



I hereby give notice that an ordinary meeting of the Governing Body will be held on:

Date: Thursday, 28 August 2014
Time: 9.30am
Meeting Room: Reception Lounge
Venue: Auckland Town Hall
301-305 Queen Street
Auckland

Governing Body OPEN AGENDA

MEMBERSHIP

Mayor	Len Brown, JP	
Deputy Mayor	Cr Penny Hulse	
Councillors	Cr Anae Arthur Anae	Cr Dick Quax
	Cr Cameron Brewer	Cr Sharon Stewart, QSM
	Cr Dr Cathy Casey	Cr Sir John Walker, KNZM, CBE
	Cr Bill Cashmore	Cr Wayne Walker
	Cr Ross Clow	Cr John Watson
	Cr Linda Cooper, JP	Cr Penny Webster
	Cr Chris Darby	Cr George Wood, CNZM
	Cr Alf Filipaina	
	Cr Hon Christine Fletcher, QSO	
	Cr Denise Krum	
	Cr Mike Lee	
	Cr Calum Penrose	

(Quorum 11 members)

Elaine Stephenson
Democracy Advisor

22 August 2014

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TERMS OF REFERENCE

Those powers which cannot legally be delegated:

- (a) the power to make a rate; or
- (b) the power to make a bylaw; or
- (c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long term council community plan; or
- (d) the power to adopt a long term plan, annual plan, or annual report; or
- (e) the power to appoint a Chief Executive; or
- (f) the power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long term plan or developed for the purpose of the local governance statement; or
- (g) the power to adopt a remuneration and employment policy.

Additional responsibilities retained by the Governing Body:

- (a) Approval of a draft long term plan or draft annual plan prior to community consultation
- (b) Approval of a draft bylaw prior to community consultation
- (c) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of electoral officer
- (d) Adoption of, and amendment to, the Committee Terms of Reference, Standing Orders and Code of Conduct
- (e) Relationships with the Independent Maori Statutory Board, including the funding agreement and appointments to committees.
- (f) Approval of the Unitary Plan
- (g) Overview of the implementation of the Auckland Plan through setting direction on key strategic projects (e.g. the City Rail Link and the alternative funding mechanisms for transport) and receiving regular reporting on the overall achievement of Auckland Plan priorities and performance measures.

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1 Affirmation

His Worship the Mayor will read the affirmation.

2 Apologies

An apology from Cr LA Cooper has been received.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

4 Confirmation of Minutes

That the Governing Body:

- a) confirm the ordinary minutes of its meeting, held on Thursday, 14 August 2014, as a true and correct record.

5 Acknowledgements and Achievements

At the close of the agenda no requests for acknowledgements had been received.

6 Petitions

At the close of the agenda no requests to present petitions had been received.

7 Public Input

Standing Order 3.21 provides for Public Input. Applications to speak must be made to the Committee Secretary, in writing, no later than **two (2)** working days prior to the meeting and must include the subject matter. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders. A maximum of **thirty (30)** minutes is allocated to the period for public input with **five (5)** minutes speaking time for each speaker.

8 Local Board Input

Standing Order 3.22 provides for Local Board Input. The Chairperson (or nominee of that Chairperson) is entitled to speak for up to **five (5)** minutes during this time. The Chairperson of the Local Board (or nominee of that Chairperson) shall wherever practical, give **two (2)** days notice of their wish to speak. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders.

This right is in addition to the right under Standing Order 3.9.14 to speak to matters on the agenda.

At the close of the agenda no requests for local board input had been received.

9 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
 - (i) The reason why the item is not on the agenda; and
 - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
 - (i) That item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

10 Notices of Motion

At the close of the agenda no requests for notices of motion had been received.

Long Term Plan 2015 - 2025 Mayoral Proposal

File No.: CP2014/18445

The Mayor's proposal for the 2015 – 2025 Long Term Plan will be tabled at the meeting.

Impact of Local Government Amendment Act 2014 on development contributions

File No.: CP2014/18779

This report was not available at the time the agenda went to print and will be distributed under separate cover.

Signage Bylaw Review - Statement of Proposal: Recommendations from the Regulatory and Bylaws Committee

File No.: CP2014/18716

Purpose

1. To adopt the recommendations of the Regulatory and Bylaws Committee regarding a signage bylaw.

Executive summary

2. At its meeting of 19 August 2014, the Regulatory and Bylaws Committee agreed to recommend to the Governing Body that a combined Auckland Council and Auckland Transport signage bylaw is the most appropriate way to address signage related issues. At that same meeting, the Regulatory and Bylaws Committee also agreed to recommend to the Governing Body the Statement of Proposal (including a report on the expected impacts of the proposed bylaw and the scale of change, a proposed combined bylaw and a revocation of the legacy council signs bylaw provisions) for consultation using the special consultative procedure – Resolution Number RBC/2014/36.
3. A copy of the statement of proposal (including the proposed bylaw) is contained in Attachment A. A copy of the Regulatory and Bylaws Committee report is contained in Attachment B.

