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LEGAL OPINION

To:	Jason Marris (CEO)
From:	Brigitte Morten; Alexandra Miller
Client:	Kaipara District Council
Date:	20 March 2025; Updated 10 July 2025; Updated 22 July 2025
Subject:	Local Government Obligations to Māori

CONTENTS

GLOSSARY

Acronyms	
ACT	ACT Party
AP	Annual Plan
CMCA	Common Marine and Costal Area
CMT	Customary Marine Title
EEZ	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
Ellis	*Ellis v R* [2022] NZSC 114
FTA Bill	Fast-Track Approvals Bill
SO Guide	The Local Government NZ Guide to Standing Orders
HRA	Human Rights Act 1993
LEA	Local Electoral Act 2021
LGA	Local Government Act 2002
LGNZ	Local Government New Zealand
LGOIMA	Local Government Official Information and Meetings Act 1987
LGRA	Local Government Rating Act 2002
LINZ	Land Information New Zealand
LTP	Long Term Plan
MACA	Marine and Coastal Area (Takutai Moana) Act 2011
NZBORA	New Zealand Bill of Rights Act 1990
NZCPS	New Zealand Coastal Policy Statement
PCR	Protected Customary Rights
RMA	Resource Management Act 1991
SCP	Special Consultative Procedure
Te Ture mō Te Reo Māori 2016	Te Ture mō Te Reo Māori 2016 (Māori Language Act 2016)
Trans Tasman Resources	*Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127
Wellbeings	In reference to the requirements in sections 3 and 10 of the LGA to provide or promote for the social, economic, environmental, and cultural well-being of communities.

SUMMARY

1. This opinion outlines local government's obligations to Māori, in distinction to its obligations to residents and the community generally. Local authorities are not the Crown and therefore do not have duties as a signatory to the Treaty of Waitangi. However, Parliament has provided, mainly through the LGA, that local government must address the Crown's responsibility to take account of the principles of the Treaty of Waitangi, and in turn address particular obligations to Māori.

2. The main focus of this report is on the sources of obligation (and the sources of limits on them) that are commonly misunderstood. They are primarily:

    2.1. Local Government Act 2002;

    2.2. Local Government Rating Act 2002;

    2.3. Local Electoral Act 2001;

    2.4. Resource Management Act 1990;

    2.5. New Zealand Bill of Rights Act 1990;

    2.6. Human Rights Act 1993; and

    2.7. Court decisions.

3. As stated recently by the High Court, there are few concrete privileges of Māori with respect to local government. Where there are obligations owed, these are generally considered to be limited to those expressly stated in applicable legislation (as identified above).[1]

4. Most of these obligations can be characterised as process requirements. Local authorities are statutorily obligated to establish and maintain processes for Māori to contribute to decision making processes. They are not guaranteed a right of consultation, an outcome, nor can they veto a decision. Ultimately, local government must uphold democracy that executes the will of the people, represented through elected officials.

INTRODUCTION

5. Kaipara District Council requested an opinion on local government obligations to Māori as a guide to informing elected councillors and council officers on their obligations and how these may be performed.

6. This report distinguishes between legal duties, non-performance of which would be unlawful, and obligations that arise from consensus among councillors about responsibilities created by political expectations, common community views, or the most effective ways to respond to needs and particular cultural sensitivities of Māori. Councillors may promote or support

[1] *Hart v Marlborough District Council* [2025] NZHC 47 at [62].

differences in treatment of Māori by the council to achieve purposes and to deliver services they intend to provide generally, without unfair favouritism or discrimination on the basis of race.

7. This opinion states the current law whilst noting community views on what the law should be. We do not comment on the validity of those views other than to state where they do not reflect the current law.

8. A legal opinion on a question should be an expert prediction of how a court would answer the question. That has become much more difficult recently, in relation to Māori rights and privileges, the role of the Treaty and tikanga, and constitutional issues. Over the last five or so years a novel form of judging has become dominant in our senior courts. Certainty and predictability of interpretation has been subordinated to the view of some senior judges that their role is to make (they call it "develop") the law.

9. This is particularly significant for this report, because on many contentious issues the law is silent, or vague. Most relevant statutes were drafted at a time when Parliament and the drafters assumed that what is not prohibited is permitted, what is not expressly a duty of a person (including a local authority) cannot be required or enforced against the person.

10. The orthodox view was that rights and obligations would not be found or asserted without clear written authority. They assumed that the law would be changed only by Parliament or by judges in the uncommon cases where a novel issue was not covered by statute, or the statute was ambiguous, and earlier precedent cases did not point to how the novel case should be decided.

11. These orthodox principles are being challenged, to the degree that Parliament is currently considering a Bill to amend the Marine and Coastal Area Act expressly to direct that the reasoning of judges in a number of recent cases not apply to interpretation of the Act. This is unprecedented for New Zealand.

12. There are some examples of a return to orthodoxy, with the High Court recently determining that Parliament intended to restrict the Treaty obligations of local authorities making decisions under the Local Government Act to those explicitly stated in the Act. However, there are some Court decisions inferring treaty obligations outside of those expressly stated in legislation,[2] and the general question of whether the Courts can impose Treaty obligations on local authorities has been left open by the Courts.[3]

13. In this respect, this opinion states the law as it would be on orthodox interpretation principles. Where there are widespread views that there are obligations that go further than, or which are different from those that are legally prescribed, we generally explain the sources of those views. They are often the views of organisations (such as LGNZ) on what they think the law should be. Sometimes they may be reasonable reflections or forecasts of where authoritative

[2] *Ngati Maru Ki Hauraki Inc v Kruithof* CIV-2004-485-330, 11 June 2004, where Baragwanath J stated in the context of the Resource Management Act, "It is the responsibility of successors to the Crown, which in the context of local government includes the Council, to accept responsibility for delivering on the art. 2 promise."
[3] *Hart,* above n 1, at [63].

opinion is trending. We do not comment on the merits of those views other than to state where they do not reflect the current law

BACKGROUND

Position of the Treaty of Waitangi in domestic law

14. The position of the Treaty of Waitangi in our law is not straightforward. The common law principle is that international instruments are not enforceable by the courts unless they are incorporated into legislation by Parliament.[4] However, as Treaty jurisprudence has developed there is a view that the Treaty is part of the "context" in which legislation is to be interpreted (if the statutory language is not clear),[5] and that the courts will not lightly ascribe an intention by Parliament to override or abrogate the principles of the Treaty.[6]

15. However, the position of the Treaty should not be overstated. It is not a form of supreme legislation or a fundamental constitutional document that controls Parliament's power to make legislation.[7] It does not give rise to rights that are directly enforceable in the courts,[8] and it does not override inconsistent legislation.[9]

16. Following the signing of the Treaty on 6 February 1840, William Hobson, as Captain in the Royal Navy and Lieutenant-Governor of New Zealand, made two proclamations which asserted the British Crown's sovereignty over New Zealand on 21 May 1840. These are reproduced at Appendix D. The proclamation of sovereignty over the North Island of New Zealand relied on sovereignty being ceded through the Treaty. The proclamation of sovereignty over the South Island was based on discovery. This was the formal process of asserting sovereignty by proclamation. In June 1840 the New South Wales legislature passed an Act declaring the laws of New South Wales to extend to Her Majesty's dominions in New Zealand. The Colonial Office published Hobson's proclamations of sovereignty in the London Gazette on 2 October 1840.

Relationship between Treaty of Waitangi and local government

17. The Treaty of Waitangi was signed by the British Crown and Māori Chiefs (exercising control over different parts of the country). It placed obligations on all parties. The Courts have described the nature of the relationship as the Crown, as the dominant party, owing a fiduciary obligation to honour the principles of the Treaty.[10] It has also been described as a "partnership".

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[4] *Te Heuheu Tukino v Aotea District Māori Land Board* [1941] NZLR 590 (PC).
[5] *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 210. Examples of where this may occur is in judicial review proceedings where the Treaty of Waitangi may be considered to be a relevant consideration or person may rely upon it as the basis for legitimate expectations.
[6] *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA).
[7] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (HC and CA) at 655-656, 691.
[8] *Hoani Te Heuheu Tukino v Aotea District Māori Land Board* [1941] 2 All ER 93 at 98 (PC), affirmed in *Taiaroa v Minister of Justice* HC Wellington CP 99/94, 4 October 1994, at 19.
[9] Ross Carter Burrows and Carter Statute Law in New Zealand (6th ed, LexisNexis, Wellington, 2021) at 682.
[10] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 at 664 (SOE case); *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 at 266 (HC); *Attorney-General v New Zealand Māori*

18. The Crown, although it may differ according to the context in which it is used, describes executive government conducted by Ministers and their public service agencies.[11] While the obligations were entered into by the British Crown and the Crown now operates as separate legal entities (the Crown in right of New Zealand is distinct from the Crown in right of the United Kingdom) court cases have determined that the Crown in right of New Zealand is the inheritor of the full legal personality of the British Crown in respect of New Zealand.[12]

19. The orthodox view is that local government is not part of the Crown; they are independent legal entities,[13] and are not generally subject to ministerial or other forms of Crown control.[14] The LGA specifies that it does not "bind the Crown" except in relation to particular provisions around powers of the Minister, officials, and the Local Government Commission.[15] Local government is the embodiment of citizen self-government at local level, not delegates or local agents of the Crown.[16]

20. The courts have been generally reluctant to impose Treaty obligations on local authorities at common law.[17] However, judgments of a court must be followed by lower courts in similar cases, and the general question as to whether Treaty obligations apply outside of obligations expressly provided for in statute, has not come before the Court of Appeal or the Supreme Court. Judicial Review applications, which are those that challenge public decisions, are filed with the High Court. What this means, is that the law on this question is not settled;[18] there can be differing conclusions amongst the High Court given it is the court of first instance for reviews of public decisions, and due to this question of law not having been determined by the more senior Courts.

21. However, whilst the Treaty does not create a standalone enforceable right, there are clauses in legislation applicable to local government that require local government to take the "principles" of the Treaty into account.

Council v Attorney-General [1996] 3 NZLR 140 (CA) 140 at 188; and *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (CA) at 343 (per Thomas J). See Law Commission Act 1985, s 5(2) (te ao Māori). The Treaty does not specifically covenant an equal partnership between the Crown and Māori, but equal partnership is increasingly being asserted by Māori advocates. Compare *He Puapua: Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand* (Te Poni Kokiri, Wellington, 2019) (equal partnership pathways). See also Pae Ora (Healthy Futures) Bill 2021 (85-1) (establishment of major Māori Health Authority).

[11] Cabinet Office *Cabinet Manual 2023* at [1.4].

[12] *NZ Maori Council v Attorney-General* [1990] 1 NZLR 513; Cooke P (at 517–518); *Burt v Governor-General* [1992] 3 NZLR 672; *Public Service Association v Attorney-General* [1962] NZLR 299 (CA)

[13] Local Government Act 2002, s 12.

[14] See Phillip Joseph *Constitutional and Administrative Law in New Zealand* (3rd ed, Thompson Reuters, Wellington, 2007) at 591 and following. The leading New Zealand case is *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (CA). There are limited ways in which Ministers can exert control over councils but that limited degree of control is not enough to make councils part of the Crown.

[15] Local Government Act 2002, s 8.

[16] There has been some commentary that local government are agents of the crown, but this is not as reflected in Court decisions or legislation.

[17] *Hart v Marlborough District Council,* above n 1, citing *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2022] NZHC 1846 at [77(d)].

[18] This is as discussed in *Hart v Marlborough District Council,* above n 1, at [62].

Principles of the Treaty

22. Other than where a literal text of the Treaty could be a source of legal obligation, in many Acts of Parliament, there are clauses referring to "the principles of the Treaty of Waitangi". Such clauses exist in both the LGA and RMA and are discussed in detail under paragraphs [67] and [138] respectively.

23. Such clauses require attention to Treaty "principles" rather than the Treaty itself. This distinction between the Treaty and its principles was made in the Treaty of Waitangi Act 1975, and carried into section 9 of the State Owned Enterprises Act 1986. The principles were never defined in legislation, and in 1987, in the seminal *Lands* case, the Court had to make sense of the phrase.[19]

24. The issue in the *Lands* case*,* was whether the Crown could transfer land which was subject to Treaty settlement claims to newly formed state-owned enterprises. [20] The State-Owned Enterprises Act 1986 contains a section prohibiting the Crown from acting inconsistently with the "principles of the Treaty of Waitangi". [21] This concept of "Treaty principles" led the Court of Appeal to emphasise that it was the "spirit" of the Treaty, not its literal text, which mattered.[22] Put another way, the literal text of the Treaty is not a source of legal obligation.

25. The Court in the *Lands* case went on to create the "Treaty principles". The three most relevant principles are: (1) the duty of "active protection" — the Crown must take all reasonably practicable steps to ensure that Māori are able to enjoy the rights granted to them under the Treaty;[23] (2) the duty to act "in the utmost good faith" — the Crown must act reasonably and fairly in good faith in its dealing with Māori (and vice-versa for Māori when dealing with the Crown);[24] and (3) redress.[25]

26. The court in the *Lands* case also considered whether there was a principle requiring consultation, concluding that there was not. Significantly, Cooke P said in the judgment:[26]

> *A duty "to consult"… In any detailed or unqualified sense is elusive and unworkable. Exactly who should be consulted… would be difficult or impossible to lay down. Moreover, wide-ranging consultations could hold up the processes of Government in a way contrary to the principles of the Treaty.*

27. Until very recently the law was that a "Treaty clause" delineated and confined the extent of the Treaty's relevance to an Act.

28. However, in the case of *Trans-Tasman Resources*, the Supreme Court rejected the Crown and Trans-Tasman Resources' arguments that the RMA Treaty clause should be read as limiting the

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[19] *New Zealand Māori Council v Attorney-General,* above n 7, at 661 per Cooke P.
[20] At 642.
[21] This is a more mandatory formulation than 'take account of' in the Local Government Act, and later Acts.
[22] *New Zealand Māori Council v Attorney-General*, above n 7, at 663 per Cooke P.
[23] At 664 per Cooke P.
[24] At 673 per Cooke P and 682 per Richardson J.
[25] Implicit in *Lands*, but referred to (for example) at 715 per Bisson J.
[26] At 665 per Cooke P. See also at 683 per Richardson J.

relevance of Treaty principles to the four processes explicitly referred to in that section. The Court determined that a "broad and generous" interpretation should be given to Treaty provisions and that "an intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made quite clear."[27] In subsequent decisions, the courts have stated it is likely that if decisions have been lawfully made under legislation, that gives effect to the Crown's obligation, it cannot be argued that the Treaty has been breached.[28]

Status of Waitangi Tribunal

29. The Waitangi Tribunal was established in 1975 to hear Māori claims of breaches of the Treaty of Waitangi by the Crown. It is not a Court of law but a permanent commission of inquiry.[29] Other than in limited circumstances relating to specified land, it does not have binding powers of decision but may recommend that the Crown make reparations where a claim is upheld.[30] The Tribunal can recommend how the Crown can compensate the claimants, remove the prejudice or prevent similar prejudice occurring in the future. These recommendations are not binding on the Crown.

30. As local government is not the Crown, it is largely immune from the Tribunal's inquiries. However, both the Tribunal and the High Court have stated that the Tribunal's mandate to inquire can be extended to local authorities on the ground that the Crown is responsible for the acts or omissions of local authorities through the powers it has granted and delegated to local authorities.[31] However, it will be for the Crown to determine whether to act on any recommendations arising from such an inquiry.

