



I hereby give notice that an ordinary meeting of the Auckland Development Committee will be held on:

Date: Wednesday, 20 July 2016
Time: 1.30pm
Meeting Room: Level 2 Reception Lounge
Venue: Auckland Town Hall
301-305 Queen Street
Auckland

Auckland Development Committee

OPEN AGENDA

MEMBERSHIP

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

(Quorum 11 members)

Tam White
Democracy Advisor

15 July 2016

Contact Telephone: (09) 890 8156
Email: Tam.white@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

TERMS OF REFERENCE

Responsibilities

This committee will lead the implementation of the Auckland Plan, including the integration of economic, social, environmental and cultural objectives for Auckland for the next 30 years. It will guide the physical development and growth of Auckland through a focus on land use planning, housing and the appropriate provision of infrastructure and strategic projects associated with these activities. Key responsibilities include:

- Unitary Plan
- Plan changes to operative plans
- Designation of Special Housing Areas
- Housing policy and projects including Papakainga housing
- Spatial Plans including Area Plans
- City centre development (incl reporting of CBD advisory board) and city transformation projects
- Tamaki regeneration projects
- Built Heritage
- Urban design

Powers

(i) All powers necessary to perform the committee's responsibilities.

Except:

- (a) powers that the Governing Body cannot delegate or has retained to itself (see Governing Body responsibilities)
 - (b) where the committee's responsibility is explicitly limited to making a recommendation only
- (ii) Approval of a submission to an external body
- (iii) Powers belonging to another committee, where it is necessary to make a decision prior to the next meeting of that other committee.
- (iv) Power to establish subcommittees.

Exclusion of the public – who needs to leave the meeting

Members of the public

All members of the public must leave the meeting when the public are excluded unless a resolution is passed permitting a person to remain because their knowledge will assist the meeting.

Those who are not members of the public

General principles

- Access to confidential information is managed on a “need to know” basis where access to the information is required in order for a person to perform their role.
- Those who are not members of the meeting (see list below) must leave unless it is necessary for them to remain and hear the debate in order to perform their role.
- Those who need to be present for one confidential item can remain only for that item and must leave the room for any other confidential items.
- In any case of doubt, the ruling of the chairperson is final.

Members of the meeting

- The members of the meeting remain (all Governing Body members if the meeting is a Governing Body meeting; all members of the committee if the meeting is a committee meeting).
- However, standing orders require that a councillor who has a pecuniary conflict of interest leave the room.
- All councillors have the right to attend any meeting of a committee and councillors who are not members of a committee may remain, subject to any limitations in standing orders.

Independent Māori Statutory Board

- Members of the Independent Māori Statutory Board who are appointed members of the committee remain.
- Independent Māori Statutory Board members and staff remain if this is necessary in order for them to perform their role.

Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Other staff who need to because of their role may remain.

Local Board members

- Local Board members who need to hear the matter being discussed in order to perform their role may remain. This will usually be if the matter affects, or is relevant to, a particular Local Board area.

Council Controlled Organisations

- Representatives of a Council Controlled Organisation can remain only if required to for discussion of a matter relevant to the Council Controlled Organisation.

| ITEM | TABLE OF CONTENTS | PAGE |
|-------------|--|-------------|
| 1 | Apologies | 7 |
| 2 | Declaration of Interest | 7 |
| 3 | Confirmation of Minutes | 7 |
| 4 | Petitions | 7 |
| 5 | Public Input | 7 |
| 6 | Local Board Input | 7 |
| 7 | Extraordinary Business | 7 |
| 8 | Notices of Motion | 8 |
| 9 | Proposed Auckland Unitary Plan - Background Information relating to the decision-making process, structure of the Independent Hearing Panel recommendation reports and management of public information. | 9 |
| 10 | Consideration of Extraordinary Items | |

1 Apologies

An apology from Cr DA Krum has been received.

2 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.

3 Confirmation of Minutes

That the Auckland Development Committee:

- a) confirm the ordinary minutes of its meeting, held on Wednesday, 6 July 2016, including the confidential section, as a true and correct record.

