Act, the presumption is that local boards will be responsible for making decisions on non-regulatory activities except where decision-making on a region-wide basis will better promote the well-being of communities across Tāmaki Makaurau.
- c. Where a local board is making a decision, which has been allocated to it by the Governing Body, the local board decision is the council decision; there is no required backup or follow-up decision by the Governing Body.
- d. The allocation of non-regulatory decision-making responsibility is decided by the Governing Body every year and included in the council's Annual Plan (and every three years in the Long-term Plan). It provides local boards with significant decision-making responsibility for areas such as local parks and community facilities, local activities such as events, and local projects such as community development initiatives. Before making a decision on allocation, the Governing Body will consider the views and preferences expressed by each local board.

### **6.2.3 Resolving decision-making allocation disputes**

- a. The Local Government (Auckland Council) Act 2009 provides a mechanism to deal with any disputes that might occur between the Governing Body and local boards on decisions made by the Governing Body on the allocation of non-regulatory decision-making responsibilities or proposed bylaws [1].
- b. The following process must be followed if one or more local boards is dissatisfied with the Governing Body's decision:
  - The local board advises the chief executive that they disagree with the Governing Body decision [2].
  - The local board and the Governing Body must make reasonable efforts to reach a mutually acceptable and timely resolution of the dispute, having regard to the legislation's requirements and the current and future wellbeing of Auckland's communities, their preferences and priorities.
  - The local board may apply in writing to the Local Government Commission for a binding determination if the dispute cannot be resolved.
- c. On receipt of a request for a binding determination, the Local Government Commission is required to treat the issue as urgent and make appropriate inquiries. The costs of the Local Government Commission may be apportioned between the local board(s) and the Governing Body.

### **6.2.4 Regulatory activities that have been delegated to local boards**

- a. While the Governing Body cannot allocate regulatory decisions, it can choose to delegate its regulatory decision-making responsibilities to local boards. In deciding whether to make a delegation, the Governing Body must weigh the benefits of reflecting local circumstances and preferences (through a delegation) against the importance and benefits of using a single approach [1].
- b. Where a power is delegated, the Governing Body retains ultimate accountability for that activity. This is different from an allocated decision-making power where the local board has full accountability for the activities allocated to it.
- c. Local boards can also be delegated decision-making responsibilities from Auckland Transport. There are currently no transport delegations in place.

### **6.2.5 Input into regional strategies, policies, plans and bylaws**

- a. The Governing Body develops and adopts regional strategies, policies, plans and bylaws. The Local Government (Auckland Council) Act 2009 requires the Governing Body, prior to making any decision, to take into account the views and preferences of local boards where they or the wellbeing of their communities are affected by that decision.
- b. Region-wide policy needs to reflect the governance model explicitly recognising that local boards make local decisions. In most cases regional policy should not override this decision-making, with policy explicitly recognising where decision-making sits with the Governing Body and where it sits with local boards.
- c. Planning for policy development needs to consider the requirement for local board input from the outset. While the Governing Body is the ultimate decision-maker and sets the direction and scope for policy and planning work, in order to obtain meaningful input from local boards, it is important that they have an understanding of the proposed policy work programme, and time, resource and support to understand the issues, including the regional context, and what it means for their local communities.
- d. Local board feedback will generally need to be provided by way of a local board resolution. This feedback should be collated, analysed and summarised for reporting to the relevant Governing Body committee to support their decision-making. Specific local board resolutions need to be attached to the committee report.

### **6.2.6 The role of the local board chair and deputy chair**

- a. Each local board will appoint a chair and deputy chair. The role of local board chair is to:
  - provide strong leadership and inspire the local board
  - build and maintain relationships to develop a collegial local board that is able to work effectively together and reach consensus to deliver the local board's vision and priorities
  - be accountable for the local board relationship with iwi (chief-to-chief)
  - develop a strong working relationship with key stakeholders and senior council staff
  - chair local board meetings effectively abiding by standing orders and the code of conduct



- represent the local board, and the wider Auckland Council as appropriate, including in a civic and community role (such as citizenship ceremonies) and as the spokesperson to the media
- promote and support the principles of good governance
- work with the Governing Body and council committees to provide local board input to regional decisions and to regional strategies, policies and plans
- ensure local board members understand what is expected of them, monitor their performance and hold them to account.

The local board deputy chairperson's role is to act as chair in the absence of the chairperson.

## **6.3 Strategy, planning and oversight**

### **6.3.1 Local board plans**

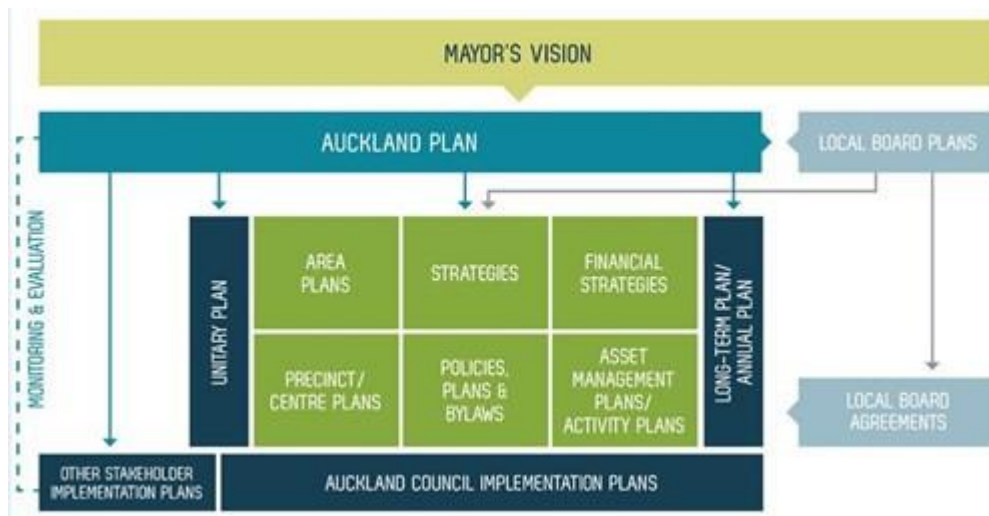
- a. In the first year after each election, the incoming local board is required to develop and adopt a new local board plan. These plans set the framework to guide local board decision-making and actions for the following three years. They set out each local board's vision, strategic priorities and outcomes, as well as key projects and initiatives, and should reflect the aspirations and priorities of local communities.
- b. Local board plans form an important part of Auckland Council's planning framework. The Auckland Plan sets the overall strategic direction for the region, while local board plans set the local direction.
- c. The purpose of a local board plan is to:
  - Reflect the priorities and preferences of the communities within each local board area in respect to the level and nature of local activities [1] to be provided by Auckland Council over the next three years.
  - Identify and describe the interests and preferences of the people within the local board area to enable the local board to communicate those interests and preferences to the Governing Body.
  - Provide a basis for developing each of the three subsequent local board agreements.
  - Inform the development of the next Long-term Plan.
  - Provide a basis for accountability of the local board to its communities.