31. Therefore, it is possible that local government may be required, if determined by the Crown, to implement Waitangi Tribunal recommendations.

Council Standing Orders

32. The LGA requires local authorities to adopt a set of standing orders for the conduct of its meetings and those of committees.[32] A member must abide by the standing orders.[33]

33. The content of the Orders are largely left to the local authority, although they must not contravene the LGA or the LGOIMA. The LGA does not prescribe that the Orders must make particular reference to Māori or the Treaty, however the Standing Orders may be a way of the local authority meeting its obligations under the LGA. For instance, in the requirement to

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[27] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [8].
[28] *Smith v Attorney-General* [2024] NZCA 692; [2025] 2 NZLR 1 at [150] and [152].
[29] Treaty of Waitangi Act 1975, sch 2 cl 8(1).
[30] Treaty of Waitangi Act 1975, s 6(3) – (4).
[31] See Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukau Harbour Claim* (Wai 8, 1985) at 99: "The Crown cannot divest itself of its Treaty obligations or confer an inconsistent jurisdiction on others. It is not any act or omission of the [Harbour] Board that is justiciable but any omission of the Crown to provide a proper assurance of its Treaty promises when vesting any responsibility in the Board." See also *Ngati Maru Ki Hauraki Inc v Kruithof* [2005] NZRMA 1 (HC) at [57] per Baragwanath J (Crown powers delegated to council).
[32] Section 21(1).
[33] Schedule 7 clause 16.

provide opportunities for Māori to contribute to decision-making.[34] This particular section is discussed in detail at paragraph [90].

34. Local Government New Zealand has produced a Standing Orders Guide that is used by a number of councils as a template for their standing orders. Franks Ogilvie has previously provided advice on these guidelines, which we understand has been read by some Kaipara District Councillors. We updated this advice in May 2025 in relation to Local Government New Zealand's 2025 SO Guide. This advice is attached as "Appendix C". In summary, and of relevance, the advice says:

    34.1. The LGNZ claim on the 'mandate' of mana whenua has no statutory basis;

    34.2. That there are no obligations on local authorities to consider the Treaty of Waitangi beyond what is statutorily prescribed;

    34.3. Local authorities need to comply with provisions in the LGA, and other applicable enactments (or settlement agreements), but there are no express obligations to Māori in relation to standing orders; and

    34.4. The SO Guide fails to warn of the risks that legitimate expectations could be established (which are enforceable by a Court) if suggestions in the SO Guide are implemented.

Use of Te Reo in Local Government

35. Te Ture mō Te Reo Māori 2016 replaced the Māori Language Act 1987 which declared Māori language to be an official language of New Zealand. This provides a legal right to use te reo in Court, but does not prescribe a right to use the language outside of that environment.

36. Te Ture mō Te Reo Māori 2016 also requires government departments to be guided by principles regarding te reo, including consultation on its promotion in the provision of services and information.[35] Local government is not subject to these principles.

37. Whilst, there is no explicit legal obligation to allow for the use of Māori in local government proceedings, or publications, the use of te reo may be part of providing opportunities for input into decision-making which is discussed in detail under the LGA section of this opinion at [90].

RECENT DEVELOPMENTS

Local Government Reform

38. In August 2024, the Prime Minister announced the Government's "Local Government Forward Work Programme". [36] This signalled a significant reform programme for local government to get "councils back to basics". As part of this reform, Cabinet has agreed to amend and streamline the purpose provisions of the LGA including by abolishing the four Wellbeings.

[34] Local Government Act 2002, s 14(1)(d).
[35] Section 9.
[36] Christopher Luxon, Prime Minister "Speech to the LGNZ SuperLocal conference" (21 August 2024).

39. As detailed throughout this opinion, the purposes of the LGA, which requires promotion of the Wellbeings, are significant in considering what obligations local government owes to Māori. Further detail on the reform programme is not yet known, and it is unclear when it will be implemented.

Tikanga

40. Tikanga is a "customary system of values and practices that have developed over time and are deeply embedded in the social context".[37] In *Ellis,* the Supreme Court defined tikanga as including all the "values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct."[38] And that it includes both practice and principle.[39]

41. The LGA does not refer to tikanga, however the recent decision in *Ellis* indicates that tikanga can and will be incorporated into the legal context for determination of an issue, where it is relevant and will assist the Court, even when it is not part of the governing legislation.

42. In *Ellis*, a majority decision by Winkelmann CJ, Glazebrook and Williams JJ, the Court held that the previous orthodox tests for incorporation of tikanga (as custom pertinent to Māori) in the common law, should no longer apply.[40] *Ellis* was not Māori and there was no requirement to determine tikanga with respect to him. The court stated that these tests wrongly presumed that the law inherited from the United Kingdom was dominant, and that tikanga may only be considered in reference to its consistency with Western values. Further, it was found the Courts may not "declare" the content of tikanga, as they cannot change it.[41]

43. The Law Commission's report, He Poutama, examined the impact of tikanga on what they call "state law".[42] It considered how tikanga related to powers, rights, duties, liabilities and other interests within a relationship. The Commission said that tikanga is "a coherent, integrated system of norms";[43] that it is the original law of this country.

Can Tikanga be treated as 'law'?

44. In following *Ellis*, the Commission stated that tikanga continues to function as, and retain, its separate identity.[44] The Commission identifies tikanga as sitting alongside, with some overlap and influence on and from, state law. In regard to property rights, it states that "tikanga-based interests should not be conflated with and do not require proof of proprietorship in an English law sense."[45]

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[37] Te Aka Māori Dictionary "Tikanga" <Māoridictionary.co.nz>.
[38] *Ellis v R* [2022] NZSC 114 at Appendix: [26].
[39] At Appendix: [27].
[40] At [271].
[41] At [271]. The Court held that tikanga could be determined from pūkenga and would vary between iwi.
[42] The Law Commission defined ''state law" as "legislation, other regulation, judge-made common law and state-based institutions, conventions and norms that underpin state law"; Law Commission *He Poutama* (NZLC SP24, 2023) at [1.20].
[43] At [3.1].
[44] At [1.22].
[45] At [5.9].

45. In *Trans-Tasman Resources*, the Supreme Court unanimously held that a statutory reference in the EEZ to "existing interests" in the coastal marine area, included tikanga based interests that had been claimed but not yet granted by the Courts under the MACA. The Court concluded that tikanga will be "applicable law" under the EEZ where its recognition and application is appropriate to the particular circumstances of the consent application at hand. The Court also held that "tikanga-based customary rights and interests" were existing interests under relevant legislation. The Court of Appeal had held that it was –

> *…axiomatic that the tikanga Māori that defines and governs the interests of tangata whenua in the taonga protected by the Treaty is an integral strand of the common law of New Zealand.*[46]

46. For local authorities the implications could be significant. Until there have been more judgments it will not be possible to dismiss the relevance of tikanga as 'law', that is beyond the council to research without going to court.

Review of Treaty Provisions

47. NZ First's Coalition Agreement with the National Party agreed the Coalition will "reverse measures taken in recent years which have eroded the principle of equal citizenship" and specifically will (amongst other things):[47]

> *"Conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements) that includes 'The Principles of the Treaty of Waitangi' and replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references."*

48. NZ First Deputy Leader Shane Jones has said that many of the Treaty clauses are too vague, and that more certainty is needed so the clauses don't "undermine decision-making and investment".[48]

49. In September 2024, Cabinet agreed to the list of legislation deemed to be in scope of the Review.[49] Of relevance to local government, the following acts and provisions have been included:

    49.1. RMA – Section 8;

    49.2. LGA – Section 4; and

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[46] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZCA 86, [2020] NZRMA 248 at [177].
[47] New Zealand National Party and New Zealand First *Coalition Agreement: New Zealand National Party & New Zealand First (54th Parliament)* (24 November 2023) at 10.
[48] Te Aniwa Hurihanganui "Govt moves to replace or repeal Treaty principles clauses from laws" *1News* (online ed, New Zealand, 27 May 2024).
[49] Laura Walters "Govt to change or remove Treaty of Waitangi provisions in 28 laws" *Newsroom* (online ed, New Zealand, 14 October 2024).

49.3. The Urban Development Act 2020 – Section 4 and Schedule 3, clause 1.[50]

50. A timetable for the review is not yet public, however it is expected that some amendments to Treaty provisions may be made through wider changes to the particular Act. For example, the Government has announced an intention to replace the RMA with a new system that focuses on the enjoyment of property rights.[51]

RMA Reform

51. Phase one of the RMA reform involved the repeal of the Natural and Built Environment Act and Spatial Planning Act in December 2023.[52]

52. Phase two involves the following:

52.1. The passing of the Fast-track Approvals Act in December 2024, which is discussed below at [57].

52.2. Two bills to amend the RMA, and a package of national direction changes; seven new national direction instruments, and amendments to fourteen existing instruments.

a) The first bill was the Resource Management (Freshwater and Other Matters) Amendment Bill. This bill sought to reduce regulatory burdens by amending the RMA to change resource consent processes, local authority obligations, and stock exclusion regulations. This bill has passed into legislation, receiving Royal Assent on 24 October 2024.[53]

b) The second bill is the Resource Management (Consenting and Other System Changes) Amendment Bill. This bill was introduced to the House on December 9 2024. It will amend the RMA to ease consenting for new infrastructure, encourage investment in renewable energy, and make medium-density residential standards optional for council.[54] It is intended to become law in mid-2025.

52.3. The second RMA bill, alongside the new and amended national direction instruments, is targeted to deliver on four packages related to:

a) Infrastructure and energy;

b) Housing;

[50] The Urban Development Act facilitates development by Kainga Ora – Homes and Communities. There is a limited role for local government in this Act, namely regarding the interaction of planning instruments with the streamlining provisions in the Act. Treaty of Waitangi obligations will fall substantively on Kainga Ora, as the Crown.
[51] Hon Chris Bishop "RMA Reform Phase Two priorities and plan" (press release, 22 August 2024).
[52] Ibid.
[53] Resource Management (Freshwater and Other Matters) Amendment Bill 2024 (47-1) (explanatory note) at 1-4.
[54] Resource Management (Consenting and Other System Changes) Amendment Bill 2024 (105-1) (explanatory note) at 1.

c) Farming and the primary sector; and

d) Emergencies and natural hazards;

53. As of July 2025, the Government is also consulting on new National Environmental Standards for papakāinga (communal or community housing on whenua Māori) that is intended to make it easier for Māori to develop. Local authorities with decision-making authority in relation to those standards will be obligated to follow them.[55]

54. The Government is also consulting on the National Policy Statement for Freshwater. It is not yet clear whether this will impact on local authority obligations in relation to freshwater and Māori, however proposed changes include to the role of Te Mana o Te Wai (the Māori concept of prioritisation of the health of freshwater and its ecosystem).[56]

55. Phase three of the RMA reform involves a full replacement of the RMA with new legislation to be introduced to Parliament before the end of 2025.

55.1. Cabinet has agreed on core design features of the new resource management system. Of relevance, this includes (but is not limited to):[57]

a) Providing for greater use of national standards to reduce the need for resource consents and to simplify council plans;

b) Shifting the focus away from consenting before activities can get underway, towards compliance, monitoring and enforcement of activities' compliance with national standards; and

c) Upholding Treaty of Waitangi settlements and the Crown's obligations.

55.2. The Supplementary Analysis Report for the second RMA amendment bill notes some proposals may result in a loss of Iwi involvement in decision-making and less effective Iwi involvement.[58] Although, there will be a reduction in public consultation generally, in pursuit of the objectives of growth and expediency. The Bill has been published and does not create any additional obligations to Māori, but makes necessary provision for obligations owed under other enactments, such as specifying that certain rules don't apply to customary non-commercial fishing for the purpose of giving effect to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.[59] Submissions on the Bill closed on 10 February 2025.

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[55] Hon Chris Bishop, Hon Tama Potaka "Enabling more housing: National direction on granny flats and papakāinga" (press release, 29 May 2025).
[56] Hon Todd McClay, Hon Andrew Hoggard "Government launches consultation on freshwater national direction" (press release, 29 may 2025).
[57] Hon Chris Bishop and Simon Court "Replacement for the Resource Management Act takes shape" (press release, 20 September 2024).
[58] Supplementary Analysis Report "Resource Management Act Amendment Bill 2- analysis to support introduction" (27 November 2024) at 18-19.
[59] Resource Management (Consenting and Other System Changes) Amendment Bill 105-1 (9 December 2024), Section 26.

56. It is not entirely clear how the reforms will effect local government obligations to Māori, but as the focus of the reform is to prioritise growth and development, obligations may be reduced.

The Fast-Track Approvals Act

57. The FTA Act received royal assent on 23 December 2024. The Act places obligations on decision-makers that includes local authorities. Local authorities may also be applicants in this process.

58. The policy intent of the Act was to "provide a more efficient and certain pathway for projects to seek approvals".[60] It provides for approvals to be granted under the following Acts:

    58.1. Resource Management Act 1991;

    58.2. Conservation Act 1987;

    58.3. Reserves Act 1977;

    58.4. Wildlife Act 1953;

    58.5. National Parks Act 1980;

    58.6. Heritage New Zealand Pouhere Taonga Act 2014;

    58.7. Freshwater Fisheries Regulations 1983;

    58.8. Exclusive Economic Zone and Continental Shelf (environmental Effects) Act 2012;

    58.9. Crown Minerals Act 1991;

    58.10. Public Works Act 1981; and

    58.11. Fisheries Act 1996.

59. Consultation on projects must occur before they are approved. When an application is lodged with the Environmental Protection Authority, the applicant is required to have consulted with groups in section 11 of the Act.[61]

60. Of relevance, the applicant would need to consult with:

    60.1. the relevant local authorities;

    60.2. any relevant iwi authorities, hapū, and Treaty settlement entities, including:

[60] Fast-Track Approvals Bill 2024 (31-2) (select committee report) at 1.

[61] For referral projects, section 11 requires consultation to occur prior to lodging the referral application. Under section 43(2), information on consultation must be included in a substantive application for referral or listed projects. If it is a listed project, the information that must be included is the same as for a referral application under section 11 (with necessary modifications).

a) iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements;

b) the tāngata whenua of any area within the project area that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996; and

c) any relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011.

60.3. ngā hapū o Ngāti Porou, if the project area is within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou; and

60.4. the relevant administering agencies.

61. Once an expert panel is appointed to consider an application, the panel *must* invite written comments on a substantive application from the following groups (amongst others):[62]

61.1. the relevant local authorities;

61.2. any relevant iwi authorities;

61.3. any relevant Treaty settlement entities (including an entity that has an interest under a Treaty settlement within the area to which the substantive application relates, and an entity operating in a collective arrangement, provided for under a Treaty settlement, that relates to that area);

61.4. any protected customary rights groups and customary marine title groups whose protected customary rights area or customary marine title is within the area to which the substantive application relates;

61.5. any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 that is identified in the report prepared under section 19A or 24FB and seeks recognition of customary marine title or protected customary rights within the area to which the substantive application relates;

61.6. ngā hapū o Ngāti Porou if the area to which the substantive application relates is within or adjacent to, or the activities to which it relates would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou;

61.7. the tāngata whenua of any area within the area to which the substantive application relates that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws made under Part 9 of the Fisheries Act 1996;

62. Whilst the requirements outlined are not obligations of local government, the process is significant to local government. Local authorities have the ability to submit on projects and do not need to take account of Māori in relation to such consultation (Māori will be consulted with separately). Further, the effect of the Act is to negate the need for RMA applications to

[62] Section 53.

local government for certain projects that meet the specified criteria. The current obligations of local authorities under the RMA are discussed at paragraph [131].