Recommendations

That the Governing Body:

- a) agree that pursuant to section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the issues relating to the display of signage that is on or visible from any road or from any public place under the management and control of the Auckland Council or a substantive council-controlled organisation and which is not part of the Auckland transport system.
- b) agree that pursuant to section 155(2)(a) of the Local Government Act 2002, the proposed draft Auckland Council signage bylaw is the most appropriate form of bylaw to address problems related to signage advertising commercial sexual services.
- c) agree that pursuant to section 155(2)(b) and section 155(3) of the Local Government Act 2002, as described in part 9 of the attached Statement of Proposal (Attachment A to the agenda report), the proposed draft combined Auckland Council and Auckland Transport signage bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.
- d) agree that pursuant to section 62 of the Local Government (Auckland Transitional Provisions) Act 2010 and 156 of the Local Government Act 2002, Auckland Council revokes those clauses of the existing eleven bylaws that deal with issues of signage (and replaces them with a new Auckland-wide signage bylaw).
- e) agree that pursuant to sections 145, 146 and 149 of the Local Government Act 2002 and section 22(AB)(1)(y) and (zk) of the Land Transport Act 1998, the proposed draft combined Auckland Council and Auckland Transport signage bylaw is for the purposes of:
 - i) providing for the safety of vehicular and pedestrian traffic on any road or public place under the management and control of the Auckland Council or a substantive council-controlled organisation and which is not part of the

- Auckland transport system, by limiting obstruction and distraction caused by signage;
- ii) protecting the public from nuisance and from harm or damage caused by the poor maintenance or abandonment of signage;
 - iii) assist in enhancing, maintaining, and promoting the visual amenity value of Auckland's cultural character, and its built and natural environments;
 - iv) enabling the economic benefits to Auckland that are provided through signage;
 - v) assist in protecting council-owned or controlled assets from damage or misuse.
- f) agree that pursuant to sections 83 and 86 of the Local Government Act 2002, Attachment A to the agenda report: Statement of Proposal (including a report on the expected impacts of the proposed bylaw and the scale of change (Attachment A: Appendix 1), a proposed Auckland Council Signage Bylaw (combined with an Auckland Transport signage bylaw(Attachment A; Appendix 2) and a revocation of the legacy signs bylaw provisions) be approved for public consultation (noting that portions of this Statement of Proposal relate to Auckland Transport and that decisions relating to those portions will be made by Auckland Transport's board).
- g) agree that pursuant to section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 Auckland Council confirms the following legacy council bylaws remain in force until such time as the proposed new signage bylaw becomes operational:
- i) Auckland City Council Signs Bylaw 2007;
 - ii) Franklin District Council Control of Signs Bylaw 2007;
 - iii) Chapter 19 (Temporary Signs) of the Manukau City Consolidated Bylaw 2008;
 - iv) North Shore City Part 12 (Control of Temporary Signs) Bylaw 2000;
 - v) Papakura District Council Control of Advertising Signs Bylaw 2008;
 - vi) Rodney District Council, Chapter 22 of the General Bylaw 1998, (Temporary Signs).
- h) authorise the Manager Policies and Bylaws to make any minor edits or amendments to the Statement of Proposal to correct any identified errors or typographical edits or to reflect decisions made by the Governing Body.

Attachments

No.	Title	Page
A	Statement of Proposal (including proposed bylaw) <i>(Under Separate Cover)</i>	
B	Regulatory and Bylaws Committee Report <i>(Under Separate Cover)</i>	

Signatories

Author	Rita Bento-Allpress - Democracy Advisor
Authoriser	Stephen Town - Chief Executive

Stormwater Bylaw Review - Statement of Proposal: Resolutions from the Regulatory and Bylaws Committee

File No.: CP2014/18668

Purpose

1. To adopt the recommendations of the Regulatory and Bylaws Committee regarding a stormwater bylaw.

Executive summary

2. At its meeting of 19 August 2014, the Regulatory and Bylaws Committee agreed to recommend to the Governing Body of Auckland Council the adoption of the Statement of Proposal (including a Summary of Information, the proposed Stormwater Bylaw 2014 and a revocation of the three legacy stormwater bylaws) for consultation using the special consultative procedure – Resolution Number RBC/2014/34.
3. A copy of the statement of proposal (including the proposed bylaw) is contained in Attachment A. A copy of the Regulatory and Bylaws Committee report is contained in Attachment B.

Recommendations

That the Governing Body:

- a) agree that pursuant to section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way to:
 - manage the development and maintenance of the stormwater and land drainage network, and the land, structures, and infrastructure associated with that network;
 - protect the stormwater and land drainage network, and the land, structures, and infrastructure associated with that network, from damage, misuse or loss;
 - manage the use of the stormwater and land drainage network, and the land, structures, and infrastructure associated with that network, and provide for the conditions on which connections to the public stormwater network may be made or maintained;
 - prevent interference with the stormwater and land drainage network, and the land, structures, and infrastructure associated with that network;
 - manage the stormwater and land drainage network, and the land, structures, and infrastructure associated with that network, so as to protect the public from nuisance and promote and maintain public health and safety;
 - provide measures to support the management and enhancement of the natural part of the stormwater network; and
 - ensure the maintenance and operation of private stormwater systems, the removal of redundant stormwater systems on private land and the management of hazardous materials to prevent damage to the stormwater network.
- b) agree that pursuant to section 155(2)(a) of the Local Government Act 2002, the proposed Stormwater Bylaw 2014 (*Appendix 1 to the Statement of Proposal*) is the most appropriate form of bylaw to address problems related to the management of stormwater identified as in scope