- Provide an opportunity for people to participate in decision-making processes on the nature and level of local activities to be provided by council within the board area.
- d. Each local board is required to use the special consultative procedure to formally consult with its community in the preparation of its local board plan. Boards also undertake a range of informal engagement activities to better engage with their community and to help them understand community preferences and priorities.
  - e. All current local board plans are available on the Local Boards page of the council website [2].

### **6.3.2 Local board agreements**

- a. Each year, as part of council's Annual Plan or Long-term Plan process, each local board and the Governing Body is required to agree a local board agreement.
- b. The local board agreement is effectively the annual plan for each board. It sets out the local activities to be provided in the area and the board's budget. In turn those activities reflect the priorities and preferences set out in the local board plan.
- c. Each local board agreement is developed as part of Auckland Council's annual plan. It contains a range of information [1], but must reflect the priorities and preferences in the local board's plan with respect to:
  - the local activities to be provided in the local board area
  - a statement of service levels, performance measures and targets, together with information setting out any changes to the levels of service from the preceding year and the reasons for those changes
  - a funding statement outlining how expenses in excess of the local board's budget are to be met
  - the responsibilities delegated to the local board by the Governing Body
  - the implementation or enforcement of bylaws made by the Governing Body at the request of a local board.
- d. All local board agreements are published as part of Auckland Council's Annual Plan or Long-term Plan public accountability documentation [2].

How the plans fit together



[3]

### 6.3.3 Local board work programmes

- a. Work programmes contain the detailed list of activities being delivered by departments that underpin the local board agreement.
- b. Departments need to obtain local boards' approval for their annual work programme of local activities prior to the start of the financial year. Progress against work programmes is reported quarterly to the local boards.

### 6.4 Funding local boards

- a. Auckland Council is required to adopt a local board's funding policy as part of its Long-term Plan. This sets the Governing Body's formula for allocating funds to boards.
- b. The formula must allocate funds in a way that provides an equitable capacity for the local boards to enhance the wellbeing of the communities they serve.
- c. The 2015-2025 Long-term Plan funding policy for local boards has the following characteristics:
  - **Locally-driven initiatives (LDI) funding, which is discretionary.** The Governing Body determines a total LDI funding envelope, and it is allocated to local boards based on population, size of the local board area and the level of deprivation. (With the exception of Waiheke and Āotea/Great Barrier islands, where an adjustment is made because of their low populations) [1]. Examples of LDI expenditure include local events, community grants, increases to library opening hours, feasibility studies, youth connections, and local playground

enhancements. The local board has discretion to move funds within and across activities.

- **Asset-based services (ABS) funding** where:
  - i) operating expenditure is determined on the basis of the costs to run the assets in a local board area. This primarily supports financing, renting, and maintaining assets, as well as the staff costs associated with delivering services from those assets (i.e. library, pool, community and leisure centre staff). Examples include funding for standard library opening hours, maintenance of local parks etc. The local board has the governance oversight of these assets and can change service levels over time.
  - ii) Capital expenditure is determined based on regional priorities and asset management plans. Examples include funding for a new swimming pool or renewal of a library.
- d. **Governance services funding** (also called administration costs) which is primarily driven by the number of members covering members remuneration (set by the remuneration authority, independently of Auckland Council) and Local Board Services costs
- e. In addition:
  - Auckland Transport ring-fences \$10 million for local boards to fund local transport initiatives. This funding is allocated across the local boards on the basis of population (again, with the exception of Waiheke and Āotea/Great Barrier islands where an adjustment is made due to their low populations).
  - Each local board has the ability to propose a targeted rate to its community, to fund projects, improve service levels, or for new assets.

## **6.5 Organisational support**

### **6.5.1 The role of staff in supporting governance**

- a. The organisation plays a crucial role in supporting local boards to fulfil their governance role through the provision of quality advice, supporting democratic processes, and effective community engagement to ensure robust decision making.

### **6.5.2 The role of the chief executive**

- a. The chief executive is appointed by the Governing Body and is responsible for implementing and managing the council's policies and objectives within the budgetary constraints established by the Governing Body. The responsibilities of the chief executive directly related to local boards include:

- implementing the decisions of each local board
- providing advice to each local board
- implementing each local board agreement
- providing administrative and other facilities to the local boards.

### **6.5.3 Staff delegations**

- a. The chief executive is responsible for implementing Governing Body and local board decisions. For the organisation to operate efficiently and effectively, the chief executive needs a level of delegated decision-making power. Delegations are a tool to implement governance decisions effectively.
- b. The Governing Body has delegated all of its functions, duties and powers to the chief executive, subject to certain limited exceptions and restrictions (including a financial limit of up to \$20 million). The chief executive has, in turn, delegated those to staff. The Governing Body's delegation only covers functions, duties and powers that are within the Governing Body's decision-making ambit. It does not cover local board decision-making responsibilities. Only local boards have the power to delegate their decision-making responsibilities to staff.
- c. Local boards have also provided delegations to the chief executive. These delegations are similar to that of the Governing Body. The main exception is the chief executive's lower financial authority. This differs between local boards but ranges from \$1m to \$2.5m.
- d. The delegations by local boards to the chief executive have been made subject to a set of delegation protocols. These protocols provide a base set of expectations and direction to staff and require a number of actions that are relevant to all local activities. These are contained in Schedule 2 of Auckland Council Combined Chief Executives Delegation Register [1].
- e. Other than these general delegations, local boards may also delegate specific decisions to staff to aid efficient and effective conduct of business, for example to negotiate final terms on a community lease within parameters set by the board.

