

# **Governance framework review discussion document:**

## **Regional decision-making and policy processes**

### **Introduction**

This document is designed to assist the political working party (PWP) and the executive steering group overseeing the implementation of the governance framework review.

It sets out the work of the project team on specific issues in a structured way to facilitate discussion of the options and the development of recommendations for the governing body. It is one of a series of papers that will be presented to the working party as part of the process of considering the governance framework review's recommendations.

The first part of the paper gives a brief outline of the purpose of this paper and the problem definition, it also provides context and outlines any previous relevant decisions.

The second part of the paper outlines potential options or proposed responses to specific issues. It also provides an indicative assessment of the various options against the agreed criteria.

Each paper will be considered by the political working party at one of its workshops in May and June and will be supported by a presentation by workstream leads and other relevant staff e.g. finance, legal, local board services.

## Purpose and problem definition

1. The purpose of this paper is to consider options that give better effect to the statutory roles of local boards and the governing body in regional policy and decision-making processes.

### Background

2. The Governance Framework Review (GFR) identified problems with the regional policy making process, particularly with respect to the role of local boards. The review found that:
  - There is no agreed strategic framework for regional policy development that adequately addresses governing body and local board statutory roles;
  - The timing of regional decision-making is not well-planned across the organisation. Local boards in particular don't have good visibility of the timing of regional decisions;
  - Considerable time and resource commitments are required to seek local board input on regional decisions;
  - Local boards do not receive quality advice to inform their input, and advice to the governing body and local boards often lacks analysis of local impacts.
3. To address these issues, the review recommended that council should:
  - A. Bring both arms of governance together early in the policy development process to clarify respective roles;
  - B. Increase the use of joint briefings and workshops where relevant;
  - C. Develop a methodology that clearly identifies local boards' role in regional decisions;
  - D. Develop tools to enable local board input earlier into regional policy development;
  - E. Develop a clear policy on the commissioning of contestable advice, including a conflict resolution process;
  - F. Continue to embed the programme for improving the quality of policy advice;
  - G. Consider limiting the ability of local boards to advocate on regional policy issues (particularly investment), once due consideration has been given.

### Legislative and policy context

4. The Local Government (Auckland Council) Act 2009 provides the following relevant provisions for regional policy and decision-making:

- Each local board is responsible for *‘identifying and communicating the interests and preferences of the people in its local board area in relation to the content of the strategies, policies, plans, and bylaws of the Auckland Council’* [s.16(1)(c)]
- The governing body must *‘consider any views and preferences expressed by a local board, if the decision affects or may affect the responsibilities or operation of the local board or the well-being of communities within its local board area’* [s.15(2)(c)] when carrying out its decision-making responsibilities, including regional policy-making.

5. Auckland Council’s current Long-term Plan notes in an explanatory note to the decision-making allocation table:

*Local boards have a statutory role identifying and communicating the interests and preferences of its communities in relation to policies, plans and bylaws. Processes will need to be identified that enable a local board to fulfil this role where a delegation has not been given. [Auckland Council Long-term Plan 2015-2025, Volume 2, p.287]*

(The allocation table does not however state the Governing Body’s statutory role as set out in s.15(2)(c) of LGACA and noted above.)

## Problem definition

6. The key question is how to strengthen the role of local boards in regional decisions and policy-making in a way that gives better effect to governing body and local board statutory roles, leads to better consideration of local views, and is as efficient and effective as possible.

## Analysis

7. Internal consultation with various departments involved in local and regional policy making agreed with the GFR findings that current processes involving local boards are sometimes sub-optimal, ad hoc, and inefficient. There is, for example:

- no involvement or consultation with local boards in the development or prioritisation of regional policy work programmes;
- no agreed criteria or process to categorise and prioritise the local interest or impact of regional policy or decision-making processes;
- no agreed suite of engagement tools or communications methods to use when engaging local boards during regional policy-making.

8. There was general agreement that many of the GFR recommendations should be implemented and that some agreed processes would lead to more efficient and optimal involvement of local boards in regional decision-making. This would enable local

boards and the governing body to more effectively deliver on their respective statutory roles.