LEGISLATION

Definition of "Māori" in a legislative context

63. The LGA, LGRA, and RMA, do not define "Māori". Legislation may refer to "Māori" or to "iwi and hapū". Interpretation of what Parliament intended when referencing "Māori" in legislation, is left to the Courts. The Courts seek to ensure that the working of legislation is sensible, just and practical.[63] Therefore, where there is no express definition, the courts will consider the purpose and context of the Act.[64]

64. The purpose of the LGA is to allow for democratic and effective local government that recognises the diversity of New Zealand communities.[65] The key obligations owed to Māori in the LGA seek to engage the local community in decision making and promote accountability to local communities. Therefore, whilst the definition of Māori will need to be considered in the context of specific provisions, in relation to the LGA, it will likely require a broad interpretation that incorporates the promotion of engagement and accountability. This is supported by statements of the High Court that it is not for local authorities to determine competing claims of cultural status of iwi under the LGA,[66] and therefore local authorities would want to consider comment from any and all iwi or hapu claiming status under the umbrella of engaging with "Māori".

65. The LEA does contain an explicit definition of Māori – "a person of the Māori race of New Zealand; and includes any descendant of such a person".[67]

Local Government Act 2002

66. The LGA has a number of clauses imposing or suggesting, either expressly or impliedly, particular action be taken in regards to Māori. This section of the opinion is structured as follows:

    66.1. The Treaty of Waitangi Clause – Section 4

    66.2. The Purpose provisions and principles

        a) Section 3 – Act's Purpose

        b) Section 10 – Purpose of Local Government

        c) Section 14 – Principles relating to local authorities

    66.3. Consultation

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[63] *Commissioner of Inland Revenue v Wilson* [2017] NZCCLR 12 (CA) at [29].
[64] Legislation Act 2019, s10
[65] Local Government Act 2002, s3
[66] *Hart, above n 1,* at [115].
[67] Local Electoral Act, s5(1).

a) Section 77 – Requirements in relation to decisions

b) Section 81 – Contributions to decision-making processes by Māori

c) Section 82 – Principles of consultation

66.4. Good Employer

a) Clause 36 of Schedule 7

Treaty of Waitangi clause

67. As outlined, local government are not part of the Crown, and therefore do not owe obligations to Māori under the Treaty of Waitangi. However, there is a Treaty Principles clause in the LGA that imposes a statutory obligation on local government.

68. Section 4 of the LGA provides, that:

> *In order to recognise and respect the **Crown's responsibility** to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, **Parts 2 and 6 provide principles and requirements for local authorities** that are intended to facilitate participation by Māori in local authority decision-making processes. [**emphasis added**]*

Whilst, as discussed at [28], the Courts may interpret Treaty clauses broadly, it was confirmed in *Hart v Marlborough District Council* that Parliament intended to restrict the Treaty obligations of local authorities under the LGA.[68] Local authorities do not owe obligations beyond those explicitly included in the Act, and the proper focus of the Treaty clause, is to ask whether the local authority has breached its obligations under Part 2 and/or 6 of the LGA.[69]

69. Part 2 of the LGA provides the purpose of local government, and the roles and powers of local authorities. Part 6 provides requirements for planning, decision-making and accountability.

The Purpose Provisions and Principles

70. Sections 3 and 10 of the LGA outline the purpose of the Act and of Local Government, and both sections reference the Wellbeings. As identified at [38-39] of this opinion, the Government is intending to remove references to the Wellbeings from the LGA,[70] though the details of the reform programme are unknown as is implementation. The below discussion outlines what the law currently is

71. The purpose of the LGA is outlined in section 3 which states:

> The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—
>
> (a) states the purpose of local government; and

[68] *Hart*, above n 1, at [63].
[69] At [78].
[70] Hon Simeon Brown "Government getting local government back to basics" (press release, 16 December 2024).

(b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and

(c) promotes the accountability of local authorities to their communities; and

(d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and **cultural well-being** of their communities, taking a sustainable development approach. [**Emphasis added**]

72. Section 10 outlines the purpose in relation to local government and is worded similarly:

(1) The purpose of local government is—

(a) to enable democratic local decision-making and action by, and on behalf of, communities; and

(b) to promote the **social, economic, environmental, and cultural well-being of communities** in the present and for the future. [Emphasis added]

73. Section 3 only requires local government to make decisions that are not *contrary* to the purpose of the LGA.[71] This enables decisions to be made that are for an ancillary purpose. However, section 10 is a more express obligation, in that it requires local government to *give effect* to the promotion of the Wellbeings.

74. Section 10 references other matters local government also need to give effect to, which includes the enabling of democratic local-decision making by and on behalf of communities. Therefore, neither section 3 nor 10, or any of the Wellbeings, trump democratic decision making.

75. This is further emphasised by section 14 of the LGA which sets out the principles relating to local authorities:

(1) In performing its role, a local authority must act in accordance with the following principles:

(a) a local authority should—

(i) conduct its business in an open, transparent, and democratically accountable manner; and

(ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:

(b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and

(c) when making a decision, a local authority should take account of—

(i) the diversity of the community, and the community's interests, within its district or region; and

(ii) the interests of future as well as current communities; and

(iii) the likely impact of any decision on each aspect of well-being referred to in section 10:

(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:

[71] See *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74 at [51] and *Helicopters Ltd v Minister of Conservation* [2013] NZHC 982 at [171] per Kós J "The existence of a collateral purpose does not invalidate the exercise of a statutory power… but the additional purpose must not run counter to, thwart, circumvent or subvert the proper statutory purpose".

(e) a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes; and

(f) a local authority should undertake any commercial transactions in accordance with sound business practices; and

(fa) a local authority should periodically—

(i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and

(ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and

(h) in taking a sustainable development approach, a local authority should take into account—

(i) the social, economic, and **cultural well-being** of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

(2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i). [**Emphasis added**]

76. Importantly, section 14 provides that if there is any conflict between the Wellbeings, this is to be resolved in accordance with the principle that it should conduct its business in an open, transparent, and democratically accountable manner.

77. The effect of these sections, is that if there is the ability to give effect to the Wellbeings as well as enable democratic decision making, then this should be adhered to by Councils in making decisions, so far as is possible. However, if there is a conflict between these two principles, then democratic accountability is of primary importance.

Ability to enforce duty

78. We are not aware of a case that directly challenges whether the LGA purpose provisions could invoke an enforceable right by Māori to ensure local authority decisions promote or provide for their Wellbeings.

79. However, in *Blakeley Pacific Ltd*,[72] the Court considered the purpose provision of the RMA which contains similar wording; requiring the recognition and provision of sustainable management which includes the enabling of "people and communities to provide for their social, economic, and cultural well-being". In relation to the RMA clause, the Court found that it can require consideration of Māori and how their cultural well-being can be 'enabled', but the clause also requires consideration of non-Māori communities. Particular action to enable Māori was not required, but there needed to at least be consideration of ways this could be accounted for in the relevant proposal.

[72] *Blakeley Pacific Ltd v Western Bay of Plenty District Council* [2011] NZEnvC 354.

80. The Courts have also been clear that within the decision-making framework of the LGA, discretion about how to meet the Wellbeings are for the particular local authority:

80.1. In *New Zealand Forest Owners Association Inc v Wairoa District Council*, the High Court considered whether in promoting the environmental well-being of its community the council was required to take climate change into consideration. It found that it did not;[73]

80.2. In *Wellington City Council v Woolworths New Zealand Ltd* the Court found that economic, social and political assessments in relation to the setting of rates, were not specified in the Act, and had therefore been left to the overall judgment of elected representatives;[74]

80.3. In *Waitakere City Council,* the Court stated "In review proceedings the court cannot substitute its own opinion for that of the elected council. Proper respect must be given to the role and responsibilities of the democratically elected council";[75]

80.4. In *Royal Forest and Bird Society of New Zealand Inc v Southland District Council* [NZHC] 2023 399, Forest and Bird's argued the Council had failed to have proper regard for sustainability in reference to the Wellbeings.[76] The Court did not agree and further stated that section 14 (the principles relating to local authorities) is a guide to the exercise of powers. The implementation of section 14 principles is through the ballot box at elections rather than through a Court review.[77]

81. However, the centrality of democratic decision-making does not override the necessity to follow the decision-making framework. The High Court in *Hauraki Coromandel Climate Action Inc v Thames-Coromandel District Council*, was clear that[78] –

> *"While the Council has discretion as to how to satisfy its compliance with the LGA, it was required to consider how to comply."*

82. Therefore, there may be circumstances where applying the Wellbeings in relation to Māori as a "community" could conflict with the enabling of democratic decision making, and in such circumstances a Council would retain discretion to make a decision to prioritise the enabling of democratic decision making and thereby not give effect to the Wellbeings of Māori, so long as it conducts business in an open, transparent and democratically accountable manner.

Consultation

83. Part 6 of the LGA deals with planning, decision-making and accountability. Section 75 sets out this part, which includes obligations of local authorities in relation to the involvement of Māori in decision-making processes.

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[73] *New Zealand Forest Owners Association Inc v Wairoa District Council* [2022] NZHC 761 at 546.
[74] *Wellington City Council v Woolworths New Zealand Ltd (No 2)* [1996] 2 NZLR 537 (CA) at 545.
[75] *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 (CA) at 15.
[76] *Royal Forest and Bird Society of New Zealand Inc v Southland District Council* [NZHC] 2023 399 at [59].
[77] At [67].
[78] *Hauraki Coromandel Climate Action Inc v Thames-Coromandel District Council* [2020] NZHC 3228 at [64].

84. Section 76 states that every decision must be made in accordance with sections 77, 78, 80, 81 and 82.

85. The Court of Appeal has confirmed that Part 6 of the LGA does not confer any *duty* to consult with affected or interested parties. Local authorities are given a deliberately broad discretion as to whether to consult, and, if so, how.[79] However, there are specific provisions that relate to involvement of Māori in decision-making, and compliance with these could require some form of consultation as it could be deemed unreasonable to not have done so.

Section 77 & 79

86. Section 77(1) of the LGA requires that in the course of the decision-making process, a local authority must:

> (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
>
> (b) assess the options in terms of their advantages and disadvantages; and
>
> (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

87. This section is subject to section 79 which states that the local authority has discretion to make judgments about how to comply with section 77 (the decision-making process) that is "largely in proportion to the significance of the matters affected by the decision as determined in accordance with" the significance and engagement policy. All local authorities are required to have a significance and engagement policy, and if they wish to change them, they must undertake consultation in accordance with section 82.

88. Section 77 only requires taking into account of the relationship of Māori and their culture and traditions where it is a significant decision in relation to land or water. It does not require any prioritisation of such a consideration. This is emphasised by section 79 which provides it is the responsibility of a local authority to exercise its discretion about how to achieve compliance with section 77 (that is in proportion to the significance of the matters as determined through adherence to the significance and engagement policy).

89. Consultation with Māori is not prescribed, but consideration of relevant relationships are. The onus is not solely on the local authority to inform itself of interests under section 77(1)(c). In *Hart*, the Court found the Council's Hearing Panel was entitled to rely on Rangitāne to adduce information to support its position as Rangitāne were given several opportunities to provide the information.[80] The important thing is that relevant iwi and hapu are given opportunities to provide information regarding a significant decision in relation to land or a body of water.

[79] *Wellington City Council v Minotaur Custodians Ltd* [2017] NZCA 302, at [52].
[80] *Hart,* above n 1, at [93].

Section 81

90. Section 81 of the LGA specifies local authority obligations to Māori in regard to decision-making-

> **81 Contributions to decision-making processes by Māori**
>
> (1) A local authority must—
>
> (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and
>
> (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and
>
> (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).
>
> (2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—
>
> (a) the role of the local authority, as set out in section 11; and
>
> (b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgments.

91. Section 81 provides that the local authority must establish ways for Māori to be involved in the decision-making process, including consideration of ways to foster the development of Māori capacity to contribute. These requirements are likely to be overlapping. For example, the requirement to maintain processes to provide opportunities for Māori to participate is likely to involve measures to foster development of the ability to participate. These processes are identified and articulated in the LTP, discussed from paragraph [103].

92. There is a general obligation for the local authority to "enable democratic local decision-making".[81] It is possible that a council may conclude that satisfaction of section 81 is met through the same measures as used for non-Māori (as part of their obligation to enable democratic decision making).[82] However, in *Hart*, the court considered it "concerning" that Rangitāne had to make first contact with the Council to seek information, suggesting that targeted engagement (in terms of opportunities to contribute and information provided) with relevant iwi is required.[83]

93. In *Te Runanga O Ngati Whatua v Kaipara District Council,* the High Court confirmed that section 81 does not impose a duty to consult with Māori, but that some evidence of maintenance of processes for Māori to contribute decisions was needed.[84] In that case there were monthly meetings with representatives of iwi and hapu informing them that the Council would be making a decision to retain or disestablish its Māori ward. What is required will be context dependent, and there is no specification as to what extent Māori capacity to contribute must be provided for. It is therefore prudent for a local authority to record how it considers processes for Māori to contribute to decision-making is maintained, and ensure information is provided to relevant iwi and hapu.

[81] Local Government Act 2002, s 10.
[82] As required in the purpose of the LGA at s 10.
[83] *Hart*, above n 1, at [144].
[84] *Te Runanga O Ngati Whatua v Kaipara District Council* [2024] NZHC 3889, at [88].

94. The obligations in section 81(1) are constrained by subsection (2). That is, when the local authority is making a decision under section 81(1), they must have regard to the purpose of the role of a local authority[85] which includes enabling democratic decision-making, and "such other matters as the local authority considers on reasonable grounds to be relevant to those judgments". There is little guidance about what may be considered "reasonable grounds" but it would be fair to say other LGA considerations, such as the principles set out in section 14, would be relevant.[86]

95. There is very limited commentary on whether capacity building under section 81 requires a financial contribution to Māori.[87] There is no statutory requirement for this to occur but it is arguable that if a financial obstacle was so substantive that it prevented Māori from participating, and the Council did not consider this, that it may be in breach of its obligations under the LGA.

Section 82

96. As part of the LGA's intention to promote democratic decision-making, section 82 of the LGA requires consultation in certain situations and in regards to Māori, in accordance with a number of principles:

> (1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:
>
> (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
>
> (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:
>
> (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:
>
> (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:
>
> (e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:

[85] Note that the section specifies that it must have regard to the purpose of a "local authority" (section 11) which in turn refers to the purpose of "local government" (section 10).
[86] Section 14 states that a local authority must act in accordance with principles that include conducting business in a democratically accountable manner, taking account of diversity of the community, the interests of future as well as current communities, prudent stewardship and efficient and effective use of its resources.
[87] See Grant Hewison "Agreements between Māori and Local Authorities" (2000) 4 NZJEL 121 (agreements and protocols for consultation).

(f) that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority and explanatory material relating to the decisions, which may include, for example, reports relating to the matter that were considered before the decisions were made.

(2) A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1).

(3) The principles set out in subsection (1) are, subject to subsections (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.

(4) A local authority must, in exercising its discretion under subsection (3), have regard to—

(a) the requirements of section 78; and

(b) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and

(c) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and

(d) the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and

(e) the costs and benefits of any consultation process or procedure.