### **6.5.4 Local Board Services**

- a. Local Board Services provide dedicated support for the 21 local boards. This support includes:
  - policy and strategic advice
  - leadership of the preparation of local board plans

- supporting the development of local board agreements each year
  - community engagement support, including constituent work
  - democracy and administrative support
  - advice and support (for the organisation) on engaging with local boards
  - coordinating planning and processes that cover all 21 local boards
  - leading organisational change programmes aimed at improving support for elected members.
- b. The department works with the rest of Auckland Council and the CCOs to ensure local boards can carry out their governance role effectively. The advisory role of the department means that it will look at issues through a local lens as well as taking account of the region-wide picture. A key role of the department is to integrate advice from the rest of the organisation.
  - c. The department reviews all reports for local board agendas. Final sign-off is with the relevant local area manager for local board reports, and with the manager of Local Board Services for reports that go to all 21 local boards and for local board work programmes.
  - d. The local area manager is the chief executive's delegate at local board business meetings.
  - e. The support model for local boards is that Local Board Services provides the dedicated support, but the rest of the organisation provides subject matter expertise and support as required.

## **6.6 Conducting governance business**

### **6.6.1 Formal decision-making**

#### Local board business meetings

- a. Local boards make their decisions at formal public business meetings. These meetings are advertised publicly and members of the public are welcome and encouraged to attend [1]. Most local boards hold one formal business meeting a month.
- b. These meetings are run under the Standing Orders of each board [2]. Standing Orders set out the meeting rules and cover such issues as how the meeting will be chaired, the quorum required, how debates operate and a number of other rules to help meetings run smoothly, efficiently and effectively. A formal vote is always required, even where the board is in consensus.

- c. All such business meetings have a formal agenda which sets out the subjects being discussed at the meeting. For other than procedural items each agenda item is accompanied by a written report. There are three ways that reports can arise:
- through the local board asking for a report
  - through the chief executive (or delegate, i.e. local area manager) arranging for a report
  - through the chair or portfolio holder providing a report.
- d. These reports set out the issues under consideration, provide analysis and consideration of options, give advice on the various decisions to be made, and provide staff recommendations. After debating issues, a board will make decisions by passing formal resolutions. These resolutions are recorded in formal minutes which are confirmed for accuracy at the next scheduled meeting.
- e. In its decision-making, a local board must comply with Part 6 of the Local Government Act 2002 as if it is "local authority". To meet the requirements of the Act, elected members should expect reports and advice that:
- identify options to achieve the objective of the decision
  - include an assessment of the pros and cons of these options
  - incorporate engagement with Maori with respect to significant decisions in relation to land or a body of water and
  - include consideration of the views and preferences of those affected by or who have an interest in the decision.
- f. There are other legislative requirements and legal principles that apply to local board decision-making. Advice must meet Auckland Council's Quality Advice Standards[3].
- g. The staff support required to enable local boards to meet these requirements depends on the circumstances. The council's Significance and Engagement Policy applies to decisions made by local boards. For a detailed explanation of the council's approach to consultation and engagement refer to Section 15: How council decisions are made.
- h. Only matters on the agenda can be discussed; this is an important component in transparency and the public's ability to hold board members accountable. Extraordinary business is an exception to this and is permitted only for issues that are urgent and where a decision cannot wait until the next scheduled meeting [4].
- i. Standing orders provide for members of the public to present petitions, make deputations or address the board on an issue of concern. The practice for dealing

with petitions, deputations and public forum session in meetings varies between boards.

- j. A board may delegate responsibilities, decisions, duties and powers to a member of the local board to aid efficient and effective conduct of business.

### **6.6.2 Non-decision-making meetings**

#### Workshops

- a. Local boards also hold workshops. Workshops do not have decision-making authority.
- b. Workshops are used to canvass issues, prepare local board members for upcoming decisions and to enable free and frank discussion between elected members and staff.
- c. Workshops for groups of local boards can be held giving local boards the chance to work together on common interests or topics.
- d. Workshops are generally not open to the public. Decisions will be made at a formal, public board meeting.

#### Chairs' Forum

- e. Local board chairs meet regularly at the Chairs' Forum to consider a range of issues relevant to all boards.
- f. The Chairs' Forum is not set up as a formal decision-making body. However, from time to time, local boards may delegate decision-making authority to chairs, as appropriate to work with other chairs at the Chairs' Forum to make collective decisions that affect all local boards. An example of such a decision is the selection of a single local board representative to fill a seat reserved for Auckland's 21 local boards on the Local Government New Zealand National Council.

#### Political Working Parties

- g. Sometimes, political working parties comprising local board members or local board members and Governing Body members are established to consider an issue in more depth. Typically, these are established for issues that may need on-going oversight or to develop feedback on a particular topic for the board. Any issues requiring decisions will be reported to the relevant business meeting and/or Governing Body committee.

### **6.6.3 Meetings, quorum and attendance**

- a. Most boards schedule one formal business meeting a month for the months February to December. Extraordinary meetings may be scheduled to consider an issue that cannot wait until the next monthly business meeting. As noted previously the time and location of these meetings is publicly advertised and members of the public are



welcome to attend.

- b. Requirements for a quorum and local board member attendance are the same as for the Governing Body. For more information refer to Section 10.5: Meeting Procedure.