- c) agree that pursuant to section 155(2)(b) and section 155(3) of the Local Government Act 2002, the proposed Stormwater Bylaw 2014 is not inconsistent with the New Zealand Bill of Rights Act 1990.
- d) agree that pursuant to section 62 of the Local Government (Auckland Transitional Provisions) Act 2010, the Auckland Council proposes to revoke the following legacy stormwater bylaws (and replace them with a new region-wide stormwater):
- Auckland City Council Bylaw No 18 Stormwater Management 2008;
 - Papakura District Council Stormwater Bylaw 2008; and
 - Chapter 21 (Stormwater drainage) of the Rodney District Council General Bylaw 1998.
- e) agree that pursuant to sections 83 and 86 of the Local Government Act 2002, Attachment A to the agenda report: *Statement of proposal - Review of stormwater bylaws* be adopted for public consultation.
- f) authorise the Manager Policies and Bylaws to make any minor edits or amendments to the Statement of Proposal to correct any identified errors or typographical edits or to reflect decisions made by the Governing Body.

Attachments

No.	Title	Page
A	Statement of Proposal (including proposed bylaw) (<i>Under Separate Cover</i>)	
B	Regulatory and Bylaws Committee Report (<i>Under Separate Cover</i>)	

Signatories

Author	Rita Bento-Allpress - Democracy Advisor
Authoriser	Stephen Town - Chief Executive

Outdoor Fires Bylaw Review - Statement of Proposal: Resolutions from the Regulatory and Bylaws Committee

File No.: CP2014/18711

Purpose

1. To adopt the recommendations of the Regulatory and Bylaws Committee regarding an outdoor fires bylaw.

Executive summary

2. At its meeting of 19 August 2014, the Regulatory and Bylaws Committee agreed to recommend to the Governing Body that a bylaw is the most appropriate way to address identified perceived problems associated with the risk of fire in the outdoors and to recommend the adoption of a statement of proposal (with a proposed bylaw) for public consultation – Resolution Number RBC/2014/35.
3. A copy of the statement of proposal (including the proposed bylaw) is contained in Attachment A. A copy of the Regulatory and Bylaws Committee report is contained in Attachment B.

Recommendations

That the Governing Body:

- a) agree that pursuant to section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing certain issues relating to outdoor fires as identified in Attachment A to the agenda report.
- b) agree that under section 155(2)(b) of the Local Government Act 2002, the proposed Outdoor Fire Safety Bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.
- c) agree that under section 62 of the Local Government (Auckland Transitional Provisions) Act 2010, the Auckland Council proposes to revoke in full the four bylaws relating to outdoor fires (to be replaced with a new Auckland-wide bylaw on outdoor fire safety).
- d) agree that under sections 83 and 86 of the Local Government Act 2002, Attachment A to the agenda report: Statement of Proposal “Outdoor Fire Safety Bylaw, August 2014” be adopted for public consultation using the special consultative procedure.
- e) authorise the Manager Policies and Bylaws to make any minor edits or amendments to the Statement of Proposal to correct any identified errors or typographical edits or to reflect decisions made by the Governing Body.

Attachments

No.	Title	Page
A	Statement of Proposal (including proposed bylaw) <i>(Under Separate Cover)</i>	
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Signatories

Author	Rita Bento-Allpress - Democracy Advisor
Authoriser	Stephen Town - Chief Executive

2016 Local Government Elections - Review of Electoral System and Review of Representation Arrangements

File No.: CP2014/18538

Purpose

1. To advise the Governing Body of the opportunity to change the electoral system for the 2016 elections, establish Māori wards and to undertake a representation review.

Executive summary

2. The Local Electoral Act 2001 provides for the opportunity to review the electoral system, the establishment of Māori wards and a review of representation.
3. Each of these reviews has specific timeframes and processes. The Governing Body should be aware of the implications of initiating reviews on these matters.

Recommendation/s

That the Governing Body:

- i) agree that the status quo prevail for the electoral system, electoral wards and representation.

Comments

Background

4. The Local Electoral Act 2001 provides the opportunity for local authorities to consider:
 - changing the electoral system (for example from FPP to STV)
 - establishing Māori wards
 - reviewing representation arrangements.
5. That Act sets out deadline dates in relation to each of these, if they are to take effect at the next elections. A summary of these dates is:
 - 12 September 2014 for a resolution to change the electoral system
 - 23 November 2014 for a resolution to establish Māori wards
 - 31 August 2015 for a resolution making the council's initial proposal on representation arrangements.

Electoral system

6. Under the First Past the Post system (FPP) a candidate can be successful at election by winning more votes compared to other candidates.
7. Under the Single Transferable Voting (STV) system, a voter casts a single vote but ranks his or her preferences. First preferences are used to establish whether any candidates are elected by reaching the required quota of votes. If not, the system provides a method for transferring second preferences and other preferences until all vacancies are filled.