9. A proposal for recommendations to implement and not to implement is set out below.

**Recommendations to fully implement: A, B, C, D, F**

*Procedural issues around policy- and decision-making*

10. An initial response proposal to the GFR report (Appendix H of the GFR report) addressed recommendations A-D above. This response recommended the following directions and procedural fixes to build the local board input role more effectively into the regional decision-making process:

- i. Ensure local board members are given genuine opportunities to influence regional decisions through early engagement;
- ii. Better support the governing body in hearing the views of local boards, e.g. through more joint engagement throughout the decision-making process, and through better reporting of local views and analysis to the governing body;
- iii. Inform local boards of the outcome of final decisions by the governing body, including how their views were taken into consideration.
- iv. Improve the quality of advice given to local boards and the governing body in regional decision-making process, particularly on implications of options at local level, and implementation and monitoring.
- v. Involve local boards in regional work programme development at the beginning of each term, and refresh it each year.
- vi. Use criteria to categorise regional decisions as high, medium or low local impact (or potentially interest – see below in paragraph 13) and tailor local board engagement processes accordingly
- vii. Use an agreed suite of tools for local board engagement that give greater and earlier influence for local boards.
- viii. Make greater use of local board clusters for engagement.

11. It is recommended that these be implemented. Recommendation (viii) – making greater use of local board clusters for engagement – is already being implemented this term.

12. Internal consultation identified that categorisation under recommendation (vi) should be undertaken for the likely level of local board interest, not local impact, as meaningful local impact analysis cannot be adequately performed in the discovery phase of policy development. However, a high level estimate of potential local impact may be able to be performed in many circumstances.

### *F: Quality advice*

13. It is proposed that Recommendation F – Continue to embed the programme for improving the quality of advice – be implemented.
14. Council's standard report template contains a section for 'Local board views and implications'. The quality of analysis and advice in this section is variable, and on the whole it could be better used to demonstrate local impacts of the decision being sought. This may lead to better consideration of local effects of decisions by the governing body, improving regional decision-making.
15. Council's existing quality advice improvement programme for staff can be further strengthened to give effect to the role of local boards in regional policy making, and to this end it is recommended that further guidance be provided through quality advice programmes in line with procedures identified above.

### **Recommendations not to implement: E, G**

#### *E: Policy on local boards commissioning contestable or external advice*

16. The first part of recommendation E is that council should consider implementing a clear policy or process on local boards commissioning contestable advice and / or engaging external expertise.
17. The GFR report identified that in some instances local boards have used contestable or external advice to develop local plans or strategies inconsistent with regional plans, strategies and policies, or for which there is no funding for implementation. They have also, in limited circumstances, sought other advice to challenge council officer advice, either on the basis of concerns about its quality, or concerns about its independence.
18. The recommendation was for a policy or process to cover the following situations:
  - Where a local board wishes to pursue work that is not within an existing work programme and / or cannot be accommodated by the organisation due to capacity or prioritisation issues; and / or
  - Where the local board disagrees with a council staff position and requests contestable advice.
19. Internal consultation identified that:
  - the issue of boards seeking contestable advice has arisen a handful of times and has been adequately managed within Local Board Services;
  - the more important issue is ensuring that local boards are able to influence regional and / or organisation priorities for their local policy work and that regional decisions, including regional policy-making, take into account local views and preferences;
  - resourcing for policy work is a key driver; and

- the status quo involves managing requests on an ad hoc basis.

20. It is important to note that each local board has the statutory power to ‘consider and report on any matter of interest or concern to the local board, whether or not the matter is referred to it by the governing body’ [Local Government (Auckland Council) Act 2009 s.13(2)(e)].

21. It is proposed that such a policy is not necessary and not be implemented because:

- these problems may to a large extent be addressed through processes identified in recommendations A to D, such as greater and earlier local board involvement in direction setting for policy work and better local analysis;
- each instance will be different, and an ad hoc approach is likely the most appropriate to tailor the sourcing of advice for the particular circumstance if required;
- officers have clearly communicated to local boards when they have not been able to undertake local policy work internally (including for reasons such as the requested work would be inconsistent with regional plans, or there would be no resourcing to implement the outcome.)