#### 6.6.4 Voting and decisions

- a. All decisions of the local board are made by voting on resolutions or procedural motions. A resolution is a statement setting out a draft board opinion or decision, whereas a procedural motion is a resolution requiring a particular course of action to be taken under Standing Orders. Both resolutions and motions need to be proposed by one board member and seconded by another before they can be considered.
- b. A simple majority [1] of the elected members present and voting must support a resolution before it is passed. All elected board members have one vote. Additionally, the chairperson has a casting vote in the event of a tied vote. Conventionally the chairperson will use their casting vote to support the status quo, however this convention is not a requirement in standing orders. There are three ways in which a decision on a vote may be taken:
  - **On the voices** – members supporting a resolution say “aye”, and those opposing say “no”. The chairperson will call the result based on the number of voices in each camp.
  - **A show of hands** – members are asked to hold their hands up if they support or oppose a resolution
  - **By division** – a division can be called by the chair or any member. Under this system the vote of each member supporting or opposing a resolution is recorded (a second division can be called in the event of confusion).
- c. Meeting minutes will record if a resolution or motion is carried or lost. With a division, the minutes will record the names of those who supported or opposed the resolution and whether it was carried or lost.
- d. Members are able to abstain from voting and may, if they choose, have their abstention recorded in the minutes. A member may also have their vote recorded against a resolution.
- e. Where members have a conflict of interest it needs to be declared. In these circumstances, members are recommended to withdraw from the debating table and can no longer take part in debate on the item. However, their presence is counted for the purposes of the quorum.

#### 6.6.5 Confidentiality

- a. One of the foundations of local government is openness and transparency. As a general principle all local board elected members are entitled to have access to all information, for which there is good reason to have such access [1]. This access enables local board elected members to properly discharge their duties.

- b. Some information needs to be kept confidential, where good reason exists under the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- c. While most decisions of a local board are taken in public, there are some reasons under LGOIMA which allow the public to be excluded from part of a meeting to enable a confidential item to be discussed.
- d. Under their Code of Conduct all local board elected members are expected to not disclose confidential information (whether or not it is subject to a resolution to exclude the public at a formal board meeting). Failure to observe this requirement may expose the council to litigation. It may also inhibit the information flows and undermine confidence in the council.

#### **6.6.6 Agendas and Minutes**

- a. Decision-making by local boards is based on a formal agenda and the associated reports. Records of attendance and the decisions taken are also kept in the form of minutes. Access to these documents is provided in a number of ways:
  - **Elected members** – are provided with electronic versions of each agenda, associated reports and subsequent minutes.
  - **Staff** – can access agendas, reports and minutes through the internal Infocouncil system or the internet.
  - **Public** – under LGOIMA, copies of agendas, reports and minutes are required to be available for inspection at libraries and council public offices. LGOIMA pre-dates the internet and there is no requirement under the Act to provide access via the internet. However, it is council practice to publish all agendas, reports and minutes on its website. For further information, on Agendas and Minutes for the key meetings, see Agendas and Minutes on the Auckland Council's Website also. Some boards also send links to interested stakeholders or publicise the information's availability on the board Facebook page. Some boards also send links to interested stakeholders or publicise the information's availability on the board Facebook page.

#### **6.7 Footnotes**

##### **6.1.1 Establishment of local boards**

[1] Cabinet paper (Nov 2009) "Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards", on the Department of Internal Affairs website.

[2] Local Government (Auckland Council) Act 2009 section 10.

### **6.1.2 Membership**

[1] Local Government (Auckland Council) Act 2002 section 11AA.

[2] <http://www.aucklandcouncil.govt.nz/EN/AboutCouncil/representativesbodies/LocalBoards/Pages/home.aspx>

[3] Local Government (Auckland Council) Act 2009 section 103 and Local Electoral Act 2001 section 19H.

[4] Section 11 Local Government (Auckland Council) Act

### **6.1.3 Legal Status**

[1] Local Government (Auckland Council) Act 2009 section 12.

### **6.2.3 Resolving decision-making allocation disputes**

[1] Local Government (Auckland Council) Act 2009 sections 97-99

[2] This is a practical step, to commence the process.

### **6.2.4 Regulatory activities that have been delegated to local boards**

[1] Local Government Act 2002 section 36C (3)

### **6.3.1 Local board plans**

[1] Local Government (Auckland Council) Act 2009 section 4 interpretation.

[2] Auckland Council website Local Boards page

<http://www.aucklandcouncil.govt.nz/EN/AboutCouncil/representativesbodies/LocalBoards/Pages/home.aspx>

### **6.3.2 Local board agreements**

[1] Local Government (Auckland Council) Act 2009 section 21.

### **6.4 Funding local boards**

[1] Long-term Plan 2015-2025. Volume 3 Local Board Funding Policy.

<http://www.legislation.govt.nz/act/public/2009/0032/latest/DLM2322326.html>.

### **6.5.3 Staff delegations**

[1] See Auckland Council Combined Chief Executives Delegation Register, Updated August 2016, retrieved from:

<https://acintranet.aklc.govt.nz/EN/departments/accountingservices/Policies%20and%20procedures/Combined%20Chief%20Executives%20Delegation%20Register.pdf>

### **6.6.1 Formal decision-making**

[1] An exception to this rule is for a small number of agenda items where grounds exist to lawfully exclude the public under the Local Government Official Information and Meetings Act and the meeting has resolved in public that such grounds exist.

[2] Each board adopts its own standing orders. There are some minor differences between the standing orders of differing boards.

[3] Attached document below

[4] See Chapter 18 Official Information for more information on extraordinary business and extraordinary meetings.

### **6.6.4 Voting and decisions**

[1] N.B. the election of the chairperson at the beginning of the electoral term can use one of two differing systems to help ensure that the chairperson elect has the support of the majority of the board members.

### **6.6.5 Confidentiality**

[1] Elected Members Code of Conduct Section 7.6 Confidential Information

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

## 11. Council-controlled organisations

### 11.1 What are council organisations and council-controlled organisations?

- a. Council-controlled organisations (CCOs) perform a vital role in helping the council achieve its strategic goals, delivering a range of services to residents and visitors on behalf of the council. Taken together, their activities make a significant contribution to community wellbeing. The council has a collaborative and cooperative relationship with its CCOs as partners in the delivery of the council's objectives and priorities for Tāmaki Makaurau.
- b. Councils in Aotearoa New Zealand can provide services to their communities in a number of different ways:
  - via their own in-house staff and operations
  - by contracting a third party or organisation
  - through an entity that is council-controlled but is governed, managed and operated at arm's-length through an independent board of directors.
- c. Councils can hold or control any proportion of rights to appoint directors in a range of organisations [1], including:
  - **Council organisation (CO)** - An entity is a CO when the council has the right to appoint fewer than 50 per cent of its directors [2]. Currently, Auckland Council has more than 70 COs.
  - **CCO** - Entities in which the council has the right to appoint 50 percent or more of the directors are CCOs.
  - **Substantive CCO** - Substantive CCOs are wholly-owned council entities responsible for delivering a significant service or activity on behalf of the council or owning or managing assets with a value of more than \$10 million [3]. Substantive CCO is only a concept in Auckland local government.
  - **Council-controlled trading organisation (CCTO)** - The council can also have a stake in organisations which trade with the purpose of making a profit. These CCOs are known as council-controlled trading organisations. Auckland Council currently has only one CCTO, a joint venture called Waste Disposal Services.