8. An argument in favour of STV is that it is a fairer system, in that if a voter's first preference would otherwise be wasted, the voter's second and other preferences can be recognised. An argument against STV is that it is more complex than FPP and more difficult for voters to understand – with a possibility of more “informal” votes (votes not properly entered so not counted). Some councils which moved to STV have moved back to FPP, on the basis that it is easier to understand for voters and that STV did not affect the outcome. There is some evidence that informal votes are due to mixed electoral systems on the one voting paper, rather than STV per se, and that when all issues on a voting paper are decided through STV there are fewer informal votes.
9. The legislation setting up the Auckland Council prescribed FPP for the 2010 and 2013 elections. When the Auckland Governance Legislation Select Committee reported the Local Government (Auckland Council) Bill it said:

“The majority of us are of the view that the disadvantages of STV, particularly its perceived complexity (and therefore its propensity to discourage voting), outweigh the disadvantages of FPP for the 2010 elections.”
10. The Justice and Electoral Select Committee has recently published its inquiry into the 2013 local government elections. It notes the mix of FPP and STV as follows:

“Local authorities can choose between the first past the post (FPP) voting system or STV. In 2013, 90 per cent of local authorities used FPP in their own elections. Therefore, voting in most local elections involved a combination of FPP and STV. We understand that generally the STV councils have a higher turnout, but the incidence of invalid voting is usually far higher in District Health Board elections, because people tick their preferred candidates rather than ranking them.

In 2008, the Local Government Commission conducted a post-election survey of voters; 52 per cent of the respondents said that having two systems was confusing, while 46 per cent said it was not. A large majority of respondents (82 per cent) said they would prefer a single system.”
11. The committee did not make a specific recommendation.
12. A further aspect of STV is that, on election day, the result is delayed, due to the need to have all votes in prior to transferring preferences.
13. The guidelines issued by the Local Government Commission state:

“The Commission notes, for example, the argument that to gain the full benefits of proportional representation under STV, multi-member wards or constituencies of at least three members, but preferably five to seven members, are required. Clearly this should be considered by a local authority using STV when undertaking its representation review.”
14. Governing Body member wards are either one member or two member wards, and therefore STV would not likely have a significant impact.
15. Local boards are multi-member bodies and local board members were invited to a briefing on these issues. There was not a strong desire expressed for change.
16. Whether or not the council resolves to change the electoral system, it must give public notice of the right of electors to demand a poll.

Māori wards

17. The Royal Commission on Auckland Governance recommended a Governing Body comprising of the mayor and 23 councillors, two of whom would be elected at large from the Māori electoral role and one of whom would be appointed by Mana Whenua.
18. However, Parliament legislated for a Governing Body comprising of the mayor and 20 councillors with no Māori seats and the creation of an Independent Māori Statutory Board (IMSB).
19. Nevertheless, the general provisions of the Local Government Act 2002 with respect to Māori wards still apply to Auckland Council. Thus, as the legislation stands, the IMSB would continue to exist if Māori wards were established.
20. The legislation provides for councils to establish Māori wards by passing a resolution by 23 November 2014. This is discretionary, council is not required to take any action
21. On the basis of statistics supplied by Statistics New Zealand, two members of Auckland Council could be elected through Māori wards. The total number of Governing Body members is set in legislation at 20 plus the mayor and so the number of general members would be reduced to 18 if Māori wards are established. There could be two separate Māori wards with one member elected in each, or there could be one Auckland-wide ward with two members.
22. Should the Council resolve to introduce Māori wards then the timeframes are as follows.

By 23 November 2014	A local authority MAY resolve to introduce Māori representation for the next triennial election. If a resolution is made after this date then it takes effect at the subsequent triennial election. It has effect for two triennial elections and continues unless changed.	Section 19Z of LEA
By 30 November 2014	IF a resolution has been made by a local authority to introduce Māori representation, a local authority MUST give public notice of the right of 5 per cent of the electors to demand a poll on Māori representation.	Section 19ZA of LEA
By 28 February 2015	IF a resolution has been made by a local authority to introduce Māori representation, a certain period MUST be given following the public notice on Māori representation allowing electors to gather sufficient signatures to demand that a poll be held on Māori representation for the next two triennial elections.	Section 19ZC of LEA
By 28 February 2015	A local authority MAY resolve to undertake a poll of electors on a proposal that Māori representation be introduced for the next two triennial elections.	Section 19ZD of LEA

23. Through various engagement and consultation processes there has been a call for direct Māori representation on the Governing Body and greater involvement by Māori in council decision making processes.