4 Petitions

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

5 Public Input

Standing Order 7.7 provides for Public Input. Applications to speak must be made to the Democracy Advisor, in writing, no later than **one (1) clear working day** 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.

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

6 Local Board Input

Standing Order 6.2 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 **one (1) day's** 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 6.1 to speak to matters on the agenda.

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

7 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.”

8 Notices of Motion

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

Proposed Auckland Unitary Plan - Background Information relating to the decision-making process, structure of the Independent Hearing Panel recommendation reports and management of public information.

File No.: CP2016/15059

Purpose

1. To provide the Committee with the following information:
 - i. a refresher on the legal framework for decision-making on the Independent Hearing Panel (**the Panel**) recommendations on the Proposed Auckland Unitary Plan (**PAUP**), and the timeline for this;
 - ii. an overview of principles relevant to the management of conflicts of interest generally and an outline of assistance available to elected members in relation to PAUP decision-making;
 - iii. the likely structure of the reports received from the Panel containing its recommendations
 - iv. management of public information after the receipt of the Panel's recommendations.

Executive summary

2. Since September 2014, the Council has presented its position in response to submissions on the PAUP to the Panel. The hearings were completed on 13 May 2016 and the Panel's recommendations are due to be received by the Council on 22 July 2016. As outlined in detail in the report presented to the Committee on 13 April 2016, the Council is required to notify its decisions in response to the Panel's recommendations on 19 August 2016.
3. This report provides the Committee with a refresher on the decision-making process and the timeline for this, and an overview of principles relevant to the management of conflicts of interest. It also provides information on the likely structure of the Panel's recommendation reports that will be received by the Council on 22 July 2016, and the management of public information after the receipt of the recommendation reports.

Recommendation/s

This report does not contain any recommendations.

Comments

Legal framework for decision-making

4. Members were previously briefed on the legal framework for decision-making at the 13 April information meeting.
5. The Local Government (Auckland Transitional Provisions) Act 2010 (**the Act**) establishes a unique streamlined process to help deliver the first Auckland Unitary Plan. The Panel established under the Act started hearing submissions in September 2014. The hearings were completed in mid-May 2016. The Panel provided the Council with recommendation reports on most of the designations in the PAUP on 18 May 2016. The Panel is required to release its recommendations on the remaining designations, and the balance of the PAUP, to the Council no later than 22 July 2016.

6. The Council has 20 working days to consider the Panel's recommendations and to notify a decision version of the PAUP, together with its reasons for any recommendation it has rejected. Within this timeframe staff will need to analyse the recommendations, prepare reports for Council's decision meetings and prepare the notification of the Council's decision. Based on a 20 working day scenario the Council must release its decision version by 19 August 2016.
7. The Act was written to create a process that enabled the PAUP to move from notification to operative at a much faster pace than typically could occur under the Resource Management Act 1991. This includes limiting merits appeals to the Environment Court against the Council's decisions on the Panel's recommendations to situations where:
 - i. the Council has accepted a recommendation that is identified by the Panel as beyond the scope of submissions and the person wishing to appeal is "unduly prejudiced" by the Council's decision; or
 - ii. the Council has rejected a recommendation from the Panel.
8. Such appeals must be lodged with the Court and served on the Council within 20 working days after notification of the Council's decisions.
9. Separate provision is made in relation to appeals to the Environment Court concerning designations / heritage orders, with such appeals having to be lodged and served within 30 working days after the Council gives notice of the decision on the designation / heritage order.
10. Appeals on questions of law can be made to the High Court by submitters within 20 working days.
11. The right to seek judicial review of decisions is preserved by the Act, however any available right of appeal to the Environment Court must be exercised first.
12. Section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**Attachment A**) specifies Auckland Council's obligations once it receives the recommendations from the Panel.
13. The Council is required to release its decisions on the PAUP and set out the recommendations it has accepted and rejected. If a Panel recommendation is rejected, the Council must provide reasons as well as an alternative solution (i.e. alternative provision(s)) it supports. The alternative solution / provisions must be within scope of submissions and must be based on material that was presented to the Panel at the hearings. The Council also has the ability to accept a recommendation but alter the relevant PAUP provision in a way that has a minor effect or to correct a minor error.
14. The Council is required to prepare a Section 32AA cost benefit analysis report (under the Resource Management Act) for any alternative provisions to the Panel's recommended version of the PAUP, unless a Section 32 report or Section 32AA report has been already prepared as part of the PAUP and / or Council's case team evidence.
15. Section 151 of the Local Government (Auckland Transitional Provisions) Act 2010 sets out the process for designations / heritage orders of requiring authorities other than the Council. In short, Council decisions on Panel recommendations relating to non-Council designations / heritage orders are treated as if they were recommendations to requiring authorities notified under clause 9(1) of Schedule 1 to the RMA. Requiring authorities must notify the Council of their decisions on the recommendations within 30 working days. The Council then has 15 working days to give notice of those decisions.