## 11.2 Purpose of Council-controlled Organisations

- a. A CCO's main purpose is to help achieve the council's objectives. When a council decides to deliver public services through a CCO, it effectively transfers responsibility to a board of directors or trustees. This is common practice internationally and is often referred to as delivering services at arm's-length.
- b. Auckland Council commissioned an independent review of its CCO model in 2020 to ensure it was working for our city and our people. The review considered criteria for deciding whether or not to deliver activities through CCOs. These include whether activities:
  - require the commercial disciplines and specialist expertise of professional directors
  - require people with strong technical and industry knowledge and rely on the ability to recruit and retain highly skilled staff with private sector skills
  - require fast decision-making, innovative thinking and the application of relevant commercial disciplines, including those relating to risk management
  - can be made more efficient by aligning the CCO's systems and processes to its specific business needs
  - lend themselves to achieving economies of scale
  - are not duplicated by other CCOs or the council.

## 11.3 Auckland Council COs and CCOs

Auckland Council provides a range of services and programmes to the region through four substantive CCOs and eight others that are smaller in scale and budgets. All CCOs participate in, and contribute to council plans, as well as managing services, such as transport. The Long-term Plan contains information on the activities of Auckland CCOs and COs.

### 11.3.1 Substantive CCO services and activities

- a. **Auckland Transport (AT)** was established as a statutory entity [1], a fact that restricts the level of change the council can make to its structure without a change to the legislation. AT's purpose is "to contribute to an efficient, effective and safe Auckland land transport system in the public interest" [2]. AT operates under the Local Government (Auckland Council) Act 2009 [3], and is also subject to the Land Transport Management Act.
- b. **Eke Panuku Development Auckland Limited (Eke Panuku)** was established by council resolution in 2015. Eke Panuku is an amalgamation of two former council CCOs - Auckland Council Property Ltd and Auckland Waterfront Development Agency. Eke Panuku is the urban regeneration agency for Auckland Council and has a dual purpose to:



- redevelop urban areas through its priority location programmes and other council group programmes.
  - manage the council's non-service property and provide property-related services to the council group.
- c. **Watercare Services Ltd** provides integrated water and wastewater services to Auckland. Watercare is governed by the Local Government (Auckland Council) Act 2009 [4], and must manage its operations efficiently, with a view to keeping the costs of water and wastewater supply at minimum levels while maintaining the assets' long-term integrity [5]. Watercare is prevented from paying a dividend or distributing any surplus to the council as owner [6].
- d. **Tātaki Auckland Unlimited Ltd** was established in 2020 through the merger of earlier CCOs Auckland Tourism and Economic Development Limited (ATEED) and Regional Facilities Auckland Limited (RFAL), following recommendations from an independent review of council-controlled organisations. Auckland Unlimited is New Zealand's largest producer of cultural, entertainment, sporting and wildlife experiences and the largest regional economic development agency in the country committed to delivering outcomes that meet its purpose of 'enriching cultural and economic life in Tāmaki Makaurau.'

### 11.3.2 Smaller CCOs and COs

- a. The council has a further eight CCOs that are smaller in scale and budgets than the substantive CCOs. These entities provide services to a range of stakeholders and contribute to delivering council programmes and services.
- b. The following CCOs are required to meet governance requirements such as half-year and annual reports and Statements of Intent
- **Community Education Trust Auckland, Te Hononga Akoranga (COMET)** - supports education and skills across Auckland, contributing to social and economic goals in the Auckland Plan.
  - **Contemporary Art Foundation** - promotes the arts through ownership and management of the Te Tuhi Centre for the Arts, a public gallery in Pakuranga which hosts local, national and international art exhibitions.
  - **Manukau Beautification Charitable Trust** - promotes, supports and undertakes programmes, actions and initiatives to beautify Auckland
- c. The following CCOs are exempt from the above requirements:
- **Arts Regional Trust (ART)** - aims to grow entrepreneurship in the Auckland's arts, culture and creative sectors to generate cultural, creative and economic outcomes that benefit the region
  - **Māngere Mountain Education Trust (MMET)** - the trust administers the

Māngere Mountain Education Centre which provides educational opportunities for Aucklanders of all ages to learn about Māngere Mountain and its people.

- **Mount Albert Grammar School Community Swimming Pool Trust** - supports the Mt Albert Aquatic Centre, a local community pool
- **Te Motu a Hiaroa (Puketutu Island) Governance Trust** - Watercare established this trust to oversee and hold the fund for developing, managing, maintaining and operating Puketutu Island. The trust works with the council and iwi to transform the island into a regional park, after the deposition of biosolids in an excavated site
- **Te Puru Community Charitable Trust** - manages the community centre at Te Puru Park and supports sports, leisure, community and cultural groups in the Beachlands, Maraetai and Whitford areas.