24. This is reflected in the IMSB's schedule of issues of significance and Māori Plan:
- "Māori are empowered, enabled, respected and recognised in their ability to actively and meaningfully contribute to the development of Auckland, in becoming the world's most liveable city by a council that actively engages, consults and includes Māori in decision making processes and future plans".*
- "Māori are empowered, enabled, respected and recognised as playing an important role in the development of local communities by a council that recognises the role of Māori in local board decision making".*
25. In the IMSB's view the establishment of Māori wards are an important part of contributing to these outcomes. The board is of the view that direct representation on the Governing Body through Māori wards is distinct from the IMSB's role as an independent statutory authority. From the board's perspective the two roles are not mutually exclusive.
26. The establishment of up to two Māori wards, would have the effect of triggering a representation review. The transfer of Māori voters from the general roll to the Māori roll, would impact on the remaining number of voters in each general ward in a manner that would not be uniform. This would affect the plus or minus 10 per cent rule and mean the redrawing of most, if not all, ward boundaries. The Governing Body ward boundaries would then not be contiguous with local board boundaries unless they were to be reviewed as a consequence.
27. The representation review provisions which apply to councils generally and to Auckland Council's Governing Body with respect to ward boundary changes do not apply for local board boundary changes. Proposed changes to local board boundaries must be dealt with as a reorganisation proposal in the same manner as proposed boundary changes between local authorities.
28. The following section of this report draws the conclusion that there are no compelling reasons to undertake a representation review for the 2016 election, although one must be undertaken for the 2019 election. However, the establishment of Māori wards would result in such a review being undertaken for 2016 and is therefore not recommended.
29. If the council were of a mind to consider the establishment of Māori wards in the future it may well want to consider advocating changes to legislation as to the maximum number of members, and the process for considering local board boundaries. Such a review could not be completed within the timeframe required for the 2016 elections.

Review of representation arrangements

30. Each territorial and regional council must conduct a review of representation arrangements at least once every six years. If the council decides to not conduct a review for the 2016 elections, it must conduct a review for the 2019 elections.
31. If the council decides to conduct a review, it must resolve its initial proposal by 31 August 2015. Investigations would need to commence this calendar year to meet that deadline.
32. The total number of members of the Governing Body is set by legislation. The review could propose to amend the number, names and boundaries of wards; the number and names of local board subdivisions and the number of local board members in each board. As stated above the boundaries of local boards can only be changed through a reorganisation process.

33. The legislation requires effective representation of communities of interest and fair representation (the people represented by each councillor should not deviate from the average by more than 10 per cent). When the Local Government Commission set the current boundaries it accepted some deviations over the 10 per cent threshold. The commission was directed by legislation to create a single member ward for the former Rodney district and a single member ward for what remained of the Franklin district after the southern part of the district was transferred to Waikato District Council. On current statistics, there would be an under-representation problem in the Waitemata ward. This is primarily brought about by the number of residents now residing in apartments in the CBD and CBD fringe. Attached is a table of changes based on information from the 2013 census.
34. Adjusting the boundary of the Albert-Eden-Roskill boundary to include some of the current Waitemata ward could address this variance. Changing the boundaries of one ward can have a flow-on effect into other wards.

The timeframes should the council choose to undertake a review this term are as follows.

By 31 August 2015	Representation Arrangements Review completed by local authority. Local authority resolves its proposals.	Section 19H of LEA
By 8 September 2015	A local authority MUST give public notice of the resolution containing the representation arrangements review proposals. One month submission period.	Section 19M of LEA
By 8 October 2015	Close of submissions.	Section 19M of LEA
By 19 November 2015	Submissions heard by local authority.	Section 19N of LEA
By 19 November 2015	A local authority MUST give further public notice of its proposals. One month appeals/objection period.	Section 19N of LEA
By 19 December 2015	Close of appeals/objections.	Section 19O of LEA
By 15 January 2016	Forward all representation and boundary review material to LGC (if appeals/objections received).	Section 19Q of LEA
By 10 April 2016	Determination by LGC	Section 19R of LEA

We are not aware of significant problems with the current arrangements and do not intend to recommend a review for the 2016 elections.

Consideration

Local board views and implications

35. A workshop was held for local board members. Those attending did not express a desire for change in relation to the electoral system. The Waitakere Ranges Local Board has also advised their preference for maintaining status quo (WTK/2014/110).

Māori impact statement

36. There has been no consultation with Māori specifically in relation to this report. However, the matter has been raised through previous engagement processes and been the subject of advocacy to the council by the IMSB (see paragraphs 23-25).

37. Māori wards are one mechanism for increasing Māori participation in council decision making. However, there are a range of other mechanisms which are not reliant on a representation review. These are the subject of advocacy through the IMSB's schedule of significance and Māori Plan, and the council is actively striving to advance enhanced involvement in decision making through a range of initiatives.

Implementation

38. If the Governing Body resolves to change from FPP to STV, the council's current provider of election services will be able to make the appropriate changes.
39. There would need to be an extensive awareness campaign to ensure all voters were aware of the change.
40. The cost of a poll would be in the order of one million dollars.

Attachments

No.	Title	Page
A	Wards 2010 and 2013	23

Signatories

Author	Warwick McNaughton - Principal Advisor - Democracy Services
Authorisers	Grant Taylor - Governance Director Stephen Town - Chief Executive

Wards in 2010 and after the 2013 census results.