*E: Internal dispute resolution process*

22. The second part of recommendation E is that council should consider implementing an internal process to resolve conflict between a local board and the governing body where decision-making authority is disputed.

23. The rationale proposed for this by the GFR report is that there have been situations where local boards have not accepted the organisational view on where decision-making responsibility lies.

24. Council could implement such a process – for example, by having the chief executive attempt to resolve the dispute and, if not successful, then having the mayor (or a small committee) adjudicate. This would not preclude the local board(s) applying to the Local Government Commission under s.97 of LGACA for a binding determination.

25. Internal consultation identified little need for such a dispute resolution mechanism, and it is proposed that one not be implemented as it would likely be out of proportion to the problem: generally where there are concerns about who is responsible for decision-making, these are already sufficiently resolved internally. In six years there has been only one application to the Local Government Commission for a binding determination, after internal attempts to resolve, and this was rejected by the commission as not meeting the statutory criteria for a dispute.

26. Furthermore, it is likely that implementing improved processes as described elsewhere in this report, particularly involving local boards earlier and more fully in regional decision-making processes on issues that are important to them, will reduce the occurrence of disputes or concerns over who is the decision-maker.

### *G: Limiting local board advocacy*

27. The GFR report recommended that council establish clear protocols that focus on ensuring advocacy is finite and that regional decisions are accepted. The rationale for this was that, particularly in the area of capital investment, local boards do not have to balance the trade-offs in the same way that the governing body does and it is perfectly tenable and logical for boards to advocate for additional investment in their areas while at the same time seeking lower rates.
28. It is recommended that such a policy or process not be developed due to legal constraints, existing mechanisms under Standing Orders already providing a balanced mechanism to address these issues, and also because there are improved advocacy prioritisation processes that should partially mitigate the problem.
29. Council cannot legally implement a formal policy or process constraining the ability of local boards to advocate on regional issues. To do so would restrict local boards in their ability to carry out one of their key statutory responsibilities under LGACA: to identify and communicate the interests and preferences of the people in the local board area in relation to the content of the strategies, policies, plans and bylaws of the Auckland Council (s.16(1)(b)).
30. LGACA anticipates that the key way that local boards will advocate is through local board plans and local board agreements, but this is not the only mechanism. The fact that local boards can advocate on regional issues outside of the council's budgetary or defined policy processes is reflected in the governing body standing orders, which provide for local board speaking rights (S.O.6.1) and local board input (S.O.6.2) at meetings of the governing body and its committees. These rights are not limitless.
31. In terms of speaking rights, Standing Orders limit the speaking rights of local boards to speaking about matters on the agenda that affect their board area, their board's communities or their responsibilities. Such speaking rights are at the discretion of the chairperson of the meeting.
32. Similarly, local board input is subject to the discretion of the chairperson of the meeting, and a local board speaker may not use the time allocated for local board input to speak about a matter that:
- Has already been considered and decided;
  - Has a separate public hearings or consultation process attached to it;
  - Is subject to a quasi-judicial process; or
  - Is outside the terms of reference of that meeting or outside the functions of Auckland Council.

33. These existing limits in Standing Orders constrain the ability of local boards to advocate, but do so in a balanced way in which the local boards are still able to fulfil their statutory role of identifying and communicating local interests and preferences. To go further than this would put at risk the ability of local boards to fulfil their statutory responsibility.

34. In addition to these legal considerations, LTP and annual plan processes are improving and there is a new advocacy prioritisation process now in place; local boards are narrowing and better prioritising their advocacy to the governing body, and the organisation is better placed to provide in-depth information on initiatives to enable improved decision-making.

### **How to implement policy process improvements**

35. The key question is through what mechanisms should these proposed recommendations be implemented. The following section explores how best to implement recommended options. It sets out two options and assesses them against criteria agreed by the PWP. These options are:

- Option 1: a procedural framework directing officers on policy processes
- Option 2: adopted policy principles plus a procedural framework.