### 11.3.3 Control and accountability of Auckland's substantive CCOs

- a. The council is accountable for a CCO's actions and spending; it is, therefore, essential that a CCO's decisions align with the council's plans and policies. The council uses the following tools and processes to achieve this alignment and accountability:
  - **Appointments to a CCO board of directors** – the council appoints all directors to the board of each substantive CCO and the majority of directors on a number of smaller CCOs. The council's approach to these appointments and directors' remuneration is outlined in its Appointment and Remuneration Policy for Board Members of Council Organisations. While the Companies Act 1993 requires the directors of CCOs that are companies (all but AT) to act in the CCOs' best interest, their constitutions also allow them to act in the best interests of the shareholder, the council. The council may also appoint up to two councillors onto the board of Auckland Transport.
  - **The annual Statement of Intent (SOI)** – each CCO must annually document strategic priorities in its SOI for the following three years and agree these with the council [1].
  - **Reporting requirements** - Each CCO's SOI sets the performance measures for the three-year period. Each CCO must provide the council with half-yearly and annual reports [2]. The council also requires all substantive CCOs to report on their performance at the end of the first and third quarters and explain if SOI performance measures have not been met. The council has face-to-face performance discussions with CCO boards for the half-year reports and for the fourth quarter results.
  - **Strategic Alignment** – Each substantive CCO must give effect to the Long-term Plan and act consistently with any relevant aspect of council plans and strategies [3]. The overall direction for CCOs is also set in line with the Auckland Plan.
  - **The CCO Accountability Policy** - The council is required to have a policy on

the accountability of its substantive CCOs [4]. This policy is set out in the council's Long-term Plan [6] and establishes the council's enduring expectations for each CCO. Important elements of the Accountability Policy are:

- **Additional planning and reporting requirements** - all substantive CCOs are required to have asset management and activity plans, performance frameworks and supporting financial information to feed into the council's Long-term Plan and Annual Plan.
- Among other requirements substantive CCOs must:
  - use accounting policies and standards that are consistent with the council group's accounting policies and standards
  - follow any other planning requirements specified by the council and notified to CCOs
  - prepare a Māori Responsiveness Plan and work with council to monitor and report against it
- **Major transactions relating to strategic assets** - the Accountability Policy identifies the strategic assets owned or managed by each substantive CCO and sets out the requirements for management of them. In particular, CCOs may not undertake a major transaction (as defined in the CCO Accountability Policy) in relation to a strategic asset unless approved by the council or already provided for in the Long-term Plan. Certain transactions, such as a decision to transfer the ownership or control of a strategic asset to or from the local authority, must be provided for in the Long-term Plan [5], and may trigger consultation requirements [6].
- **Statement of Expectations.** Section 64B of the Local Government Act allows Council to issue a statement of expectations and in October 2021 Auckland Council approved its first iteration of this document. The SOE is read in conjunction with the CCO Accountability Policy, and focusses on how CCOs should conduct their business and manage their relationship with Council and other stakeholders. Both documents have statutory status and work in complementary fashion. The SOE encompasses a range of principles for CCOs, such as:
  - Giving effect to Auckland Council's shared governance (governing body and local boards)
  - Achieving outcomes for Aucklanders is paramount
  - Operating as a group, not individual organisations
  - The no-surprises principle
  - Common use of branding

- Openness with the public.
- b. The council also has a range of additional mechanisms to achieve alignment and accountability, including:
  - **Local Board Engagement Plans** – CCOs are accountable to the council through the governing body. They are required to proactively build relationships with local boards, as well as develop engagement plans with them.
  - **Governance relationships** – Following the recommendation of the CCO Review in 2020, the governing body is visiting each substantive CCO annually to better understand its business and culture and to informally build relationships.
  - **Liaison councillors for substantive CCOs** – Liaison councillors roles were established in the 2019-2022 term with the purpose of developing the relationship between the council and each CCO's board, and enhancing the flow of information between the parties.
  - **Letters of expectation** – Council issues an annual letter of expectations to each of its substantive CCOs to inform the development of the CCOs' Statements of Intent. Following the recommendation of the CCO Review in 2020 a workshop has been introduced to support the development of letters of expectation between CCO chairs, chief executives and the governing body.

### 11.3.4 Strategic assets managed by council-controlled organisations

The table below describes the strategic assets that are owned or managed by the council's substantive CCOs:

Council-controlled organisation	Strategic assets owned and managed by the CCO	Strategic assets owned by the council and managed by the CCO
Auckland Transport	the public transport network	roading and footpath assets
Auckland Unlimited Limited as corporate trustee of the Regional Facilities Auckland Trust	the network of stadiums and venues  Auckland Art Gallery (including the associated art collection)  Auckland Zoo	none
Panuku Development Auckland Limited	None	freehold interests in central Auckland waterfront land
Watercare Services Limited	the water supply and wastewater networks	none

## **11.4 Footnotes**

### **11.1 What are Council Organisations (COs) and Council-controlled Organisations?**

[1] This includes companies or any entities that are a partnership, trust, arrangement for the sharing of profits, union of interest, cooperation, joint venture, or other similar arrangement, set up with the intention of making a profit or with some other non-profit objective in mind.

[2] Local Government Act 2001, section 6(1).

[3] Local Government (Auckland Council) Act 2009, section 4(1).

### **11.3.1 Substantive CCO services and activities**

[1] Local Government (Auckland Council) Act 2009, section 38

[2] Local Government (Auckland Council) Act 2009, section 39

[3] Sections 38 to 56

[4] Local Government (Auckland Council) Act 2009, Part 5

[5] Local Government (Auckland Council) Act 2009, section 57(1)(a)

[6] Local Government (Auckland Council) Act 2009, section 57(1)(b)

### **11.3.3 Control and accountability of Auckland's substantive CCOs**

[1] Local Government Act 2002, section 64

[2] Local Government Act 2002, sections 66 and 67

[3] Local Government (Auckland Council) Act 2009, section 92

[4] Local Government (Auckland Council) Act 2009, section 90(1)

[5] Local Government Act 2002, section 97

[6] See the council's Significance and Engagement Policy.

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisations**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**

Updated 29 May 2023

## 15. The council and the law

The council obtains legal representation and advice which is subject to litigation and legal professional privilege.

### 15.1 Legal advice and representation

#### 15.1.1 General

- a. The council [1] obtains legal advice and representation from:
  - its in-house Legal Services department, Ngā Ratonga Ture, managed by the General Counsel
  - external lawyers instructed by the General Counsel or their staff
  - employment relations lawyers in the People and Culture department.
- b. All requests for legal advice or representation (not concerning employment relations matters) must be referred to the council's Legal Services department.

#### 15.1.2 Advice and representation from the council's Legal Services department

- a. Advice and representation obtained from in-house lawyers is professional, independent and objective.
- b. In-house lawyers, including those in Legal Services and the General Counsel, are bound by the rules of professional conduct for lawyers when providing legal advice or representing the council [1]. These professional obligations require in-house lawyers to (among other things):
  - Exercise independent professional judgement on the council's behalf, and give objective advice to the council based on the lawyer's understanding of the law [2] and
  - Within the bounds of the law and their professional obligations, protect and promote the interests of the council to the exclusion of the interests of others [3].