(5) Where a local authority is authorised or required by this Act or any other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in subsection (1) as are inconsistent with specific requirements of the procedure so prescribed are not to be observed by the local authority in respect of that consultation. [**Emphasis added**]

97. Section 82(2) makes explicit where Māori will in some way be interested in or affected by a decision, "A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1)." However, this does not mean that a local authority has a duty to consult on everything, but it must exercise this discretion in line with the requirements of this part of the LGA. These are a set of performance standards.[88] The High Court has stated the provision requires local authorities to have consultation processes in place, which are then to be used in circumstances where a local authority is obliged (on some other basis) to consult with Māori, or where it decides to consult with Māori.[89]

98. What is required will therefore be context dependent. Section 82 was considered by the Court in *Hart* where it was found that consultation on a bylaw affecting iwi, only needed to occur at a point where the outcomes of consultation can be considered in the decision being made.[90] Local authorities have discretion in determining the appropriate way to observe the principles (subject to subsection 4 and 5).

[88] *Wellington City Council v Minotaur Custodians Ltd,* above n 79, at [38-42].
[89] *Te Runanga O Ngati Whatua v Kaipara District Council,* above n 84, at [105].
[90] *Hart*, above n 1, at [151].

99. Some specified decisions of local authorities require application of the SCP set out in Section 83. This process is detailed in discussion on the LTP at [103]. Section 82 applies, including the explicit obligations to Māori, even if the SCP is followed.[91]

100. The Courts have considered the application of the consultation obligations under section 82 and section 83 generally:

100.1. In *Wellington CC v Minotaur Custodians Ltd,* the Court of Appeal looked at the effect of section 82, finding, that when a council does choose to consult, there are principles that apply to the particular forms of consultation adopted. These principles are basic performance standards, with subsection (3) as the counterweight, emphasising that the local authority retains discretion as to how these are met. These are then subject to further considerations in section 82(4) that the local authority must relevantly bear in mind. Instead of a duty to consult with affected or interested parties, local authorities are given "a deliberately broad discretion as to whether to consult, and, if so, how", but consultation decisions must be rational and consistent with the objects of the Act and the particular controlling provisions.[92]

100.2. In *Gwynn v Napier CC,*[93] the High Court held that in a decision on Easter trading, the council had failed to adequately consult two affected groups – namely the local Christian community and the trade union. This was because the timeframe and manner of the notice did not encourage them to respond. Individual churches were not contacted directly, the timing was over the Christmas/New Year period, and a request for additional time was declined. The trade union notice was sent to a central, rather than local branch.

100.3. In *Neil Construction Ltd v North Shore CC*[94], the High Court examined the adequacy of information provided in a consultation using the SCP. The court held that to meet the requirements of being transparent and accountable the Council should be "making information readily available in a format and manner that enables the requestor to use and apply the information for the purposes intended by the Act."[95]

101. Based on the cases discussed under this section, it would be prudent for local authorities to record processes for consultation with Māori that at least allows for the provision of information and opportunities for comment from Māori in decisions affecting iwi or hapu.

District Planning

102. The two primary planning tools for local government is the LTP and the AP. Schedule 10 of the LGA sets out the information that must be included in a LTP and AP.

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[91] See *Karaka Point Environs Residents Inc v Marlborough DC* [2013] NZHC 2577, at [81] where the High Court concluded the basic consultation provisions applied alongside the special consultative procedure under section 83.
[92] *Wellington City Council v Minotaur Custodians Ltd*, above n 79, at [42].
[93] *Gwynn v Napier City Council* [2018] NZHC 1943 at [63].
[94] *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC).
[95] At [288].

Long Term Plan

103. The purpose of the LTP is to: describe the activities and community outcomes of the local authority; provide a long term focus for decisions and activities of the local authority; provide integrated decision-making and co-ordination of resources and a basis for accountability.[96]

104. In addition to the general consultation procedures set out in the LGA section, local authorities are required to use the SCP for the LTP.[97] This process does not require specific obligations for Māori (although the LTP itself does). However, as the general principles under section 81 have application regardless of whether the SCP applies, the SCP also requires local authorities to consider, describe and provide an opportunity for Māori to be informed and present their views.

105. Additionally, the purpose of consultation on the LTP is to provide an effective basis for public participation in local authority decision-making processes relating to the content of a long-term plan by:[98]

> 93B Purpose of consultation document for long-term plan
>
> The purpose of the consultation document is to provide an effective basis for public participation in local authority decision-making processes relating to the content of a long-term plan by—
>
> (a) providing a fair representation of the matters that are proposed for inclusion in the long-term plan, and presenting these in a way that—
>
> (i) explains the overall objectives of the proposals, and how rates, debt, and levels of service might be affected; and
>
> (ii) can be readily understood by interested or affected people; and
>
> (b) identifying and explaining to the people of the district or region, significant and other important issues and choices facing the local authority and district or region, and the consequences of those choices; and
>
> (c) informing discussions between the local authority and its communities about the matters in paragraphs (a) and (b).

106. This provision is a guide to what consultation generally, and in relation to Māori, will need to involve in relation to the LTP.

Māori Capacity

107. Of specific relevance, a LTP must state how the local authority is meeting its obligation to address "Development of Māori capacity to contribute to decision-making processes".[99] To do so, they must adhere to the requirements of section 81 of the LGA discussed above at [90], including by:

107.1. Establishing and maintaining processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority;

[96] Local Government Act 2002 s 93(6).
[97] Section 93(2).
[98] Section 93B.
[99] Local Government Act 2002 Schedule 10 Part 1,

107.2. Considering ways to develop the capacity of Māori to contribute;

107.3. Providing relevant information to Māori for the purposes of the above.

108. In our opinion all these requirements are subject to and limited by the role of the local authority (which is to give effect to the purpose of local government) and any other matters the local authority thinks are relevant. As set out in paragraph [72], the purpose of local government is to "enable democratic local decision making" and to promote the Wellbeings.[100]

109. The processes and capacity building tools are not required to be specific to Māori. Capacity building mechanisms may be offered to non-Māori but it is likely to be a breach of the LGA if there is not a specific regard to any deficiencies in Māori participation or a lack of culturally appropriate tools that encourage engagement. It is also likely that there needs to be reasonable efforts to provide relevant information on decision-making processes to Māori to satisfy the LGA. This may take the form of te Reo materials, and distributions through Māori-based networks such as local rūnanga (tribal councils).

110. The LTP is not a decision to act on a specific matter,[101] but local authorities must not make a decision that is significantly inconsistent with the LTP unless reasons for the inconsistency are provided.[102] This is maintained for allowing the political will of the local authority to maintain a decision making mandate.[103] Therefore, it is not a breach of the LGA if local authorities do not implement a planned intention to engage Māori in a particular way. It is important to note, however, that a local authority may be in breach of its general duty to engage in meaningful consultation if it raised legitimate expectations of consultation, and then did not meet them.[104]

Community Outcomes

111. Schedule 10 also requires the LTP to describe "Community Outcomes", that is how the plan delivers for particular groups. Māori could be a described as such a community. It is also arguable that individual iwi, in an area where there are multiple iwi and hapū, could be described as a community.

112. Note that this is a descriptor of outcomes and what is being done. It is the Wellbeings that are the measure of whether the local authority is delivering for its community.

Annual Plan

113. The AP does not have specific requirements regarding Māori. However, when the AP is prepared with the LTP (in the year that this is required), the SCP requirements for the LTP will

[100] The "well-beings" are to promote the social, economic, environmental and cultural well-being of the community.
[101] Local Government Act 2002 s 96(4).
[102] LGA section 96(3), section 80.
[103] Note s10 of the LGA that states the purpose of local government is to "enable democratic decision-making".
[104] *New Zealand Association for Migration and Investments Inc v Attorney-General* [2006] NZ AR 45(HC) at [187].

need to also be followed for the contents of the AP. The AP must also include a report on the activities a local authority has undertaken to provide opportunities for Māori to contribute to the decision-making process.[105]

Access to drinking water

114. Section 125 of the LGA requires a territorial authority to inform itself about the access each community has in its district to drinking water services by undertaking an assessment. This section allows for an appropriate organisation, including any iwi or Māori organisation, to undertake this assessment. It does not require the organisation to be an iwi or Māori organisation.

Good Employer

115. Section 39 of the LGA states a local authority must act in accordance with particular principles including to be a "good employer". Schedule 7 requires local authorities to operate a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees, including (amongst other things):[106]

115.1. An equal employment opportunities programme;

115.2. The impartial selection of suitably qualified persons for appointment;

115.3. Recognition of:

a) The aims and aspirations of Māori; and

b) The employment requirements of Māori; and

c) The need for greater involvement of Māori in local government employment; and

115.4. Opportunities for the enhancement of the abilities of individual employees; and

115.5. Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups.

116. In addition to this, a local authority when making an appointment must "give preference to the person who is best suited to the position".[107] This reflects the obligations under the Human Rights Act which is discussed at [194] of this opinion.

117. It is unclear what being a "good employer" adds beyond general employment law obligations. In *Matthes v New Zealand Post Ltd (No 3),* the Court stated it was not satisfied that the duty to be a good employer was more onerous than an employer's general obligation to act fairly.[108] Further, in *Terpstra*,[109] the Employment Relations Authority concluded that Queenstown Lakes District Council had discharged its obligations in respect of being a good employer, due to

[105] Local Government Act 2002, Schedule 10 clause 35.
[106] Local Government Act 2002, Schedule 7, clause 36.
[107] Schedule 7, clause 36(3)(a).
[108] *Matthes v New Zealand Post Ltd (No 3)* [1992] 3 ERNZ 853 at 890.
[109] *Terpstra v Queenstown Lakes District Council* [2015] NZERA Christchurch 12 at [22].

having acted in "good faith", which an obligation is owed by all parties to any employment relationship.[110] However, a 2023 Employment Court decision found that a "good employer" in the context of the Public Service Act (which contains an equivalent provision), meant public service employers were expected to be held to heightened standards of conduct.[111] This case involved the application of tikanga to that of an individual who was not Māori, due to tikanga values being included in an employment policy.

118. We are not aware of a case on the specific requirement to recognise the aims and aspirations of Māori. On the face of the provision, all that is necessary, is the inclusion of a personnel policy that considers these factors. It does not require that the aims and aspirations of Māori are elevated above the aims and aspirations of non-Māori.

119. Local authorities retain their discretion to employ whoever they choose, or otherwise operate as an employer in any way they choose, so long as they abide by general employment law obligations, and operate and adhere to a personnel policy that fits with the requirements of clause 36.

Governance

120. Following a triennial general election, Local authorities are required to prepare and make publicly available a local governance statement that includes information on (amongst other things) "policies for liaising with, and memoranda or agreements with, Māori".[112]

121. In relation to the appointment of directors to council organisations, a local authority is required to be of the opinion that the person has the skills, knowledge or experience to guide the organisation. In identifying the skills, knowledge and experience required, the local authority "must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation".[113] This does not require that the person appointed has knowledge of tikanga Māori, but only that there is evidence that the council has considered whether such knowledge is important for the role.

Local Government Rating Act 2002

122. Rating is governed primarily by the Local Government (Rating) Act 2002 (**LGRA**). The purpose of the LGRA is (amongst other things), to:

> (b) facilitate the administration of rates in a manner that supports the principles set out in the Preamble to Te Ture Whenua Act 1993.[114]

123. The preamble to Te Ture Whenua Act 1993 states –

> Whereas the Treaty of Waitangi established the special relationship between the Māori people and the Crown: And whereas it is desirable that the spirit of the exchange of Kāwanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be

[110] Employment Relations Act 2000, section 4.
[111] *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [27].
[112] Section 40.
[113] Section 57(3).
[114] Local Government (Rating) Act 2002, s 3(b).

> reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Māori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapū, and to protect wāhi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapū: And whereas it is desirable to maintain a court and to establish mechanisms to assist the Māori people to achieve the implementation of these principles.

124. Ancestral Māori customary land, and any customary marine title area (as under MACA), are exempt from general rates.[115] The LGRA sets out a bespoke regime that clarifies the requirements for Māori freehold land.

125. Section 102 requires the adoption of funding and financial policies that includes a policy on the remission and postponement of rates on Māori freehold land. These policies must support the principles set out in the Preamble to Te Ture Whenua Māori Act. Section 108 of the LGA requires that if a policy is adopted to provide for the remission of rates on Māori freehold land, it must follow a particular procedure (set out in the section) and consideration of certain matters.[116] We have not elaborated in this opinion of what may be needed to comply with the remission policy obligation, as rating cases are generally fact specific.

Local Electoral Act 2001

126. The LEA doesn't specify or refer to any of the specific obligations to Māori referred to in the LGA. As stated at [68], under the LGA, local government has a responsibility to "maintain and improve opportunities for Māori to contribute to local government decision-making processes." Under the LEA, local authorities are required to take into account certain principles when making decisions under the LEA, including (amongst others), the "fair and effective representation for individuals and communities."[117]

127. Neither the LGA nor LEA requires local government to establish Māori wards. This is a decision for the local body, and if required, for electors through a poll.

128. The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 created new obligations for local authorities in respect of Māori wards.

129. If a local authority has Māori wards, or had resolved to establish them and had not polled residents, they had to decide by 6 September 2024 whether to retain them.[118] If a local authority decided to retain its Māori ward (or decided to continue with establishment), they must hold a referendum alongside the 2025 local body elections.[119] This referendum is binding and a Māori ward cannot be established unless a majority agrees.[120]

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[115] Schedule 1 outlines that Māori Customary Land is fully non-rateable.
[116] See Local Government Act 2002, Schedule 11.
[117] Local Electoral Act 2001, section 4.
[118] Schedule 1 clause 29.
[119] There are 43 local authorities that will be required to hold binding referendums at the 2025 local body election. The Kaipara District Council was the only local authority that resolved to disestablish its Maori Ward. The Upper Hutt City Council was in the process of establishing a Maori Ward, and rescinded its resolution to do so.
[120] Schedule 1 clause 39.

130. The LEA also contains some procedural requirements as to how candidate profiles can be submitted in Māori and English, and the calculation of Māori ward representation should this be established.[121]

Resource Management Act 1990

131. The RMA has application to local government as specified in Part 4.[122] Provisions referencing "consenting authorities" also have application to local authorities where, in relation to a particular activity, permission of the local authority is required to carry out an activity for which a resource consent is required under the RMA. [123] There is significant reform in this area and therefore it is likely that significant portions of the following will change in the coming years.

132. In particular, the following has relevance in relation to Council obligations to Māori under the RMA:

132.1. Part 2; sections 5 – 8 (purpose, matters of national importance and Treaty clause);

132.2. Consultation provisions in relation to resource consents and policy statements or plans, including consideration of the NZCPS;

132.3. Miscellaneous provisions regarding record keeping, delegation of functions and agreements in relation to Māori.

Part 2 of the RMA

Sections 5-7

133. Section 5 states that the purpose of the RMA is to "promote the sustainable management of natural and physical resources".[124] Sustainable management is defined -

> (2) In this Act, sustainable management means the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

134. In achieving the purpose of the RMA, section 6 outlines that:

> all persons exercising functions and powers under [the RMA], in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for matters of national importance.

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[121] Schedule 1A.
[122] Titled "Functions, powers, and duties of central and local government".
[123] Resource Management Act 1991 s 2.
[124] Section 5.

135. The RMA lists eight matters of national importance that includes:[125]

> (e) …the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

136. Section 7 lists "other matters" of national importance, and states particular regard must be had (amongst other things) to kaitiakitanga.