36. Following these options there is brief discussion on whether changes to resourcing would enable better outcomes in the policy process. Any resourcing issues could be considered independently of the above two options and not be mutually exclusive to them. This would be explored through the Organisational Support workstream of the Governance Framework Review if so desired.

## **Options and analysis**

### **Option 1 – Procedural framework for officers to follow**

37. This option involves implementing new procedures by way of an officer framework for regional policy-development and decision-making, mandating stronger roles for local boards and with clear instructions for staff.

38. In summary, it would build the local board input role more effectively into regional decision-making by stipulating processes and specific tools for:

- early local board engagement to influence regional decisions;
- better supporting the governing body in hearing the views of local boards, e.g. through more joint engagement throughout the decision-making process, and through better reporting of local views and analysis to the governing body;

- informing local boards of the outcome of final regional decisions, including how their views were taken into consideration;
- improving the quality of advice given to local boards and the governing body in regional decision-making process, particularly on implications of options at local level, and implementation and monitoring (as set out at a high level in the ‘Quality advice’ section above);
- involving local boards in regional work programme development at the beginning of each term, and in refreshing it at the beginning of each subsequent calendar year;
- categorising regional decisions as high, medium or low interest (and potential local impact), with agreed criteria;
- using a suite of specified engagement tools that give greater and earlier influence for local boards, in line with categorisation;
- making greater use of local board clusters for engagement.

## Assessment

Criterion	Assessment
Consistency with the statutory purpose of local government (s10 LGA)	Yes – contributes to enabling democratic decision-making and action by and on behalf of communities
Does the option contribute to improving <b>role clarity</b> between the two arms of governance, both internally and for the public?	Yes – heightens role of local boards in regional decision-making, particularly internally for staff.
Does the option provide for <b>decision making at the appropriate level</b> , as set out in s17 of the LGACA and reflect the <b>subsidiarity principle</b>	No – does not change decision-making allocation / role for local boards.
Does the option provide for <b>increased empowerment of local boards</b> , especially in their place shaping role?	Yes, there will be some increased empowerment of local boards through a greater voice in regional decision-making, but unlikely to contribute to place-shaping role.
Does the option ensure <b>accountability and incentives</b> for political decisions?	No additional accountability or incentive mechanisms will stem from this option.
What is the <b>administrative feasibility</b> of the option, including efficiency and feasibility of implementation?	Administratively feasible. There will be some efficiency gains from simplified local board engagement processes (e.g. removing requirement to attend 21 local board

	workshops for low priority or impact policy development), but requirement for better local analysis and advice will likely increase timeframes for regional policy development, particularly for issues with high local interest and impact.
Does the option contribute to <b>improved community engagement</b> with and better services for Aucklanders?	No, unlikely to lead to better engagement or services.

39. It is expected that implementation of these processes will enable local boards and the governing body to better give effect to their respective statutory policy making roles. This should enable better decision-making both by local boards and the governing body.

40. In certain instances, such as where council is responding to a request for submissions within a constrained timeframe (for example developing a submission to a select committee or central government agency process) it may not be possible to apply this new framework fully. This will be noted in the framework.

41. The exact costs and benefits of implementing this option will be difficult to quantify. As noted above, for lower priority or impact regional decisions and policy processes, the local board engagement process should be more streamlined and efficient. For higher local impact or priority regional decisions or policy processes, these new procedures may increase the length of time due to the need for greater local analysis and engagement.

## Option 2 – adopt policy principles in addition to procedural framework

42. This option involves the governing body formally adopting principles that set out at a high level the expectations around regional decision-making and policy-making, and how local boards will be involved. They would be agreed with local boards and formally adopted by the governing body. A separate, more procedural framework as identified in Option 1, will also be produced as a staff resource to follow for regional policy and decision-making.