### 15.1.3 Advice and representation from external legal providers

- a. The General Counsel (acting under the chief executive's delegation) or their Legal Services staff may procure external legal advice or representation for the council.
- b. In deciding whether to procure external advice or representation, the General Counsel and Legal Services staff take the following factors into account:
  - the nature and/or complexity of the matter
  - the available capacity and expertise within Legal Services and elsewhere, including the availability of counsel
  - the financial and strategic risks and implications for the council
  - issues of independence or conflict of interest (actual or perceived).
- c. The decision whether to obtain external legal advice or representation will be made in consultation with the relevant council business unit or department.
- d. Where external lawyers are instructed on a council legal matter, the General Counsel and Legal Services staff retain oversight and will direct the manner in which the legal services are provided.

## 15.2 Legal advice and legal professional privilege

### 15.2.1 Legal professional privilege

- a. Legal professional privilege is a term that applies to the protection of confidential communications between lawyer and client. If legal advice is protected by legal professional privilege, it will not be required to be produced for inspection during discovery in legal proceedings and will likely be protected from disclosure under the Local Government Official Information and Meetings Act 1987 and the Privacy Act 2020 [1].
- b. There are two types of legal professional privilege:
  - **Solicitor/client privilege** - protects communications between client and lawyer where the communication is intended to be confidential, and the communication is made for the purpose of obtaining legal advice.
  - **Litigation privilege** protects communications and information made or received for the dominant purpose of preparing or conducting court proceedings, where proceedings are either underway or reasonably apprehended.
- c. In this context, council is the client. Council communications (including emails) seeking or providing legal advice are legally privileged, including those between the Legal Services department and external lawyers. Exchanges between council

witnesses and lawyers to prepare evidence are also legally privileged.

- d. It is very important that legal professional privilege is maintained. Legal Services staff can advise how to ensure legal professional privilege is not inadvertently waived.
- e. Staff and elected members should not disclose privileged material outside of the council without first seeking advice from Legal Services.

### **15.2.2 Presentation of legal advice**

- a. A document is not automatically privileged because a lawyer prepared it or it is labelled 'legally privileged'. Often only parts of a document will be privileged (e.g. those parts seeking or recording legal advice, as opposed to providing policy advice).
- b. To ensure legal advice is properly protected by legal professional privilege:
  - Legal advice should, where practical, be separated from policy advice, even if both kinds of advice are contained in the same document
  - Legal advice should be marked 'confidential and legally privileged'.

## **15.3 Litigation involving the council**

### **15.3.1 General**

- a. The General Counsel (acting under the chief executive's delegation) and their staff in the Legal Services department manage litigation involving the council (initiated by council or against council).
- b. Litigation involves a range of decisions that are often irreversible and have significant consequences for the council.
- c. Legal Services works with the relevant council staff, department or business unit involved in the proceedings. Staff members are expected to cooperate with the General Counsel and their team to determine whether it is appropriate for them to give evidence or assist in the proceedings.

### **15.3.2 Approach to litigation**

- a. The council is committed to acting as a model litigant. This means more than acting honestly and complying with the law and court rules. The council also undertakes to act with propriety, fairly and in accordance with the highest professional and ethical standards.
- b. The council is also committed to managing litigation by or against it as

effectively and efficiently as practicable, taking into account the legal, financial and reputational risks. In particular the Council will:

- take and defend legal action in accordance with the statutory functions and purpose, the principles of local government, and its strategic and operational objectives
- Only initiate litigation, including appeals, where there is a reasonable prospect of success and/or if the litigation is justified in the public interest
- deal with litigation promptly and efficiently, without causing unnecessary delay or expense
- when responding to litigation, consider the appropriate level of involvement it should have in each case, taking into account the issues at stake and how important they are to the strategic objectives of the council, the participation of other parties and requirements or expectations of the court
- seek to resolve claims as early as appropriate and consider and initiate (where appropriate) alternative means of resolution to avoid litigation
- apply a fair and objective approach to handling litigation
- not contest matters which it accepts as correct or make unmeritorious arguments for tactical reasons
- act decisively and properly to protect and advance its interests as a local authority.

### **15.3.3 Council instigated legal proceedings, including prosecutions**

- a. The council's commitment to acting as a model litigant is especially important when instigating legal proceedings.
- b. The council's most common legal proceedings are prosecutions and enforcement actions for non-compliance with regulatory requirements, e.g. a breach of a bylaw, resource or building consent.
- c. In considering whether to bring an enforcement action or to prosecute, the council adopts an escalated approach, i.e. an enforcement officer will assess the nature of the non-compliance and, in particular, whether it was intentional.
- d. In deciding whether to prosecute and throughout the prosecution, the council complies with the Solicitor-General's Prosecution Guidelines which aim to ensure all

prosecution processes are open and fair, and reflect the public interest [1].

- e. Elected members should not get involved in decisions on individual prosecutions and enforcement actions. This does not prevent elected members from engaging in the council's overall policy on prosecutions.
- f. Generally, the council will prosecute cases of intentional non-compliance or recidivist or serious non-compliance (where there is serious impact or harm caused). Where the non-compliance is non-intentional, the council may impose low level sanctions and require the non-compliance to be remedied instead of prosecuting.
- g. The council's prosecuting lawyers have particular professional obligations [2] (in addition to their general professional obligations), including presenting the prosecution case fully and fairly and with professional detachment.

#### **15.3.4 Judicial review of the council's decisions**

- a. The High Court can undertake a judicial review to determine if a council decision is lawful.
- b. A court can review most formal council decisions (including those by elected members and council staff) and the process by which they were reached. Ordinarily, a power that is the subject of review proceedings will be one that has been given to the decision-maker by statute.
- c. Usually a person or group adversely affected by the decision brings a judicial review.
- d. The basic questions for judicial review are:
  - Has the decision-maker acted within the scope of the power or discretion conferred?
  - Has the decision-maker acted fairly?
  - Has the decision-maker acted reasonably? Normally this question is confined to asking whether the decision-maker has acted in a way that no reasonable decision-maker could have acted.
- e. The most likely grounds for a review of a council decision are that, in making the decision in question, the council decision-maker:
  - Failed to follow the process specified in legislation for making the decision.
  - Did not act fairly because they failed to consult with persons or groups affected by or interested in the particular decision. In particular, if the council did not follow the consultation requirements outlined in the Local Government Act 2002.
  - Defeated a legitimate expectation of a person with an interest in the decision (e.g. a promise to do something in a particular way).

