

## 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 the 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 on 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 he/she has because of his/her role or office (e.g. a warranted enforcement officer has statutory powers to make decisions related to his/her 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
  - 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].
- e. 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.
- f. 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.
- g. 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 CCOs.
- 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 or contentious.

**d. Delegations to external organisations or CCOs**

- 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 trumps 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 reports consider the impact of policy 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 he/she has 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 he/she made up his/her 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 his/her 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.

- f. 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.
- g. The public can have input into the council's decisions at meetings of the governing body, local boards and their committees. Ordinarily, a period of 30 minutes is set aside for public input 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
- b. Process for making a bylaw under the Local Government Act 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.
- 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 he/she has changed his/her 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 a 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**