### *Proposed policy principles*

43. The following principles are proposed for adoption:

- Regional decision-making and policy development will give effect to the statutory roles of local boards and the governing body by using processes that:
  - Ensure local boards are able to input to regional decision-making at the early direction-setting stage

- Support the governing body in its decision-making to consider local board views effectively, and communicate to local boards the outcome of a decision and how local board views influenced it
- Are effective and efficient, with structured local board engagement proportional to the interest and potential local impacts of the decision.
- The governing body and local boards will have an overview of foreseeable regional decisions, and when they are to be made, as early as is practicable.
- The governing body will determine, with local board input, a programme of work for the electoral term for strategy, policy, plan development and key regional decisions that are foreseeable.
- The governing body and local boards will receive quality advice to support their decision-making and input roles (respectively), in particular on implications, implementation and monitoring. Local boards will receive quality advice on local implications.

44. An appropriate place to stipulate these policy principles would be in the Long Term Plan and Annual Plan, as part of the description of decision-making responsibilities that includes statutory decision-making responsibilities, the allocation of decision-making for non-regulatory activities, and delegated decision-making responsibilities. They can also be included in the Governance Manual.

## Assessment

Criterion	Assessment
Consistency with the statutory purpose of local government (s10 LGA)	Yes – contributes to enabling democratic decision-making and action by and on behalf of communities
Does the option contribute to improving <b>role clarity</b> between the two arms of governance, both internally and for the public?	Yes – heightens role of local boards in regional decision-making, both internally and externally.
Does the option provide for <b>decision making at the appropriate level</b> , as set out in s17 of the LGACA and reflect the <b>subsidiarity principle</b>	No – does not change decision-making allocation / role for local boards.
Does the option provide for <b>increased empowerment of local boards</b> , especially in their place shaping role?	Yes, there will be some increased empowerment of local boards through a greater voice in regional decision-making, but unlikely to contribute to place-shaping role.
Does the option ensure <b>accountability</b>	Yes – adopted policy principles provide a

<b>and incentives</b> for political decisions?	benchmark for political accountability.
What is the <b>administrative feasibility</b> of the option, including efficiency and feasibility of implementation?	Administratively feasible. There will be some efficiency gains from simplified local board engagement processes (e.g. removing requirement to attend 21 local board workshops for low priority or impact policy development), but requirement for better local analysis and advice will likely increase timeframes for regional policy development, particularly for issues with high local interest and impact.
Does the option contribute to <b>improved community engagement</b> with and better services for Aucklanders?	No, unlikely to lead to better engagement or services.

45. The same impacts and costs and benefits as Option 1 can be expected, although this option can be expected to provide greater political accountability and also provide clearer direction to staff and the public through the adoption and publication of overarching policy principles.

### Additional considerations: resourcing

46. Adding or redeploying existing resources may be a further avenue through which better policy processes and outcomes, as sought by the Governance Framework Review, could be achieved. For example this could contribute to addressing capacity issues identified during internal consultation, such as undertaking more local policy work or providing a greater level of advice to boards and the governing body on local implications of regional policy

47. The level of extra or redeployed resourcing has not been explored deeply or quantified during this process, but would be considered through the Organisational Support Workstream.

48. There would be financial implications if additional resource was to be added for this function, and this would likely be difficult within a constrained funding environment.

49. There are various ways that additional or redeployed resources could theoretically be used, such as:

- Creating additional general policy capacity in existing policy teams to enable greater provision of local policy work and undertake more local analysis and reporting;
- Creating a technical Local Impact and Analysis position or team to undertake local analysis alongside existing policy teams, or to quality assure local analysis

carried out by policy teams (similar in function to central government's Regulatory Impact Analysis Team at Treasury).

## **Conclusion and potential recommendations**

50. It is recommended that option 2 – adopted policy principles plus a regional policy development framework for officers – be progressed for the following reasons:

- An agreed set of procedures for officers, including specified criteria and tools, should address procedural problems with regional policy development identified by the Governance Framework Review report.
- Politically agreeing and adopting policy principles creates a benchmark for organisational performance and political accountability.
- Implementation is feasible and it is unlikely to create additional resource requirements.

### **Next steps**

51. Draft contents of a policy development framework, based on material in Appendix H of the GFR report, is being developed. This includes, for example, proposed prioritisation criteria, tools to engage local boards, and communication methods. This can be workshopped with local boards in more depth in the coming months.