- Did not act fairly because they failed to give effect to the principle of natural justice.
  - Made up their mind before hearing or considering all relevant matters (i.e. predetermined the decision).
  - Took into account irrelevant considerations, failed to take account of relevant considerations, made a mistake about the facts relevant to the decision, or made the decision for the wrong purpose.
  - Could appear to an observer to have been influenced by a personal relationship, duty or consideration (i.e. the decision-maker had a conflict of interest or was biased).
  - Made the decision after an invalid or unauthorised delegation.
  - Acted for an improper purpose (not the purpose for which the power or discretion was conferred).
  - Acted outside the scope of the power or discretion or misinterpreted the applicable law.
  - Made a mistake about facts that were important to the decision.
  - Did not actually make the decision, but instead rubber-stamped the decision of an adviser.
- f. If a claim for judicial review is successful, it is up to the Court to decide what, if any, remedy it will grant. Most often, the Court will set aside the decision, and direct the decision-maker to remake it. The Court may direct how this should be done, but will not direct the outcome of the decision. The Court might also make declarations about the way the decision was made (e.g., that something that should have been done was not done, or that some matter that was taken into account by the decision-maker was not relevant). In some cases, the Court may also award monetary relief, such as compensation for a breach of a fundamental right, or restitution where fees have been unlawfully charged.
- g. As part of the council's model litigant commitment, the council will normally take a generous rather than technical approach to the disclosure of documents in judicial review proceedings. It is also expected to be candid in explaining its decision-making process to the court.
- h. Staff and elected members should be aware that information they prepare for internal purposes, including emails, may be released to opposing parties in litigation.

### **15.3.5 Proceedings that name staff or elected members as defendants**

- a. In legal proceedings involving the council, the appropriate party is Auckland Council

rather than a specific decision-maker or part of council. The “party” is the person or organisation which brings the action or defends the action.

- b. Elected members or council staff may occasionally be named as defendants in court proceedings in relation to the exercise of powers in their council role. In these situations, the council should be substituted as the correct party. If this does not occur, the practice is for the council to indemnify elected members or council staff and to conduct the proceedings on their behalf.
- c. In some cases, an elected member or staff member may be sued for acts in their official capacity but which have a more personal aspect. For example, an elected member may be sued in defamation because of the contents of a particular speech or public statement. Alternatively, proceedings may be instituted alleging that a council decision-maker has acted dishonestly or in bad faith.
  - The extent to which the decision-maker will be personally liable in these cases will depend on the law and facts of the particular matter.
  - By their very nature, cases brought against a decision-maker personally raise issues about whether he/she has acted within the scope of his/her legal authority. The council may not indemnify the decision-maker if they have acted greatly beyond the scope of their authority.
- d. There is no absolute legal right to indemnity just because a person is acting as a council decision-maker.
- e. When a decision-maker is personally sued or threatened with legal action and is unsure whether they should be indemnified, they should seek the Chief Executive’s agreement (in consultation with the General Counsel) in advance to meet their legal expenses.
- f. The General Counsel (acting under delegation from the Chief Executive) may in some situations retain private counsel for a decision-maker.

#### **15.3.6 Court documents**

- a. Legal documents that must be served on the council may be served by leaving them at the council’s principal public office (135 Albert Street, Auckland) or given personally to the mayor or chief executive [1].
- b. Once a document has been filed in the court, it is under the custody of the court, and access to such documents is controlled by the court [2]. Therefore, court documents (whether the council’s or another party’s) must not be disseminated beyond what is necessary for the council’s involvement in the proceedings. Such dissemination may well be a contempt of court.

#### **15.3.7 Insured claims against council**

- a. In some cases the council may be insured for the costs of proceedings or the

quantum of any damages awarded against it.

- b. Staff should promptly notify the General Counsel (or their team) of proceedings in which they have become involved, or threats of claims, or circumstances which may give rise to a claim, to ensure any council-held insurance policy is not compromised. Admissions of wrongdoing, apologies and settlements of an insured claim, without consultation of the insurer, may invalidate the council's insurance over that claim.
- c. If the claim is insured, council's insurance and legal teams will manage the claim, in conjunction with the insurer and broker.

### **15.3.8 Commenting on council legal proceedings**

- a. It is inappropriate for staff or elected members to publicly comment on the substance of a matter involving the council when it is before the court. In some circumstances, such a comment may be a contempt of court.
- b. Elected members and council staff should be careful not to act in a way that jeopardises the council's position in a legal proceeding.
- c. Elected members and council staff must not express views that are likely to be publicised if these views could be regarded as reflecting adversely on the impartiality or ability of a judge. It is improper for a person holding public office to make such comments publicly.
- d. Elected members must make clear that any public comments on judicial decisions (once the litigation is complete) are their own views and not the council's.

## **15.4 Footnotes**

### **15.1.1 General**

[1] Lawyers in the council's Legal Services department also provide legal advice to some CCOs.

### **15.1.2 Advice and representation from the council's Legal Services department**

[1] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

[2] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rule 5.3.

[3] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rule 6.

### **15.2.1 Legal professional privilege**

[1] Local Government Official Information and Meetings Act 1987, s 7(2)(g); Privacy Act 2020, s 53(d).

### **15.3.3 Council instigated legal proceedings, including prosecutions**

[1] Crown Law Solicitor-General's Prosecution Guidelines (1 July 2013) at 1.1.



[2] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rule 13.12.

### **15.3.5 Court documents**

[1] Local Government Act 2002 s 250.

[2] See Senior Courts (Access to Court Documents) Rules 2017

## **Key Documents**

**Local Government Official Information and Meetings Act 1987**

**Privacy Act 2020**

**Local Government Act 2002**

**Senior Courts (Access to Court Documents) Rules 2017**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Crown Law Solicitor-General's Prosecution Guidelines**