Managing conflicts relating to PAUP decision-making

16. At the meeting, there will be an opportunity to discuss the management of financial and non-financial conflicts of interest generally and an outline of assistance available to elected members to answer any questions that they may have on the management of relevant interests following receipt of the Panel's recommendations. As an introduction to that discussion, refer to **Attachment B** for an excerpt from the Office of the Auditor-General report "Ashburton District Council: Allegations of conflicts of interest affecting decisions on a second bridge: Appendix - Types of interests and the risks they create in local government" (October 2014). **Attachment C** sets out relevant provisions from the Standing Orders and Auckland Council Code of Conduct: Elected Members.

Description of the Panel's Deliverables

17. It is understood that the recommendation reports from the Panel are likely to be in two parts:
- Part 1.** The Reports - an overview report and a report on each hearing topic. The individual hearing topics include a summary of the recommended changes to the plan for that topic. It is understood this document will be approximately 1000 pages in length.
- Part 2.** The Recommended Plan – It is understood that this will comprise a clean version of the Panel's recommended text of the Unitary Plan and a clean version of the Panel's recommended maps created in the Panel's GIS viewer.

The Management of Public Information After the Receipt of the Recommendation Reports

18. Following the public release of the panel's recommendations a public information campaign will begin to ensure the public have factual information about the recommendations and to explain the process for council's decision-making in August.
19. Communications will include media and stakeholder briefings, summaries of the panel's recommendations, internal communications for staff, social media updates, and paid advertising to direct the public to the recommendations on the council website.

Consideration

Local board views and implications

20. All local board chairs are invited to attend the Auckland Development Committee meeting.

Māori impact statement

21. The PAUP is of considerable interest to Auckland's Mana Whenua. A number of the topics that have been / will be presented to the Committee at the Auckland Development Committee information meetings between April and July 2016 are of high interest to Mana Whenua, and indeed the wider Māori community. However, as the Council will not be making any decisions at the information meetings, the report itself does not have any impact on Māori.
22. Impacts on Māori will be addressed in the decision-making reports that will be considered by the Council in August 2016.

Attachments

| No. | Title | Page |
|-----|--|------|
| A | Attachment A - Section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 | 13 |
| B | Attachment B - Excerpt from the Office of the Auditor-General report | 15 |
| C | Attachment C - Relevant provisions from the Standing Orders and Auckland Council Code of Conduct Elected Members | 17 |

Signatories

| | |
|------------|---|
| Author | Celia Davison - Team Leader Unitary Plan |
| Authoriser | Penny Pirrit - Director Regulatory Services |

ATTACHMENT A

Section 148 of the Local Government (Auckland Transitional Provisions) Act 2010

148 Auckland Council to consider recommendations and notify decisions on them

(1) The Auckland Council must—

(a) decide whether to accept or reject each recommendation of the Hearings Panel; and

(b) for each rejected recommendation, decide an alternative solution, which—

(i) may or may not include elements of both the proposed plan as notified and the Hearings Panel's recommendation in respect of that part of the proposed plan; but

(ii) must be within the scope of the submissions.

(2) When making decisions under subsection (1),—

(a) the Council is not required to consult any person or consider submissions or other evidence from any person; and

(b) the Council must not consider any submission or other evidence unless it was made available to the Hearings Panel before the Panel made the recommendation that is the subject of the Council's decision.