137. Kaitiakitanga is defined in the RMA as:[126]

> …the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

Treaty Principles

138. The RMA contains what we have described generally as a Treaty clause which states:[127]

> "all persons exercising functions and powers under [the Act], in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi…"

139. This Treaty provision applies to all functions and powers under the RMA, and places an obligation on the Crown and other decision-makers like local authorities. It is not much value as a limit, or a guide, to those with powers and duties under the RMA.

Application of Part 2 in relation to Māori

140. The matters of national importance, 'other matters' and the Treaty provision (sections 6 to 8) are all subject to the purpose (section 5) of the RMA. A decision made under the RMA must not be contrary to this purpose.[128] The purpose provision has been stated broadly and has been found to require the "enabling" of the social and cultural well-being of Māori.[129]

141. The failure to take into account any of these matters, could be grounds to set aside a decision, such as granting consent.[130]

142. However, the Courts have made it clear that "the provisions of Part 2 of the Act dealing with Māori interests where well founded in the evidence, give no veto power over developments under the Act".[131] These interests need to be balanced against all other matters of national importance listed in sections 6 and 7, as well as the Treaty principles and the overriding purpose of the Act. The purpose provision does not refer specifically to the enabling of social and cultural well-being of *Māori* but of "enabling peoples and communities to provide for

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[125] Section 6(e).
[126] Section 2.
[127] Section 8.
[128] A ground for judicial review of a public decision, is that a decision was made for an "improper purpose". A statutory power may be exercised for a purpose ancillary to the purpose of the enactment, but not contrary to that purpose.
[129] *Blakeley Pacific Ltd v Western Bay of Plenty District Council*, above n 72, at [190]-[191].
[130] *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 (CA) at 291-292 per Bisson J.
[131] *Freda Pene Rewiti Whanau Trust v Auckland Regional Council* HC Auckland (2005) at 298, endorsed by the High Court in *Ngati Ruahine v Bay of Plenty Regional Council* [2012] NZHC 2407 at [65].

their social, economic, and cultural well-being", and the key is the sustainable management of natural and physical resources.

143. In *Watercare Services Ltd v Minhinnick*, the Court of Appeal summarised the approach to weighting the Part 2 considerations, as:[132]

> *The Court must weigh all the relevant competing considerations and ultimately make a value judgment on behalf of the community as a whole. Such Māori dimension as arises will be important but not decisive even if the subject matter is seen as involving Māori issues… Cultural wellbeing, while one of the aspects of section 5, is accompanied by social and economic wellbeing. While the Māori dimension, whether arising under s6(e) or otherwise, calls for close and careful consideration, other matters may in the end be found to be more cogent… In the end a balanced judgment has to be made.*

144. The Waitangi Tribunal has also reported that:[133]

> *It is now settled law that those exercising powers under the RMA are not required to act in a manner consistent with the principles of the Treaty of Waitangi. Rather, they must engage in balancing each of these factors. Thus, all matters listed in sections 6 to 8 are evaluated one against the other.*

145. The recognition and provision of matters of national importance, and consideration of the principles of the Treaty therefore requires genuine consideration of such matters, but does not require that one matter be given priority over another. The Courts have stated, "it is for the specialist tribunal to accord the weight to the various factors that it considers appropriate".[134]

146. In relation to kaitiakitanga, consultation is not specified, but it is implied this will be needed where it is relevant in order to have "particular regard" to it. It is not for a consent authority to decide between competing groups who are entitled to be deemed kaitiaki.[135] However, it would be prudent for Councils to consult with any groups who claim kaitiaki to ensure adherence to section 7. As outlined below at [166.3], the Crown are required to provide information to Councils on those with kaitiaki in the relevant area, however information on claimants may need to be sought by the Council.

147. The extent of what is required by Part 2 was considered in *Blakeley Pacific Ltd v Western Bay of Plenty District Council,*[136] where the Environment Court considered whether an appeal to the decision of the Council to grant consent to Blakely Pacific to subdivide land it owned on

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[132] *Watercare Services Ltd v Minhinnick* [1998] 1 NZLR 294 (CA) at 305.
[133] Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims, Stage One,* (Wai 1200, 2008) at 1408.
[134] *Freda Pene Rewiti Whanau Trust v Auckland Regional Council,* above n 113, at 72.
[135] *Ngatiwai Trust Board v Whangarei District Council* [1994] NZRMA 269. Consultation requirements in relation to kaitiakitanga are further discussed in the Report of the Parliamentary Commissioner for the Environment "Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management" (1998) at 23.
[136] *Blakeley Pacific Ltd v Western Bay of Plenty District Council*, above n 72, at [189].

Matakana Island, was lawful. The existing residents were almost exclusively Māori and had continuously occupied the site since pre-European times. Compliance with section 104 of the RMA was considered, which requires a consent authority, subject to Part 2 of the Act, to have regard to particular matters.

148. The Court found the proposal did not adequately enable the Māori community or views of the wider community of Western Bay of Plenty or recognise and provide for the relationship of Māori and their culture.[137] This was because the proposal failed adequately to address such considerations. Discussion of a community liaison group establishing a dialogue between owners and the Māori community, was not seen as enough. The Court also looked at the application of section 8 (the Treaty Principles) and concluded the principles were applicable to the proposal in a broader sense and that these weren't adequately addressed by the proposal.[138] The consent was cancelled.

Consultation

149. Part 4 of the Act sets out the functions and duties of central and local government.

150. Whilst there is no explicit legal obligation under the RMA for Māori to be consulted by applicants or Māori in relation to resource consents,[139] consultation can occur and may be required under other legislation (such as the LGA). The position is similar with regard to designations or heritage orders.

Consents

151. Whilst not explicitly required, consultation will often be important to address the matters (such as of national importance and the Treaty principles) in Part 2. The Environment Court has stated "Although consultation is not mandatory, it is difficult to see how the applicant could have addressed these issues without doing so".[140]

152. Where an applicant does undertake consultation, they must describe this in the application.[141]

153. The consideration of environmental effects (as specified in 'other matters') is likely to also require consultation. Schedule 4 of the RMA requires that the assessment includes any effect on those in the neighbourhood, possibly the wider community. This can include cultural effects.[142] Additionally, the Schedule requires an assessment of any impact on (amongst other things) spiritual or cultural values.[143]

154. In determining an application, the local authority can choose to consider iwi planning documents and cultural impact assessments, if they have been provided by mana whenua.[144]

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[137] At [190-191].
[138] At [193-196].
[139] Section 36A of the RMA makes it clear that there is no duty on an applicant or a consent authority to consult regarding a resource consent application.
[140] *Te Rūnanga o Ngai Te Rangi Trust v Bay of Plenty Regional Council* [2001] NZEnvC 402 at [260].
[141] Resource Management Act 1991, sch 4 cl 6.
[142] Schedule 4 clause 7(1)(a).
[143] Schedule 4 clause 7(10(d).
[144] Section 104.

Additionally, the High Court has stated that where iwi provide evidence of adverse cultural effects, it is not open to the Environment court to find otherwise. In the case of *Tauranga Environmental Protection Society v Tauranga City Council*,[145] the court relied upon the relevant planning documents and Deed of Settlement.

Policy Statements or Plans

155. Under Schedule 1, clause 3 of the RMA, during the preparation of a proposed policy statement or plan, local authorities are required to consult with the "tangata whenua of the area who may be so affected". Consultation is conducted through iwi authorities.

156. For the purpose of this clause, a local authority will be treated as having fulfilled this obligation if it has:[146]

    156.1. Considered ways in which it may foster the development of the iwi authority's capacity to respond to an invitation to consult;

    156.2. Established and maintained processes to provide opportunities for those iwi authorities to consult it;

    156.3. consulted with those iwi authorities;

    156.4. enabled those iwi authorities to identify resource management issues of concern to them; and

    156.5. indicated how those issues have been or are to be addressed.

157. Under clause 4A of Schedule 1, a local authority must (before notifying a proposed policy statement or plan):

    157.1. provide a copy of the relevant draft proposed policy statement or plan to the iwi authorities consulted under clause 3(1)(d); and

    157.2. have particular regard to any advice received on a draft proposed policy statement or plan from those iwi authorities.

158. Adequate time and opportunity for iwi authorities to consider the draft and provide advice on it, must be allowed for.[147]

159. When a local authority provides a copy of the relevant draft proposed policy statement or plan in accordance with subclause (1), it must allow adequate time and opportunity for the iwi authorities to consider the draft and provide advice on it.

[145] *Tauranga Environmental Protection Society v Tauranga City Council* [2021] NZSC 134.
[146] Schedule 1 clause 3B.
[147] Schedule 1 clause 4A(2).

New Zealand Coastal Policy Statement

160. The New Zealand Coastal Policy Statement ("NZCPS")[148] is the only compulsory national policy statement under the RMA. Its purpose is to "state objectives and policies in order to achieve the purpose of [the] Act in relation to the coastal environment of New Zealand".[149] There are specific provisions in the RMA that require the consideration of or the giving effect to the NZCPS, including that they can have the effect of rules (such as prohibiting particular activities).[150]

161. Specific obligations under the Marine and Coastal Area (Takutai Moana) Act 2011 are detailed later in this advice at [172].

162. The NZCPS, Policy 2,[151] involves "In taking account of the principles of the Treaty of Waitangi, and kaitiakitanga, in relation to the coastal environment:

162.1. recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;

162.2. involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;

162.3. with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;

162.4. provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;

162.5. take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the local authority, to the extent that its content has a bearing on resource management issues in the region or district; and

a) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and

[148] Department of Conservation *New Zealand Coastal Policy Statement 2010* (4 November 2010).
[149] Resource Management Act 1991, s 56.
[150] Resource Management Act 1991, sections 74(1)(ea), 75(3)(b), 360(4). *See Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* where the Court stated "Give effect to" simply means " implement" and is a " strong directive, creating a firm obligation on the part of those subject to it", at [77].
[151] *New Zealand Coastal Policy Statement 2010*, above n 148, at 11.

b) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;

162.6. provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:

a) bringing cultural understanding to monitoring of natural resources;

b) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;

c) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaitai or other non-commercial Māori customary fishing;

162.7. in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:

a) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and

b) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

163. The following relevant RMA provisions refer to the NZCPS:

163.1. Under section 62(3), 67(3)(b), 75(3)(b) regional policy statements, regional plans and district plans, must give effect to the NZCPS;

163.2. Local authorities must amend regional policy statements, proposed regional policy statements, plans, proposed plans, and variations to give effect to NZCPS provisions that affect these documents as soon as practicable, using the process set out in Schedule 1 of the RMA except where the NZCPS directs otherwise;[152]

163.3. A consent authority, when considering an application for a resource consent and any submissions received, must subject to Part 2 of the Act, have regard to, amongst other things, any relevant provisions of the NZCPS;[153]

163.4. When considering a requirement for a designation and any submissions received, a territorial authority must, subject to Part 2 of the Act, consider the effects on the

[152] Section 55(2B) of the RMA states "the local authority must also make all other amendments to a document that are required to give effect to any provision in a national policy statement that affects the document".
[153] Section 104(1)(b)(iv).

environment of allowing the requirement, having particular regard to, amongst other things, any relevant provisions of the NZCPS;[154]

163.5. When considering a requirement for a heritage order, a territorial authority must, subject to Part 2 of the Act, in addition to having regard to certain matters, have particular regard to, amongst other things, all relevant provisions of the NZCPS.[155]

164. The above provisions of the RMA referring to the NZCPS is subject to Part 2 of the Act. This means, that the NZCPS cannot impose obligations wider than that provided for in those sections.

165. In *Blakeley Pacific Ltd v Western Bay of Plenty District Council,* the Environment Court noted a proposal to subdivide land did not adequately address NZCPS objectives, particularly Objective 3 on taking account of Treaty principles and tangata whenua involvement.[156]

Miscellaneous

Records

166. Section 35A of the RMA requires local authorities to keep and maintain, for each iwi and hapū within its region or district, a record of:

166.1. The contact details of each iwi authority within the region or district and any groups within the region or district that represent hapū for the purposes of this Act or regulations under this Act; and

166.2. the planning documents that are recognised by each iwi authority and lodged with the local authority; and

166.3. any area of the region or district over which 1 or more iwi or hapū exercise kaitiakitanga; and

166.4. any Mana Whakahono ā Rohe entered into under section 58O.

167. The Crown are required to provide information on iwi authorities exercising kaitiakitanga within the district.[157]

Delegation of Functions

168. Local authorities can delegate functions under the RMA to public bodies including iwi authorities, but they do not have to.[158] There are limitations on this delegations including using the SCP before serving notice on the Minister for Local Government of its proposal to transfer responsibility.

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[154] Sections 168A(3)(a)(ii) and 171(1)(a)(ii).
[155] Section 191(1)(d).
[156] *Blakeley Pacific Ltd v Western Bay of Plenty District Council*, above n 72, at [180-182].
[157] Resource Management Act 1991, s 35A(2)(a).
[158] Section 33.

Agreements with Iwi

169. Under section 58O of the RMA, an iwi authority representing tangata whenua in the area can invite a relevant local authority (or authorities) in writing to enter into a "Mana Whakahono ā Rohe". If this occurs, a local authority is obligated to convene a hui or meeting with any relevant iwi authorities and local authorities that wish to participate, to discuss how they will work together to develop a Mana Whakahono ā Rohe.[159]

170. The holding of a hui or meeting is mandatory, but an agreement on a Mana Whakahono ā Rohe is not. Subsection (5) states "The iwi authorities and local authorities that are able to agree at the hui or meeting… must proceed to negotiate the terms of the Mana Whakahono ā Rohe".

171. The RMA also provides for the development of joint management agreements between a local authority and an iwi authority (or other group representing hapū) that provide for the parties to jointly perform the local authority's functions in relation to a natural or physical resource.[160] Such agreements are not mandatory and they can be terminated by giving the other parties 20 working days' notice.

Marine and Coastal Area Act 2011

172. The MACA established a regime for whanau, iwi or hapū to apply for recognition of customary interests within the foreshore and seabed areas.[161] This area is referred to as the common marine and coastal area ("CMCA"). MACA allows for the grant of CMT (which is a new and unique form of property rights)[162] or PCR.[163] These may be granted either through a High Court order or in agreement with the Crown. LINZ maintains a register of all court orders and agreements.

173. Granting of these instruments can mean additional consent, planning and monitoring obligations for local government but these do fall primarily with regional councils. These are mostly contained in the Resource Management Act.

174. MACA grants PCR holders rights including:

    174.1. Exemption from seeking resource consent to continue the protected activity;[164]

    174.2. Prohibition on the granting of resource consents that would have a more than minor adverse effect on the PCR activities (unless the PCR holder consents).[165] Schedule One of MACA sets out the relevant matters to determine resource consents in the PCR area;

[159] Section 58O(2).
[160] Sections 36B - 36E.
[161] Marine and Coastal Area (Takutai Moana) Act 2011 ss 4(1)(b) – (c), 2(b)-(c). Note that this area has special legal status and is called the "common marine and coastal area."
[162] Section 58.
[163] Section 57.
[164] Section 52(1).
[165] Section 55(2).