Ward	Population estimate 2010	No. of councillors per ward	% deviation from average population per councillor	Census 2013	% deviation from average population per councillor 2013
Rodney	54,100	1	-24.8	54,879	-22.5
Albany	137,800	2	-4.2	143,502	+1.4
NorthShore	143,200	2	-0.5	137,961	-2.5
Waitakere	158,700	2	+10.3	156,081	+10.3
Whau	76,400	1	+6.2	72,594	+2.6
Albert-Eden-Roskill	154,900	2	+7.7	147,633	+4.3
Waitemata and Gulf	79,300	1	+10.2	86,415	+22.1
Orakei	81,100	1	+12.8	79,539	+12.4
Maungakiekie-Tamaki	73,000	1	+1.5	70,002	-1.1

Howick	128,100	2	-10.9	127,125	-10.2
Manukau	156,200	2	+8.6	146,622	+3.6
Manurewa-Papakura	131,500	2	-8.6	127,878	-9.7
Franklin	64,200	1	-10.7	65,319	-7.7
Total	1,438,500	20		1,415,550	

Guidelines - elected members' access to information

File No.: CP2014/16818

Purpose

1. To approve guidelines for elected members' access to information.

Executive summary

2. In August 2013, the Governing Body requested the Code of Conduct Review Working Party to report back on how the "need to know" principle might be addressed in terms of the Code. The Working Party comprised former councillors Richard Northey (chair) and Michael Goudie, councillors Penny Hulse, Wayne Walker, local board chair Angela Dalton and former local board chair Faye Storer.
3. A positive statement about members' access to information was added to the Code at the same meeting.
4. The working party members were not all returned after the elections. However, prior to the elections, three members of the working party individually endorsed an approach to provide a separate document setting out guidelines on dealing with confidential information in a wider sense, rather than expanding on the existing provision in the Code. The guidelines document would include principles and processes around access to confidential information by elected members as an essential element of the wider aspect of managing confidential information.
5. Work on a guidelines document has progressed since then. The Standing Orders Political Working Party has provided feedback as has the local board chairs forum.
6. Essentially the guidelines affirm the "need to know" principle and provide more detail on principles and processes. The Guidelines are attached as Attachment A.

Recommendation/s

That the Governing Body:

- a) approve the "Confidential Information – Guidelines for Elected Members and Staff" document (Attachment A to the agenda report).

Comments

Proposal to produce guidelines on accessing confidential information

7. At its meeting on 22 August 2013 the Governing Body resolved:

"That the Governing Body:

- a) *affirm the 'Need to Know' principle with regard to a councillor's entitlement, by virtue of the office, to all information for which there is good reason for such access.*
- b) *recommend that the Code of Conduct Review working party address the "Need to Know" issue and report back within three months to council on how it will be included in the Code of Conduct."*

Resolution number GB/2013/88.

8. At the same meeting the Governing Body adopted amendments to the Code of Conduct. The following statement was added to the Code:

“As a policy principle Members are entitled to have access to all information, for which there is good reason to have such access, to enable members to properly discharge their duties under the ‘need to know’ test.”
9. The Code of Conduct Review Working Party comprised Richard Northey, Michael Goudie, Cr Penny Hulse, Cr Wayne Walker and local board chairs Angela Dalton and Faye Storer.
10. Prior to the elections, officers commenced work on the Governing Body’s resolution and proposed to members of the Code of Conduct Review Working Party that, since the Code now has a definite statement about access to information and the “need to know” principle, a separate guidelines document should be drawn up to provide more detail about principles and processes.
11. Furthermore, since access to information only becomes an issue when information is deemed to be confidential, the guidelines should encompass the broader matter of dealing with confidential information. The guidelines should include the issue of an elected member’s access to confidential information as an essential aspect of how confidential information is managed. The guidelines should also acknowledge concerns that have been raised through the Governing Body previously about the need to share relevant information with local boards.
12. Feedback prior to the elections from three of the members of the working party endorsed this approach.
13. Because the Code of Conduct Working Party was not continued after the elections, the draft guidelines were presented to the Standing Orders Political Working Party for comment. Those present were Councillors Chris Darby (chair), Penny Webster, Cathy Casey and Board Members David Collings, Colin Davis and Pippa Coom (representing Shale Chambers).
14. Following comment by the Working Party, the guidelines were presented to the Local Board Chairs Forum.

The “need to know” principle

15. The “need to know” principle arises from a judgment of the House of Lords in 1983. The facts of the case related to a councillor who was not a member of the council’s social services committee asking for access to files about prospective child adopters, arising from some anxiety she had about the family. The council granted access and the family challenged the council in court. The House of Lords determined that a councillor’s need to know information in order to perform his or her duties can override confidentiality.

Guidelines

16. The proposed Guidelines are attached.
17. Section 1 sets out the key principles, including the need for elected members to have the information that they need in order to perform their role.
18. Section 2 discusses the nature of confidential information. It is information that is withheld from the public when requested, for specific reasons in LGOIMA that would cause some kind of harm if the information was released. An aspect of managing confidential information is limiting its distribution to those who need to know it. There is a duty of confidentiality on those who have access.
19. Section 3 sets out how information is made available to members. This includes the duty of staff to ensure members are properly informed and the duty of members to retain confidentiality. A climate of trust and good faith is important.