(3) To avoid doubt, the Council may accept recommendations of the Hearings Panel that are beyond the scope of the submissions made on the proposed plan.

(4) The Council must, no later than 20 working days after it is provided with the report (or, if there is more than 1 report, the last of the reports) under section 146,—

(a) publicly notify its decisions under subsection (1) in a way that sets out the following information:

(i) each recommendation of the Hearings Panel that it accepts; and

(ii) each recommendation of the Hearings Panel that it rejects and the reasons for doing so; and

(iii) the alternative solution for each rejected recommendation; and

(b) electronically notify each requiring authority affected by the decisions of the Council under subsection (1) of the information referred to in paragraph (a) that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation or heritage protection order concerned.

(5) Subsection (6) applies if the Council decides that it wishes to accept a recommendation but alter the recommendation in a way that has a minor effect or to correct a minor error.

(6) The Council may notify the recommendation as accepted, but only if, when complying with subsection (4)(a)(i), it sets out the alterations to the recommendation.

(7) A recommendation to which subsection (5) applies must, for all purposes, be treated as a recommendation of the Hearings Panel accepted by the Council.

(8) Subsection (4) is subject to section 149.

Appendix

Types of interests and the risks they create in local government

| Type of conflict | Relevant law | Legal risks |
|---|---|---|
| <p>Does the member stand to gain or lose financially from the decision the Council is being asked to make?</p> <p>Or</p> <p>Does the member's spouse/partner or business stand to gain or lose financially from the decision the Council is being asked to make?</p> <p>If yes, the potential conflict is financial.</p> | Local Authorities (Members' Interests) Act 1968 | <p>For the member:</p> <ul style="list-style-type: none"> • criminal conviction • loss of office • fine <p>For the Council:</p> <ul style="list-style-type: none"> • judicial review |
| <p>Is the decision likely to affect someone that the member is related to or closely associated with, or another organisation they are involved with?</p> <p>If yes, is there a risk that the member will be seen to be biased in the way they vote because of their relationship or association with that person or organisation?</p> <p>If yes, the potential conflict is non-financial.</p> | Common law | <p>For the member:</p> <ul style="list-style-type: none"> • no personal liability <p>For the Council:</p> <ul style="list-style-type: none"> • judicial review |
| <p>Is the decision likely to affect another organisation that the member has a role in?</p> <p>If yes:</p> <p>Is there a risk that the member will be seen to be acting in the interests of the other organisation rather than the Council?</p> <p>If the member participates, is there a risk that they might breach obligations owed to the Council or the other organisation, such as a duty of loyalty or of confidentiality?</p> <p>If yes, the member has a potential conflict of roles.</p> | Common law | <p>For the member:</p> <ul style="list-style-type: none"> • potential civil liability if the member breaches legal duties owed to the other organisation <p>For the Council:</p> <ul style="list-style-type: none"> • judicial review |
| <p>If member participates in this decision, is there a risk that people will think they have made up their mind about how they are going to vote before they have listened fairly to all the arguments?</p> <p>If yes, there is a risk of predetermination.</p> | Common law | <p>For the member:</p> <ul style="list-style-type: none"> • no personal liability <p>For the Council:</p> <ul style="list-style-type: none"> • judicial review |

Conflicts of Interest: Auckland Council Governing Body Standing Orders and Auckland Council Code of Conduct: Elected Members

FINANCIAL INTERESTS

Standing Order 1.3.7:

- Every member present at a meeting must declare any direct or indirect financial interest that they hold in any matter being discussed at the meeting, other than an interest that they hold in common with the public.
- No member may vote on, or take part in a discussion about, any matter in which they have a direct or indirect financial interest. Where practical, members with a financial interest should leave the meeting for the duration of the discussion.
- The minutes must record any declarations of financial interests, and the member's abstention from the discussions and voting on the matter.