174.3. Prohibition on plans that include rules that describe an activity as a permitted activity if it will, or is likely to have, a more than minor adverse effect on the PCR;[166]

174.4. The ability to derive commercial benefit from the PCR (except for aquaculture and fisheries activity).[167]

175. MACA grants CMT holders rights including the right to:

175.1. give or decline permission for activities requiring a resource consent within the CMT area.[168] There are exceptions to this, notably:

a) accommodated infrastructure;[169]

b) existing activities authorised by resource consents;[170]

c) management activities in relation to existing marine reserves or sanctuaries;

d) existing aquaculture activities carried out under a coastal permit;

e) emergency activities; and

f) Crown research or monitoring.

175.2. protect wāhi tapu areas (Māori sacred places);[171] and

175.3. create a planning document.[172]

176. A key tenet of MACA is the assurance of continued public access within the CMCA. Local authorities maintain this (although they are not obliged to do so) through coastal access strategies, and the provision of adjacent open public spaces and parks.

177. MACA does not require local authorities to enforce compliance with wāhi tapu, but should, in consultation with the CMT holder, take appropriate action to encourage compliance.[173]

178. However, CMT applicants enjoy a special right to be notified and to share their views on any resource consent application in the MACA application area until the application is determined. For example, these views are relevant to the assessment of environmental effects in accordance with Schedule 4 of the RMA. This right may be very important in practice however it is unclear what weight should be attributed by the local authority to the applicants' views.

[166] Resource Management Act 1991, s 85A.
[167] Marine and Coastal Area (Takutai Moana) Act 2011, s 52(4)(b).
[168] Sections 66 – 70.
[169] This means existing infrastructure that is lawfully established and owned by the Crown or a list of agencies that includes local authorities. They must be reasonably necessary to either national or regional social or economic well-being, section 63.
[170] Section 64(2)(a).
[171] Sections 78 – 81.
[172] Sections 85 – 93.
[173] Section 81.

179. All applications were required to be filed by 2017 and to be publically notified,[174] therefore there is certainty for local authorities on who is an applicant. However, this registrar does not provide any insight on the potential success of the claim, the competing claims between applicants nor the timeframe for determination.

New Zealand Bill of Rights Act 1990

Application

180. The NZBORA is not an absolute Bill of Rights. It does not create enforceable duties nor can it be used to strike down legislation.

181. It applies to local authorities and its employees when they are performing a public function, or carrying out a duty conferred or imposed on them by or pursuant to law.[175]

182. NZBORA does *not* have applicability to local authorities if the act done is not in exercise of a public function, for example if it is a matter of individual employment. However, the court is reluctant to treat the outsourcing its public function as negating NZBORA duties.[176]

183. Three main applications of NZBORA impact local authorities:

183.1. **As an interpretation aid of statutory provisions** – Section 6 requires that where an Act can be given a meaning that is consistent with NZBORA it should be preferred. In *Hansen*,[177] the Court stated that the first question is whether the natural meaning of a legislative provision can be interpreted as being consistent with the NZBORA. If it cannot, then, the right is engaged, and the next question is whether the limitation is justified under section 5. This necessitates asking:[178]

a) Whether the limiting measure serves a sufficiently important purpose;

b) Whether the limiting measure is rationally connected to that purpose;

c) Whether the limit on the right is no more than is necessary to achieve the purpose (whether the purpose could be achieved by a less rights limiting measure); and

d) Whether the limiting measure is proportionate to the importance of the objective.

In *New Health v South Taranaki District Council*, the Supreme Court applied the *Hansen* test and found the Council's decision to add of fluoride to the local drinking water, was a justified limitation on the right to refuse medical treatment. The Court found that the benefits provided by increased fluoride, outweighed any risks. Although there were potentially less rights limiting measures available, they were of

[174] Marine and Coastal Area (Takutai Moana) Act ss 102 and 103.
[175] Section 3.
[176] *Moncrief-Spittle v Regional Facilities Auckland* [2022] NZSC 138, at [53].
[177] *Hansen v R* [2007] NZSC 7 at [57].
[178] At [203] – [204].

limited efficacy and the Court found "that the evidence establishes that fluoridation of drinking water is one of a range of reasonable alternatives to address the problem".[179]

183.2. **Declarations of Inconsistency** - In 2022, the NZBORA was amended to allow for declarations of inconsistency. Whilst local authorities are not responsible for legislation, they could be impacted if a declaration of inconsistency is made for legislation for which they have obligations. A court may declare that an Act is inconsistent with the rights set out in the NZBORA. If this occurs, the Attorney-General informs the House of Representatives and the government must respond. There is no statutory requirement for the House or the government to respond in a particular way, and the Act remains valid. To date, there are no declarations of inconsistency relating to local government and obligations to Māori;

183.3. **To invalidate a decision** – local authorities make decisions and operate discretion within statutory requirements and obligations. For example, local authorities operate a public function by allowing permits for use of public spaces. NZBORA applies to this type of decision and therefore the local authority must not breach any of the rights and freedoms in making this decision.

184. Two NZBORA rights are likely to be most relevant when considering local authorities obligations to Māori:

184.1. **Section 19** - "everyone has the right to freedom from discrimination on the grounds of discrimination in the HRA. Relevant grounds of discrimination under the HRA include colour; race and ethnic or national origins, which includes nationality or citizenship.

a) This section does allow for good faith measures to assist people that may have been discriminated against -

> Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.

184.2. **Section 20** - A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

185. Similar to an Act of Parliament, a decision may be found to be a breach of a NZBORA right but could be determined to be a justified limit on that right. For example, the courts have determined that health and safety can justify a breach of freedom of speech in a decision to allow use of a public space.[180]

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[179] *New Health v South Taranaki District Council* [2018] NZSC 59 at [134].

[180] *Moncrief-Spittle v Regional Facilities Auckland*, above n 176, at [102].

186. However, if a local authority makes a decision that would limit a right, it must have sufficient evidence to justify doing so. In the High Court decision of *Whitmore v Palmerston North City Council*,[181] the Court found that the Council had failed to recognise the free speech rights of a group known as Stand Up For Women, who had a booking at a Council meeting venue that the Council decided to cancel.

Obligations to Māori

187. It has been argued that some conduct said to be in performance of statutory obligations owed to Māori (as set out in this opinion), are discriminatory as against non-Māori and therefore unlawful under the NZBORA and/or HRA.

188. Section 7 of NZBORA requires the Attorney-General to table a report in Parliament on all bills before it. Such advice was publicly released in relation to the Local Government Bill 2001.[182]

189. As an example, the Bill proposed to amend the LEA (and subsequently did once enacted) to provide for Māori wards and constituencies. This was seen as discrimination on the grounds of race as it appeared to disadvantage other identifiable racial, ethnic and national groups who were similarly under-represented in local government who were not afforded the same opportunity for improved representation.[183]

190. The Attorney-General's advice was that these provisions were justified under NZBORA as a reasonable limitation on rights. This conclusion was justified by reference to:

    190.1. The purpose of increasing Māori access and participation in local government decision-making, and in furthering the Crown's obligations to Māori under the Treaty of Waitangi;

    190.2. The mechanism ensuring Māori representation is proportionate to the Māori population in an area, and the establishment of constituencies and wards not being a compulsory measure.

191. The Courts have considered the rights of Māori under NZBORA on a number of occasions, for example:

    191.1. In *Smith v Attorney-General*,[184] a Māori landowner and climate spokesperson challenged the government's response to climate change. Section 20 (rights of minorities), was advanced, the Court struck out all claims as particular breaches of this right were not specified, and the Court determined that the Crown had taken adequate steps to consider Māori interests.

    191.2. In *Ngaronoa v Attorney-General*,[185] the Court of Appeal found the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 was consistent with the

[181] [2021] NZHC 1551.
[182] Ministry of Justice *Preliminary Legal Advice: Compliance with the New Zealand Bill of Rights Act 1990: Local Government Bill 2001* (5 December 2001).
[183] At [58-60].
[184] [2022] NZHC 1693.
[185] [2017] NZCA 351.

rights in sections 9, 19 and 23(5) of the NZBORA. The Act enacted to disqualify persons serving a prison sentence from registering as electors. Discrimination for Māori was considered in relation to the fact that Māori make up a large part of the prison population in New Zealand. It was found that any disadvantage or discrimination for Māori was not motivated by hostility to Māori and discrimination under NZBORA was not breached. In particular, the Court found that less than one percent of Māori were incarcerated and this was not a material disadvantage. The disqualification from voting was found to be a justified limitation on the right.

192. There have also been decisions looking at the application of NZBORA to local government. In *Wadworth v Auckland Council,*[186] the High Court found that section 155(3) of the LGA was significant. This states "No bylaw may be made which is inconsistent with the [NZBORA], notwithstanding section 4 of that Act". The Court concluded from this, that section 4 was rendered irrelevant. The test from *Hansen* was referred to in applying the section 5 analysis, and the Court concluded that the Bylaw was reasonably justified.

193. As Parliament is the supreme lawmaker, legislation is valid until Parliament decides to amend or repeal it.[187] There may therefore be provisions in existing legislation that appear contrary to the NZBORA, but as the NZBORA is of equal status to other legislation, such provisions cannot be struck down by the Courts.

Human Rights Act 1993

194. Part 1A of the HRA applies to the actions of the legislative, executive or judicial branches of Government, as well as to the actions of any person or body performing a public function, power or duty conferred or imposed by law.

195. An action will be discriminatory under Part 1A if it involves a distinction based on a prohibited ground that leads to disadvantage and cannot be justified under section 5 of NZBORA. A limitation will be justified under section 5 if it serves a purpose that is sufficiently important to justify some limitation of the right, is rationally connected to that purpose, impairs the right no more than is reasonably necessary to achieve what it sets out to do, and is in due proportion to the objective it seeks to achieve.

196. The application of Part 2 of the HRA is limited if section 3 of the NZBORA applies, and NZBORA applies wherever a body is performing a public function, power or duty conferred or imposed by law. This will therefore have application in relation to any council decisions including decisions around policies and the provision of services.

197. The sections in Part 2 of the HRA that do apply to local authorities when performing a public function, include:[188]

    197.1. sections 21 to 35 (which relate to discrimination in employment matters), 61 to 64 (which relate to racial disharmony, sexual harassment, adverse treatment in

[186] [2013] NZHC 413.
[187] New Zealand Bill of Rights Act 1990, s4.
[188] HRA, section 21A.

employment of people affected by family violence, and racial harassment) and 66 (which relates to victimisation); and

197.2. sections 65 and 67 to 74, but only to the extent that those sections relate to conduct that is unlawful under any of the provisions referred to in paragraph (a).

198. Section 22 of the HRA requires that where an applicant for employment or an employee is qualified for work of any description, it is unlawful for an employer to:

> (a) omit to employ the applicant on work of that description which is available;
>
> (b) offer or afford the applicant less favourable terms of employment, conditions of work, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description;
>
> (c) terminate the employment of the employee, or subject the employee to detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
>
> (d) retire the employee, or to require or cause the employee to retire or resign,
>
> by any reason of any of the prohibited grounds of discrimination.

199. This provision, prevents an employer, including a local authority, from providing additional benefits to Māori employees (on the basis that they are Māori) or preventing a person who is non-Māori from being employed in a role that they are qualified to perform (if the role is available).

200. As discussed at [115], the LGA requires a local authority to operate a personnel policy that complies with the principle of being a "good employer",[189] which is subject to the requirement that when making an appointment a local authority must "give preference to the person who is best suited to the position".[190] This is reflective of section 21 of the HRA, in ensuring that race is not a determining factor in appointing a person to a role.

201. Sections 61 and 63 of the HRA outline racial disharmony and racial harassment prohibitions. Section 61 prohibits the distribution of written matter, or use of words in certain situations, that is "threatening, abusive, or insulting… being matter or words likely to excite hostility against or bring into contempt any group of persons on the ground of colour, race, or ethnic or national origins of that group of persons". Section 63 uses similar language and prohibits the use of language, visual material or physical behaviour that expresses hostility, contempt or ridicule on the basis of race, in the context of repeated incidents in specific areas such as employment.

202. There could be potential application to Councils in the context of actions involving the distribution of action or material whether written or verbal that could be considered as exciting hostility against Māori. However, racial disharmony has been found to require

[189] Local Government Act 2002 sch 7 cl 36(1).
[190] Schedule 7 clause 36(3).

material at the "serious end of the continuum" and must balance the right to freedom of expression.[191]

203. Section 65 outlines the meaning of indirect discrimination. It involves an action that has the effect of treating a person or group of persons differently on one of the prohibited grounds of discrimination, and provides that this is unlawful where there is not "good reason" for this. This provision may apply in situations where Māori could be afforded particular opportunities or benefits that the general population are not, but where there is evidence provided as to a good reason for it, such as addressing historical injustices. This is the case for affirmative action. Historical injustice is often advanced as good reason. It is rarely carefully examined, considering for example, whether the preference is going to people actually affected by the injustice, or whether there is evidence that the preference operates in practice to remedy any continuing ill effect.

204. In respect of sections 67 to 74 the only provision of relevance is section 69 which makes further provision in relation to racial harassment in relation to the employment context.

205. These clauses do not create obligations owed to Māori above that of the general population. However, in relation to the indirect discrimination provision, there may be certain situations where there are additional benefits provided to Māori that are considered to have a good reason behind them, where the converse would not be true for non-Māori.

[191] *Wall v Fairfax New Zealand Ltd* [2018] NZHC 104 at [95]; the High Court found no error in the Human Rights Review Tribunal's approach in *Wall v Fairfax New Zealand Ltd* [2017] NZHRRT 17 at [200] where it interpreted the racial disharmony provision as requiring "behaviour… at the serious end of the continuum of meaning".

APPENDIX A: KAIPARA SPECIFIC OBLIGATIONS

1. There are a number of obligations to Māori that are specific to Kaipara District Council. This section outlines the current obligations including the applicability of provisions discussed throughout this opinion as well as additional obligations.

Te Uri o Hau Claims Settlement Act

2. In 2000, the Crown and Te Uri o Hau executed a deed of settlement that acknowledged that Te Uri o Hau had suffered injustices that impaired the economic, social and cultural development of Te Uri o Hau.[192] This Act records this deed.

3. The majority of settlement terms are executed by the Crown. However, there are specific obligations for the Kaipara District Council:

    3.1. as and where the Council is a "consenting authority" for the purposes of the RMA, the Council must consider, when determining who may be adversely affected by the granting of a resource consent, the statutory acknowledgement relating to a statutory area;[193]

    3.2. in all regional policy statements, regional coastal plans, other regional plans, district plans and proposed plans that cover (all or part of) the statutory area must attach information recording the statutory acknowledgement;[194]

    3.3. entitlement land is rateable property (but the liability is proportionate to occupation).[195]

4. Sections 70 – 72 are clear that the statutory acknowledgement does not give Te Uri o Hau and their association with a statutory area any greater weight in decision-making than any other person or entity that would take into account in regard to a statutory area.[196] Nor does it affect the lawful rights or interests of a person who is not the Crown or Te Uri o Hau.[197]

Te Roroa Claims Settlement Act 2008

5. In 2005, Te Roroa and the Crown entered into a Deed of Settlement that records settlement of Te Roroa's historic claims.[198] As per the norm for Treaty of Waitangi settlement acts, most of the obligations fall on the Crown. However, in this particular act there are specific obligations / impacts on the Council. Namely:

[192] Te Uri o Hau Claims Settlement Act 2002, preamble at (28).
[193] Section 60.
[194] Section 62.
[195] Section 93.
[196] Section 71.
[197] Section 72.
[198] Te Roroa Claims Settlement Act, preamble.