20. Section 4 provides guidelines around confidentiality at meetings. When the public are excluded certain members of the public, who would otherwise need to leave, can remain if the meeting passes the resolution set out in LGOIMA. Elected members and staff (either of the governing body or of local boards) are not members of the public and their presence when the public are excluded is based on the “need to know” principle.

Consideration

Local board views and implications

21. The Guidelines were presented to the Local Board Chairs Forum. There have been minor amendments to the Guidelines as a result. The key practical difficulties raised were:
- (i) ensuring local boards were provided with the information that is relevant to them, whether confidential or not
 - (ii) clarity in standing orders to give local boards the ability to address governing body meetings, particularly at the item under discussion and when the public are excluded.
22. The first issue is partly an operational matter and the need to improve this is acknowledged. Report writers are required, as part of the report template, to ensure local board views are conveyed to Governing Body meetings.
23. The Standing Orders Political Working Party will consider the second issue. The Working Party comprises Crs Darby (chair), Webster and Casey; together with Local Board Chairs David Collings, Shale Chambers, Julie Fairey and Member Colin Davis.
24. A further aspect that relates to Local Boards is the attendance of Governing Body members at Local Board meetings. Governing Body members may remain when the public are excluded based on the “need to know” principle.

Māori impact statement

25. This is an internal procedural matter and does not impact on the Māori community.
26. The IMSB appointees to committees are full committee members and have the right to remain when the public are excluded. Other than that, the IMSB is “independent”. However, the IMSB has statutory obligations that may require access to council information and it has a statutory duty of confidentiality in regard to that information.

Implementation

27. Once approved by the Governing Body, these Guidelines will be made available to staff and to members.

Attachments

No.	Title	Page
A	Confidential information - Guidelines for Elected Members and Staff	29

Signatories

Author	Warwick McNaughton - Principal Advisor - Democracy Services
Authorisers	Grant Taylor - Governance Director Stephen Town - Chief Executive

Confidential information - Guidelines for Elected Members and Staff

1 Principles

All information held by the council is public unless there are legal reasons for withholding it.¹

Confidential information is information that is not made public and would be withheld from the public if requested. Information can only be withheld from the public under grounds in the Local Government Official Information and Meetings Act 1987.

Elected members must have access to all information they need to know in order to properly discharge their duties. This is generally referred to as “the need to know” principle.²

Staff have a duty to provide all such information to elected members, whether confidential or not.

Elected members have a duty to ensure any confidential information held by them remains confidential.

2 Nature of confidential information

2.1 *Reasons for withholding information from the public*

Confidential information is information that would cause harm, to the Council or to someone else, if released to the public.

Examples of harm that constitute good legal reason for withholding information³:

- Prejudice to maintenance of the law
- Danger to personal safety
- Breach of personal privacy
- Disclosure of a trade secret
- Prejudice to commercial position
- Offence to tikanga Maori (for specific RMA matters – eg resource consent applications)
- Breach of an obligation of confidentiality where such a breach would affect provision of information into the future or damage public interest
- Prejudice to measures to protect health and safety, or prevent or mitigate material loss, to members of the public
- Preventing the free and frank exchange of opinion by, to or between members and officers
- Exposing members and officers to improper pressure or harassment

¹ LGOIMA 1987 s 5

² The principle was established by the House of Lords in *R vs Birmingham City Council, ex parte O* [1983]; It is recognised in the Code of Conduct at 7.6

³ LGOMIA 1987 s 6, 7

- Breach of legal professional privilege (it being necessary to be able to seek legal advice without that advice needing to be disclosed – maintaining lawyer-client confidentiality)
- Prejudice to the council's commercial position or its ability to carry out negotiations
- The information would be used for an improper gain or advantage.

2.2 Management of confidential information

Because of the potential to cause harm, confidential information needs to be managed⁴ to reduce risks.

Key practices to reduce risk include:

- limiting its distribution to those who have a need to know it (this applies to both staff and elected members)
- managing requests for confidential information through a central point (such as dealing with requests from the public through the LGOIMA process)
- labelling the information as confidential (however, the council holds a lot of information which is intended for internal use only and is not marked confidential)

3 Provision of confidential information

3.1 An elected member's need for information (need to know)

Members need information in order to:

- Make decisions on matters that are presented to them in formal meeting agendas
- Generally perform their governance responsibilities (and statutory functions) for which they are accountable to the electorate

Members make decisions and perform their governance role as a body. It is the responsibility of each individual member to be properly informed when taking part in discussions as a body.

Members also have an individual role of assisting people in their electorate. Often this is by way of being a conduit to accessing information, or making service requests and complaints. But, this role is separate to the "need to know" function – members do not need to know confidential information to be a conduit, or to assist a constituent.

3.2 Responsibility to provide information

It is the responsibility of the Chief Executive to provide advice to members.⁵ This includes providing reports to meetings, through staff with expertise, together with

⁴ For example, the inadvertent release by Government Departments of clients' personal details has received media attention.

⁵ LGA 2002 s 42

attendance at such meetings in order that members have sufficient information to perform their governance responsibilities.

