

9. The chief executive and council staff

The roles, responsibilities and delegations of the chief executive and council staff, and the relationship with elected 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 his/her employment [5].
- d. A review must be carried out at least six months before the end of the chief executive's first term [6], unless the incumbent advises the governing body he/she does 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, he/she 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 and local boards [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 he or she acts within the scope of his or her powers.

e. Advising elected members

- It is also part of the chief executive's role to provide advice to governing body and local board members [5].
- The chief executive and/or council staff attend governing body (including committees) meetings and local board meetings 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 him/her 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 is capable of delivering 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 instill 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, he/she 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 his/her 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, ie 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 his/her 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 his/her 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 his/her role.

iv. The chief executive should be guided by a 'no surprises' principle. He/she 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 he/she 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 he/she has 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 his/her 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, he/she 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