5.1. The Act defines a series of locations as "cultural redress properties".[199] The permission of Council, normally required under section 348 of the LGA, is not required to establish or form a private road or right of way on these properties;

5.2. For specified properties in the Act, the obligations of local government in regard to stopping a road are exempted;[200]

Record-keeping

6. In accordance with section 35A of the RMA as discussed at [166], Kaipara DC are required to keep a record of iwi and hapū contact details within its district along with planning documents recognised by each iwi authority and any Mana Whakahono ā Rohe.

7. There are the following iwi Authorities in the Kaipara District:

7.1. Ngati Whatua

7.2. Te Roroa

7.3. Te Uri o Hau

Significance and Engagement Policy

8. As is discussed at [86] of this opinion, where an option involves a *significant decision* in relation to land or a body of water, the taking into account of the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga, is required.

9. Under the LGA, every local authority must operate a significance and engagement policy which guides a local authority's discretion in making a decision on the range of reasonably practicable options.

10. Kaipara's significance and engagement policy states the Council will meet obligations under the LGA by:[201]

10.1. recognising the enduring presence, aspirations, and cultural obligations of Mana Whenua (local iwi, hapū and Marae) as kaitiaki (stewards) in the Kaipara District;

10.2. actively considering the recognition and protection of Māori rights and interests within the Kaipara District, and how we contribute to the needs and aspirations of Māori;

10.3. where a significant decision relates to land or a body of water, taking into account the relationship of Māori, and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga;

[199] Section 26, schedule 1.
[200] Section 29.
[201] Kaipara District Council: Significance and Engagement Policy (September, 2020) at 8.

10.4. ensuring all decision reports of Council consider impacts on Māori, and if any potential impacts are identified, how these have, or will be, addressed; and

10.5. establishing and maintaining processes to provide opportunities for Māori to contribute to our decision-making processes, as provided for in Council's LTP.

11. The policy states that the Mana Whenua relationship are informed by the Mana Enhancing Agreement with Te Roroa, and the Memorandum of Understanding with Te Uri o Hau.

12. The policy further notes that Council will, "in accordance with the above principles", engage or work with Mana Whenua and/or iwi/hapū on a specific matter, normally in advance of undertaking any engagement activity in accordance with the significance and engagement policy.

13. The significance and engagement policy largely reiterates the requirements in the LGA, and does not outline any additional mandatory obligations owed to Māori.

Long Term Plan

14. At [107] of this opinion, there is comment regarding the requirement to maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority. These processes are articulated in the LTP.

15. Kaipara's 2024-2027 LTP includes reference to:[202]

15.1. the Significance and Engagement Policy;[203]

15.2. the agreement with Te Roroa, and the memorandum of understanding with Te Uri o Hau;

15.3. The agreed establishment of a Māori Ward;

15.4. That the Council "works to ensure that iwi/hapū have adequate input into resource consent and plan development processes";

15.5. There is a quarterly staff level hui that has been in place since 2021 with representatives of iwi/hapū organisations from the district;

15.6. The Chief Executive is part of the regular Iwi Local Government Chief Executive Forum Hui; and

15.7. The Council is signed up to the Whanaungatanga Ki Taurangi relationship agreement between Northland Mayoral and Chair forum and Te Kahu o Taoinui (Northland Iwi chairs forum)

16. The LTP noted that Kaipara District Council were "working on a possible review with iwi/hapū on the Te Roroa and Te Uri o Hau agreements".[204] In a September 2024 meeting, the Council

[202] Kaipara District Council: Long Term Plan (2024-2027) at 15.
[203] At 318.
[204] At 15.

terminated the relationship agreements.[205] The Te Roroa Mana Enhancing Agreement had been in place since 2002, and the Memorandum of Understanding with Te Uri o Hau had been in place since 2020. At that meeting, the Council also resolved to develop new agreements with Te Roroa and Te Uri o Hau.

17. The Council have further resolved to disestablish its Māori ward which will come into effect for the 2025 local government elections.[206]

18. There is a requirement under the LGA that the processes outlined in the LTP are "maintained". The Council are able to amend its long-term plan at any time, but must use the special consultative procedure in doing so.[207]

Local Governance Statement

19. The Local Governance Statement is statutorily mandated through section 40 of the LGA and requires the inclusion of information on (amongst other things):

    19.1. The functions, responsibilities, and activities of the local authority;

    19.2. Governance structures and processes, and delegations;

    19.3. Policies for liaising with, and memoranda or agreements with Māori; and

    19.4. Consultation policies.

20. A local authority must update its governance statement as it considers appropriate.[208]

21. The Council's local governance statement outlines its partnership with Māori and states:[209]

> *In recognition of Te Tiriti o Waitangi (The Treaty of Waitangi), Council acknowledges its ongoing obligations in conjunction with the provisions afforded to Māori in both the Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA).*
>
> *Council is dedicated to fostering strong, ongoing and increasingly effective relationships with Māori, to further raise Māori capacity to participate in local government decision-making in order to bring benefits to everyone in the Kaipara District. Maintaining and strengthening these relationships is a commitment upheld in all parts of Council and the activities it undertakes.*
>
> *Kaipara District Council also operates under two formal partnership agreements with mana whenua. Council has a Mana Enhancing Agreement (MEA) with Te Roroa and a Memorandum of Understanding (MoU) with Te Uri o Hau, to support their status as Treaty partners.*

[205] Kaipara District Council Meeting, Minute of Council Meeting (25 September 2024) at 3 and 4.
[206] Kaipara District Council, Minute of Extraordinary Meeting (7 August 2024) at 4.
[207] LGA Section 93(4) and (5).
[208] Section 40(3).
[209] Kaipara District Council: Local Governance Statement 2022 at 13.

At its October 2020 Council meeting, Council voted to establish a Māori Ward in the Kaipara District. Representation for elections 2022 and 2025 include one councillor elected to represent Te Moananui o Kaipara Ward (Māori Ward).

Council currently has an arrangement in place for the Taharoa Domain Governance Committee, which is a committee of Council, Te Roroa and Te Kuihi.

22. The language outlined in the local governance statement is stronger than in other Council policies. It outlines a "dedication" to fostering increasingly effective relationships with Māori, and to "further raise Māori capacity to participate in local government decision-making", with a "commitment" to maintaining and strengthening these relationships in "all part of Council and the activities it undertakes".

23. Kaipara District Council may wish to update its Governance Statement in consideration of this opinion (although it is not legally obligated to do so). The specific reference to recognising obligations in relation to the Treaty of Waitangi does not acknowledge that the Crown has Treaty obligations, not the council. The reference to the establishment of the Māori Ward is out of date.

Good Employer Personnel Policy

24. As stated at [115], local authorities are required to have a personnel policy. We did not have access to this policy.

Policy on the Remission and Postponement of rates on Māori Freehold Land

25. The Kaipara District Council's Policy on the Remission and Postponement of rates on Māori Freehold Land states its objective is to:

    25.1. …ensure the fair and equitable collection of rates from all sectors of the community, while recognising that Māori freehold land has particular conditions and ownership structures, which may make it appropriate to provide relief from rates in circumstances beyond what it already provided by legislation.

26. The language in the policy provides the Council with a broad discretion. The policy states that the Council *may* remit some or all of the rates on a rating unit of Māori freehold land "where it considers it just and equitable to do so", because:

    26.1. There are special circumstances which mean that the rating unit's rates are disproportionate to those assessed for comparable rating units;

    26.2. The circumstances of the rating unit or ratepayer are comparable to those where a remission or non-rateability would be granted under the LGRA, but the circumstances mean that the land does not qualify; and

    26.3. There are exceptional circumstances such that the Council *believes* it is equitable to remit rates.

27. The policy frames the threshold for the remission of rates on Māori Freehold land as a high one.

RMA

28. In respect to giving effect to the purpose of the RMA, consideration of Māori social and cultural well-being may at times be required. This is discussed in detail at [140] of this opinion. Consultation with relevant iwi authorities may be prudent where interests are affected. Consultation with iwi authorities will be needed during the preparation of a proposed policy statement or plan.

29. These iwi authorities are as listed under the Record-Keeping section at [7] above.

Marine and Coastal Area Act

30. There are no grants of PCR or CMT in the Kaipara District Council.

31. However, there are many applications in the area for customary marine title or protected customary rights.

32. As discussed under the Marine and Coastal Area Act section, at [172], applicants for PCR or CMT are required to be notified, and given the opportunity to comment, on any resource consent application in the relevant area.[210]

33. The Kaipara District Council are therefore obliged to consult with the applicants listed below if there is a relevant resource consent application.

34. In respect of the Fast-track Approvals Bill, this process is conducted through the Expert Advisory Panel, and applicants as well as the Council itself are able to provide comment on an application for fast-track approval.

[210] Resource Management Act 1991, section 95B.

APPENDIX B: COMPARISON OF OBLIGATIONS

35. Many obligations owed to Māori have been identified throughout this opinion that are also owed to the general population. It is worth determining what the mandatory obligations to Māori are, and comparing these as against obligations owed to others.

36. Comparable obligations *can* usually be implemented in respect of the general population, and ultimately the local authority retains its discretion in how it achieves compliance with all sections of the applicable legislation, including through its prioritisation of relevant considerations. Treaty settlement obligations and MACA rights are an exception to this.

37. Where there are not comparable obligations, they are generally where a form of property right has been provided to a particular group of Māori (an iwi, or a CMT or PCR holder).

38. The following table sets this out -

Legislation	Obligations Owed to Māori	General Obligations Owed
Local Government Act	Section 14(1)(d) – local authorities should provide opportunities for Māori to contribute to decision making.	Section 14(1)(b)- a local authority should make itself aware of and have regard to the views of all of its communities.
	Section 39 – local authorities must act in accordance with the principle of being a "good employer" by operating a personnel policy that (Schedule 7 clause 36) provides for the recognition of:. - the aims and aspirations of Māori ; - the employment requirements of Māori ; and - the need for greater involvement of Māori in local government employment.	The personnel policy must also provide for: - An equal employment opportunities programme; - Impartiality in appointments, and preference to the best candidate; - recognition of the aims and aspirations, and cultural differences, of ethnic or minority groups generally.
	Section 40(1)(i) – following triennial elections, local authorities must publish local governance statements that include information on policies for liaising with, and memoranda and or agreements with, Māori.	Section 40(1)(a),(f),(h) - The local governance statement must also include general information on; the functions and responsibilities of the council, its governance structures, and consultation policies.
	Section 57(3) – in appointing directors of council organisations, local authorities are required to consider whether knowledge of tikanga Māori may be relevant to the governance of the COO.	Section 57(1)- local authorities must adopt policies that set out transparent processes for identifying the skills required of directors, their appointment, and remuneration.
	Section 77 – for significant decisions in relation to land or a body of water, local authorities must take into account the relationship of Māori, their culture, and traditions.	Section 78 – a local authority must consider the views and preferences of people likely to be affected by a matter. Section 79 – A local authority has discretion about how to achieve compliance with sections 77 and 78.

Legislation	Obligations Owed to Māori	General Obligations Owed
	Section 81 – local authorities must: - Establish and maintain processes for Māori to contribute to decision making. - Consider ways to foster the development of Māori capacity to contribute to decision making. - Provide relevant information to Māori for the purpose of the above	Section 82(1)- when a local authority undertakes consultation it must act in accordance with these principles (amongst others): - (a) that persons affected should be provided with reasonable access to relevant information on the matter. - (b) These persons should be encouraged to present their views. - (e) Their views should be given due consideration.
	Section 82(2) – local authorities must ensure it has processes for consulting with Māori in accordance with the principles of consultation in section 82(1).	Section 82(1) - these principles also apply generally for any persons who "will or may be affected by, or have an interest in" the matter.
	Section 102(2)(e) – funding and financial policies ***must*** include a policy on the remission and postponement of rates on Māori freehold land.	Section 102(3)- local authorities ***may*** adopt policies pertaining to rates remissions and postponement.
	Schedule 10 clause 1 – long term plans must describe "community" outcomes, i.e., how it plans to deliver for particular groups. This could include Māori, iwi, and hapū.	This obligation also applies to the local government's communities generally.
	Schedule 10 clause 8 – long term plans must set out intended steps to foster the development of Māori capacity to contribute to decision making processes.	Schedule 10 clause 11 – a long term plan must contain a summary of the local authority's significance and engagement policy. Under section 76AA(1)(c) and (d), the SE policy must set out how the local authority will respond to community preferences about engagement on decisions relating to specific issues and matters, including what form of consultation may be desirable, and how the local authority will engage with communities on other matters. This does not go as far as the specific requirement to foster the development of Māori capacity in decision-making.
	Schedule 10 clause 35 – an annual report must include a report on activities undertaken that year to establish and maintain processes to provide opportunities for Māori to contribute to decision-making processes.	Schedule 10, Clause 23 – an annual report must describe any identified effects that any activity has on the Wellbeings of the Community generally.

Legislation	Obligations Owed to Māori	General Obligations Owed
Local Government Rating Act	Section 114 – allows for remission of rates on Māori freehold land if provided for under ***required*** policy.	Section 85 – allows for remission of rates generally ***if*** a local authority adopts a rates remission policy under s109 of the LGA.
	Schedule 1 clause 10 – Māori burial grounds are exempt from local authority rates.	Schedule 1 clause 10 – Cemeteries, crematorium, and burial grounds generally are exempt from rates.
	Schedule 1 clauses 11-14A – various kinds of Māori land are exempted from rates, including Māori customary land and land used for the purposes of a marae.	Schedule 1 includes categories of land with cultural (including religious) value or charitable purposes that is non-rateable. This includes heritage sites, sites of religious worship, and privately-owned conservation land.
NZ Bill of Rights Act	Section 19 – establishes right to freedom from discrimination on the grounds in the Human Rights Act.	The same rights are owed generally.
	Section 20 – establishes the rights of ethnic, religious, or linguistic minorities to practice, profess, and use the language of their identities.	The same rights are owed generally.
Human Rights Act	Section 21 – prohibited grounds of discrimination include religious belief, colour race, and ethnic or national origins.	The same rights are owed generally
	Sections 21-34 – discrimination in employment on s 21 grounds prohibited.	These same rights are owed generally.
	Section 65 – discrimination includes conduct which (without good reason) has the effect of treating a person differently on s 21 grounds.	This right is owed generally. There could be some instances where there is good reason for Māori, where it wouldn't be for other ethnicities.
	Section 69 – racial harassment in employment is prohibited.	This right is owed generally.
Resource Management Act	Section 5 - purpose provision; requires consideration of Māori and how their cultural wellbeing can be enabled. (*Blakeley Pacific Ltd,* discussed at [84])	Also requires consideration of non-Māori communities. (*Blakeley Pacific Ltd,* discussed at [85])
	Section 6(e),(g) – persons exercising functions under the RMA are to recognise and provide for the relationship of Māori and their culture and traditions with their taonga, and protected customary rights.	Section 6(b),(d),(f) – they shall exercise and provide for the protection of natural features and landscapes from inappropriate use, and the maintenance and enhancement of natural features, public access to marine and coastal areas, and historic heritage generally.
	Section 7(a) – persons exercising functions under the RMA in managing the use and	Section 7(aa)- Persons exercising powers must also have regards to

Legislation	Obligations Owed to Māori	General Obligations Owed
	protection of resources, shall have to regard to kaitiakitanga.	"the ethic of stewardship", which relates to the public generally.
	Section 8 – persons exercising functions under the RMA in relation to the use and protection of resources, must take into account the Treaty principles.	What is required is a balancing exercise, weighing all competing considerations and making a value judgment on behalf of the community as a whole. (*Minhinnick,* discussed at [149]).
	Section 35A – local authorities must keep and maintain a record of regional iwi and hapū contact details, planning documents they have lodged, the areas they exercise kaitiakitanga over, and any Mana Whakahono o Rohe.	No equivalent requirement to keep contract details of other groups in the RMA.
	Section 58O(2)(b) – if invited by tangata whenua, a local authority is obliged to convene a hui or meeting to discuss the development of a Mana Whakahono o Rohe. Agreeing to a Mana Whakahono o rohe is not mandatory.	No equivalent requirement for local authorities to meet with other groups upon invitation to develop a joint participation agreements.
	Section 85A – plans cannot include rules that describe activities as permitted activities if they are likely to have a more than minor adverse effect on a PCR under MACA. Section 95B – PCR and CMT groups must be notified	Section 95A contains a much more limited requirement for public notification of consent applications.
	Schedule 1 clause 3(1)(d)-(e) – in preparing a proposed policy statement or plan, a local authority must consult the tangata whenua of the area who may be affected, and any CMT groups in the area. Schedule 1 clause 3B – this consultation is fulfilled if the local authority (amongst other things) consults with those iwi authorities.	Schedule 1 clause 3(1)(a)-(c) – The local authority must also consult the Minister for the Environment and other relevant ministers, and other local authorities that may be affected. No equivalent requirement to consult generally. Under clause 3(2) a local authority ***may*** consult anyone else in the preparation of a proposed policy or plan.
	Schedule 1 clause 4A – before notifying a proposed policy statement or plan, a local authority must provide a copy to iwi authorities consulted under clause 3(1)(d), and have particular regard to advice received from them regarding the proposed plan.	Schedule 1 clause 5 – local authorities must notify their proposed policy statements and plans to its ratepayers directly affected by the proposed plan which includes a stated process for public participation and submissions.
	NZCPS requires: - Recognition of tangata whenua's continuing relationship with areas of the coast.	The NZCPS has policies for general public application, including: Policy 17 – the protection of historic heritage sites.