Members also have access to senior staff with responsibility for particular matters or issues.

The Democracy Services Department and Local Board Services Department provide additional support for members, which includes assisting members with obtaining information they need for making decisions at meetings and performing their role.

Staff have a responsibility to ensure that elected members have the information they need in order to perform their governance responsibilities.

3.3 *Duty to maintain confidentiality*⁶

Elected members must not disclose confidential information and must not use confidential information for any purpose other than the purpose for which the information was supplied to the members.

Failure to observe these provisions will impede the performance of the Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

For members, it is a breach of the code of conduct, and, depending on the type of confidential information disclosed and how it is used, may also result in loss of office.⁷

3.4 *Trust and good faith*

It is important to maintain a climate of trust between elected members and staff so that information is provided freely and in good faith, and confidentiality is observed.

Any issues are to be resolved jointly by the Mayor and Chief Executive.

4 Meetings

4.1 *Confidential information presented to meetings*

The Council is required to open its formal meetings to the public. It is able to exclude the public if consideration of an item on the agenda would be likely to disclose confidential information. A resolution to exclude the public must be passed in the form that is prescribed in LGOIMA, stating the grounds and reasons in LGOIMA for excluding the public.

At the conclusion of considering a confidential item the meeting will pass resolutions in regard to restating the report and decision in the public minutes.

⁶ Code of Conduct 7.6

⁷ See, for example, s105 A Crimes Act, corrupt use of official information

A resolution to not restate a report or decision in the public minutes does not prevent the release of the report or decision at any time following the meeting if there are no longer any legal reasons for withholding them. Any request for that information must be decided under the provisions in LGOIMA. Staff should alert the relevant chair if a report or resolution which has not been restated in the public minutes is released. If there is information in the report that must still be withheld, there may be an obligation to release the parts of the report that cannot be withheld.

If a report writer anticipates confidential information being no longer confidential after an event (such as purchase of property that won't affect similar negotiations) then the recommended restatement resolution will refer to that event.

When a confidential matter is not restated in the public minutes and the meeting is interested in being advised when the matter is no longer confidential, it may pass an additional resolution requiring officers to advise members when a report and/or decision can be made public (which might simply be an email to the members advising them that these are no longer confidential).

4.2 Attendance at confidential meetings

The members of the meeting, including appointed members, have access to the confidential information held in staff reports to that meeting and remain when the public is excluded.

When the public is excluded from a council meeting, certain people can still remain if they can assist on a particular issue: sections 48(5) and 48(6) of the Local Government Official Information and Meetings Act 1987.

Such people may include:

- CCO representatives
- Contractors or consultants (including lawyers or technical experts)
- IMSB members / committee appointees who are not part of the meeting
- Any other specified person who has particular knowledge/expertise on the issue being discussed.

The meeting must resolve in the open part of the meeting to allow the person or people to remain and state the name of the person or people and the knowledge they have that will assist in relation to the confidential matter.⁸

While staff and elected members are not "the public", they do not have an automatic right to remain in meetings when the public is excluded.

Instead, if members of the public are excluded from a meeting, the only council staff who are permitted to stay are those staff who will assist the meeting or have a requirement to be present in order to perform their role.

Elected members can attend meetings of which they are not members:

⁸ LGOIMA s 48 (5), (6)

- councillors can attend all governing body/committee meetings and local board members can attend all respective local board/committee meetings (subject to any conflict of interest issues and relevant standing orders);
- in addition to the right to attend these meetings, elected members who are not members of the meeting may also stay when the public are excluded if they “need to know” the information discussed at the meeting to carry out their responsibilities; this includes attendance of local board members at Governing Body meetings where an item is relevant to the local board and attendance of Governing Body members at local board meetings where an item is relevant to the role of the Governing Body member.

Council staff and elected members who remain in meetings do not need to be listed in the meeting resolution to exclude the public.

4.3 Governing Body, Local Boards and CCOs

All confidential governing body reports and minutes which are relevant to local board decision-making and functions should be provided to the affected local board(s) in reasonable time. Similarly, confidential local board reports and minutes relevant to governing body decision-making and functions should be provided to the governing body.

Confidential information held by council-controlled organisations (CCOs) is not automatically council information. Elected members do not have an automatic right to access information held by CCOs: each CCO board of directors is responsible for the day-to-day operation of that CCO, and the council (as shareholder) is not. Some elected members are also directors of CCOs. Any such member has a duty as a director to act in the best interests of the CCO, and is expected to observe the confidentiality requirements for that CCO .

Exclusion of the Public: Local Government Official Information and Meetings Act 1987

That the Governing Body:

- a) exclude the public from the following part(s) of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

C1 Confidential: Special Housing Areas, Tranche 4 Recommendations

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(c)(ii) - The withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to damage the public interest. In particular, the report contains commercially sensitive information and information that could potentially give certain parties a commercial advantage if released.	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

C2 Confidential: Draft Memorandum of Understanding

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations). In particular, the report contains a draft Memorandum of Understanding with Housing New Zealand Corp, the draft of which has not yet been reported to HNZA Board.	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.