Code of Conduct: Elected Members

5.4 Declare private interests

- Members must declare any private interests or personal benefits relating to their public duties and take steps to resolve any conflicts of interest in such a way that protects the public interest. This means fully disclosing actual or potential conflicts of interest; avoiding any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

7.7 Conflicts of interest

- It is a requirement of this Code of Conduct that all elected members fully acquaint themselves with, and adhere strictly to, [the Council's Conflict of Interest Policy] requirements.
- A financial conflict of interest is one where a decision or act of the governing body or local board could reasonably give rise to an expectation of financial gain or loss to an elected member.
- A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in. There are particularly strict provisions (and penalties) relating to tendering processes (refer Conflicts of Interests Policy).
- The policy also requires elected members to make full and complete annual declarations of interest.

10.2 Purpose

- At the heart of any democratic process are expectations of fair play and equity. A crucial element of this is the expectation that decision makers will not be influenced by their personal and individual interests, particularly financial self-interest, but will endeavour to make decisions they consider to be in the best interest of their country, city or district. The purpose of this policy is to ensure good practice is followed and, in conflict of interest situations, that public trust in the Council is not damaged.

10.9 Financial interest – decision making

- Elected members must not participate in any Council discussion or vote on any matter in which they have a financial interest. If they are in doubt as to whether they have a financial conflict of interest, prior to the meeting they should refer to the Local Authorities (Members Interest) Act, the Guidelines of the OAG and/or seek advice from the Chief Executive or the OAG.
- Elected members also need to be aware that the above requirement will normally apply in the case of interest through a spouse or partner and in some cases to interest through a company (refer OAG Guidelines).
- Members must always avoid accepting any gifts (including hospitality, entertainment) from parties to any regulatory process that the Council will be hearing and/or making decisions on. Members must declare their interests at meetings where matters in which they have a conflict of interest arise.
- Members must leave the meeting table while the matter is being discussed or voted on. Depending on the particular issue, members may consider it good practice to leave the meeting room itself. Declarations of interest will be recorded in the minutes of the meeting and where applicable in the Register of Members' Interest.

Conflicts of Interest: Auckland Council Governing Body Standing Orders and
Auckland Council Code of Conduct: Elected Members

NON-FINANCIAL INTERESTS

Standing Order 1.3.8:

- Where a member declares a non-financial interest in any matter, the member may decide whether that matter constitutes a conflict.
- If the member considers that there is a conflict, they may not take part in the discussions about or vote on that matter. The member must leave the table when the matter is considered, but does not need to leave the room.
- The minutes must record the declaration and member's subsequent abstention from discussion and voting.

Code of Conduct: Elected Members

5.4 Declare private interests

- Members must declare any private interests or personal benefits relating to their public duties and take steps to resolve any conflicts of interest in such a way that protects the public interest. This means fully disclosing actual or potential conflicts of interest; avoiding any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

7.7 Conflicts of interest

- It is a requirement of this Code of Conduct that all elected members fully acquaint themselves with, and adhere strictly to, [the Council's Conflict of Interest Policy] requirements.
- A non-financial conflict of interest does not have a direct personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.
- The policy also requires elected members to make full and complete annual declarations of interest.

10.2 Purpose

- At the heart of any democratic process are expectations of fair play and equity. A crucial element of this is the expectation that decision makers will not be influenced by their personal and individual interests, particularly financial self-interest, but will endeavour to make decisions they consider to be in the best interest of their country, city or district. The purpose of this policy is to ensure good practice is followed and, in conflict of interest situations, that public trust in the Council is not damaged.

10.10 Non-financial interests – decision making

- Non-financial interests involving relatives, friends, tribal affiliations, membership of other organisations (e.g. community, regional or national organisations, clubs, churches etc). Members should evaluate the Guidelines of the OAG and/or seek advice from the Chief Executive or OAG before determining whether or not they should declare an interest and stand aside from decision-making. There is no simple binding rule that covers all such cases – they must be evaluated on their individual merits.
- Predetermination. A member must not deliberate on a public consultation process where that member has made a personal submission. A member must not participate in a hearing or decision-making process under the Resource Management Act 1991, or in any other hearing or decisions that have a regulatory effect, if that member's statements or conduct indicate that he or she has predetermined the matter before hearing all relevant information. On other matters where there are potential issues of predetermination, the member should refer to the Guidelines of the OAG and/or seek advice from the Chief Executive or the OAG before deciding whether or not to participate in decision-making.