

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**