Legislation	Obligations Owed to Māori	General Obligations Owed
	- Involvement of iwi or hapū authorities in preparing regional policy statements and plans through effective consultation. - Incorporating matauranga Māori in regional policy statements, in plans, and in resource consenting. - Providing opportunities for Māori involvement in decision making, such as for consenting dealing with cultural localities. - Taking into account relevant iwi resource management plans and other planning documents lodged by iwi and hapū with local authorities. - Providing opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, fisheries, and coastal environments. - Recognising Māori heritage values, and provide for identifying and managing sites of significance to Māori. The above requirements relate to regional policy statements, consenting, designations, and heritage orders.	Policy 18 – the availability of public space in coastal marine areas. Policy 19 and 20 – walking and vehicle access to marine areas.
	Schedule 4 – MACA applicants must be notified and have their views heard on resource consent applications within their MACA application area with regard to the environmental effects in accordance with Schedule 4 of the RMA.	No comparable provision.
Marine and Coastal Area (Takutai Moana) Act	Section 52 – PCR holders are exempted from resource consenting for their protected activity.	No comparable provision.
	Section 55- consent authorities are prohibited from granting consent for activities that would have a more than minor adverse effect on a PCR activity, unless the PCR holder consents.	No comparable provision.
Te Uri o Hau Claims Settlement Act 2002	Section 60 – Kaipara District Council must consider the statutory acknowledgement relating to a statutory area when determining who may be adversely affected by the grant of a resource consent.	No comparable provision. This statute is specific to Te Uri o Hau, as a Treaty settlement.
	Section 62 – plans covering the statutory area must attach information recording the statutory agreement.	
Te Roroa Claims Settlement Act 2008	Section 26, schedule 1 – Kaipara District Council permission is not required to establish private roads or rights of way on cultural redress properties.	No comparable provision. This statute is specific to Te Roroa, as a Treaty settlement.

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Hobson's Pledge

LGNZ GUIDE TO STANDING ORDERS 2025

1. In March 2025, Local Government New Zealand ("LGNZ") published "Guide to the 2025 LGNZ Standing Orders Templates: He aratohu i te anga tikanga whakahaere hui a LGNZ" ("LGNZ Guide"). This document is meant to guide councils on updating their standing orders, which LGNZ encourages them to do following a local body election.

2. Despite being made aware of the misleading nature of the 2022 Guide, LGNZ has repeated many of the incorrect statements from their 2022 Guide (when Franks Ogilvie last provided advice).

3. To assist Councillors in understanding their legal obligations, attached to this letter is a marked-up version of the LGNZ Guide. Text has been highlighted to identify inaccurate statements, or commentary that is inconsistent with the law. Below, we outline the practical implications of this opinion, the legal obligations local authorities owe to Māori in relation to Standing Orders, and discuss potential legal liability for action beyond what is prescribed.

Practical Effect

4. The practical conclusion is that Councillors are under no legal obligations to go along with recommendations or Standing Orders that prioritise the views of mana whenua or Māori generally. Nothing in the law or the Treaty obliges Councils to appoint unelected persons qualified only by race or nomination by iwi (mana whenua or otherwise) to committees or to other bodies that gain effective political advantage or privileges that, in practical impact, discriminate against non-Māori citizens.

5. On the other hand, the law does not prevent Councils from taking particular care, or applying extra resources to encourage and facilitate Māori participation in consultation and other processes leading to decision-making by Councils. Because of the risk that such measures may conflict with the equality of citizenship implicit in Council obligations to uphold the democratic nature of their power, Councillors need to be careful that the measures adopted meet real needs specified in the Local Government Act 2002 ("LGA"), and to balance them against democratic norms.

6. The LGA is for "the empowerment of New Zealanders within their local communities",[1] and it is to enable democratic local decision-making. The democratic principle involves the right of

[1] Local Government Bill 2001, First Reading, Hon Sandra Lee (18 December 2001) 597 NZPD 1060.

every citizen, regardless of race (or distinction of any kind), to take part in the conduct of public affairs and to have access, on general terms of *equality*, to public service.[2]

7. We have not found any case in which Courts have squarely considered whether practices such as appointing Māori representatives to Committees are discriminatory and potentially not keeping with the principle of democratic decision-making. Councillors should nevertheless ask themselves whether opportunities given specifically to Māori are necessary, proportionate to assessed needs, equally available to others in their communities, and the best and least troublesome or divisive ways of meeting assessed needs.

Legal Summary

8. When making decisions under the LGA, local authorities are not bound to consider the Treaty of Waitangi beyond what is expressly required by the Act.

9. The LGA contains provisions to ensure Māori are able to contribute to local decision-making, but the LGA does not prescribe preferential treatment over the general population. The LGA does not justify any actual or de facto veto powers for Māori. It does not create any onus on objectors or opponents to overcome some kind of default burden or presumptive necessity to satisfy Māori. It does not oblige local authorities to incorporate Māori language or customs into its processes.

10. A local authority is required to give effect to the purpose of local government, which is to enable democratic decision-making on behalf of its communities and to promote the social, economic, environmental, and cultural well-being of communities generally. Whilst local authorities are required to establish and maintain processes to provide opportunities for Māori to contribute to decision making processes, the LGA requires that a local authority must give consideration to the views and preferences of *any* person likely to be affected by, or to have an interest in, a matter. Local authorities retain discretion as to how to achieve compliance with such provisions, and the Act does not expressly impose any duty to consult with anyone, including Māori, except where the special consultative procedure is required.[3]

11. Local authorities should be aware of legal risks if they incorporate measures specific to Māori that go beyond that required by law. Rights preserved by the New Zealand Bill of Rights Act 1990 ("NZBORA") and the Human Rights Act 1993, to freedom of thought, conscience, religion, and belief, as well as to be free from discrimination, may be engaged in such circumstances.

12. There may be legal claims of legitimate expectation where local authorities have an established practice or make promises to Māori, creating an expectation that such a practice will continue or promise will eventuate. They can challenge the authority if the expectation is

[2] International Covenant on Civil and Political Rights (1996), ratified in New Zealand on 28 December 1978, discussed as reflecting the "democratic principle" in a local authority context, in *Timaru District Council v Minister of Local Government* [2023] NZHC 244 at [113].

[3] The special consultative procedure is outlined in section 83 of the Act, and is required in relation to the making, amending or revoking of bylaws, when adopting a Long-term Plan.

not met. Practices created for Māori that do not respect requirements of non-discrimination, may leave a Council legally exposed.

Legal Obligations

13. The LGA requires local authorities to adopt standing orders for the conduct of their meetings and those of their committees.[4] There is no express requirement in the LGA that Standing Orders must contain particular provisions for Māori.

14. As confirmed in *Hart v Marlborough District Council*,[5] the only obligations owed to Māori in respect of decisions made under the LGA are those explicitly included in the LGA parts 2 and 6.[6] Local authorities are not part of the Crown and are not bound by the Treaty of Waitangi.

15. Part 2 contains the purpose of local government and the role and powers of local authorities. Part 6 contains decision-making obligations. As such, the proper inquiry when considering the lawfulness of a local authority's decision in the context of this opinion, is whether it has acted in accordance with the provisions of Part 6, including sections 77, 78, 80, 81, and 82.[7]

16. To do so, local authorities should ask themselves:

    1) Do any options identified as reasonably practicable to achieve the objective of the decision, involve a *significant* decision that relates to land or a body of water (having regard to the local authorities significance and engagement policy);

        a. If they do, the local authority must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.[8]

    2) Has the local authority given consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter?[9]

    3) When considering the above two matters, has the local authority exercised its discretion largely in proportion to the significance of the matters (in accordance with its significance and engagement policy)?[10]

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[4] Local Government Act 2002, Clause 27, Schedule 7.
[5] *Hart v Marlborough District Council* [2025] NZHC 47.
[6] Section 4 of the LGA states that "Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes". In *Hart*, above n 2, the Court stated that the proper inquiry in that case was whether the Council complied with Part 6.
[7] Section 80 is not relevant to the context of this opinion, as it prescribes the identification of decisions inconsistent with policy.
[8] Section 77.
[9] Section 78. In this respect, local authorities are to provide opportunities for *any* affected parties to provide information.
[10] Section 79 states that a local authority has discretion about how to achieve compliance with sections 77 and 78, particularly in relation to how it identifies and assesses options, the degree to which benefits and costs are quantified, the extent and detail of the information to be considered, and the extent and nature of any written record that is kept regarding compliance.

4) In relation to the specific decision,[11] has the local authority acted in accordance with the principles in section 14, which include (among others):[12]

    a. Providing opportunities for Māori to contribute to its decision-making processes;

    b. Taking account of the community's interests within its district or region; and

    c. Where there is a conflict between principles, resolving this by prioritising the principle that a local authority should conduct its business in an open, transparent, and democratically accountable manner.

5) In relation to the decision-making process, has the local authority:

    a. established and maintained processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority;

    b. considered ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and

    c. provided relevant information to Māori for these purposes.

6) In doing so, has the local authority had regard to,[13] and is it acting in accordance with, its role? This is to give effect to the purpose of local government, to:[14]

    a. enable democratic local decision-making and action by, and on behalf of, communities; and

    b. promote the social, economic, environmental, and cultural well-being of communities[15] in the present and for the future.

7) Does the local authority have processes in place for consulting with Māori in accordance with the principles of consultation in section 82?[16]

    a. This includes (among others) that *where consultation is being undertaken*, persons who will or may be affected by, or have an interest in, the decision or

[11] *Te Rūnanga O Ngāti Whātua v Kaipara District Council* [2024] NZHC 3889 considered whether processes had been maintained in respect of the specific decision to disestablish the Council's Māori ward. It did not matter that general processes such as the use of a Mana Enhancing Agreement, were being discontinued.
[12] Section 14. Section 79 of the Act requires a local authority to consider these principles when making judgments in its discretion about how to comply with sections 77 and 78.
[13] Section 81(2).
[14] Sections 10 and 11.
[15] In *Blakeley Pacific Ltd v Western Bay of Plenty District Council* [2011] NZEnvC 354, the Court found that this requires consideration of Māori as well as non-Māori communities.
[16] In *Hart*, above n 1, the Court found some engagement prior to the decision being made was required so as to enable consideration of views advanced. It is not the sole responsibility of Councils to obtain relevant information, what is needed is the opportunity for Māori to have access to information, and to provide their views.

matter, should be encouraged by the local authority to present their views to the local authority.

17. It is important to note that these provisions do not create any duty to consult with anyone, including Māori,[17] and there is no requirement that such considerations or processes be part of Standing Orders.

18. What is required will be context dependent and largely at the discretion of the local authority. As an example, the High Court recently determined that the Kaipara District Council had maintained processes (irrespective of a Mana Enhancing Agreement and Memorandum Of Understanding being brought to an end) that provided opportunities for Māori to contribute to the Council's decision-making processes on its decision to disestablish its Māori ward. The occurrence of monthly meetings between the Kaipara District Council's chief executive and iwi representatives regarding the decision, was sufficient.[18]

Caution should be taken

19. The LGNZ Guide omits to remind councils (as public decision makers), of their obligations to uphold the NZBORA and in particular, its protections against discrimination. Councillors should take great care to avoid offering opportunities to Māori that are not offered to other members of its community.

20. Further, under section 13 of the NZBORA individuals have the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference. Aspects of Māori culture, such as the use of karakia, may offend individuals on this basis, as the incorporation of a Christian prayer at the beginning of meetings might also be objected to. Mandating this practice within local authority processes risks interfering with a person's rights under section 13, as well as showing preferential treatment to a particular culture or religion.

21. Finally, the LGNZ Guide does not alert councils to the risk of creating expectations among some Māori that they are entitled to special treatment. A decision of a local authority could be challenged if an assurance is made that is not delivered upon.

22. In the High Court case of *Hart*, a legitimate expectation was established in the context of the Marlborough District Council's decision on the proposed East Coast Beach Vehicle Bylaw 2023. The Council appointed a hearing panel to review and make recommendations on the bylaw. It decided to give relevant iwi opportunities to either submit to the panel *or* appoint a representative to the panel. The rest of the public were only afforded the opportunity to submit. One Iwi appointed a representative, making the number of persons on the panel a total of three. However, this iwi additionally sent a letter that was in substance a submission. Another iwi did not appoint a representative on the understanding that if they appointed a representative, they would not be able to submit on the proposal. A breach of legitimate expectation in respect of this iwi was established, due to the fact that the other iwi appointed

[17] The Court of Appeal found that local authorities are given a deliberately broad discretion as to whether to consult and, if so, how, in *Wellington City Council v Minotaur Custodians Ltd* [2017] NZCA 302, at [42].
[18] *Te Rūnanga O Ngāti Whātua v Kaipara District Council,* above n 12, at [89].

a representative *and* submitted on the bylaw.[19] The Council was found in breach despite the Court concluding that "the Council [had] engaged in extensive consultation with" the iwi.[20]

23. Considering this, if a local authority makes assurances to Māori that exceed what is given to other "communities" in its rohe it could, if it defaults on the assurance, face legal challenge from the relevant hapu or iwi for breach of legitimate expectation, or legal challenge from other people or groups disadvantaged by the discrimination (if the discriminatory assurance is delivered upon).

24. Local authorities should therefore take care in ensuring they comply with their legal obligations under the LGA, and do not commit themselves to actions beyond these.

Yours faithfully
FRANKS OGILVIE

Brigitte Morten
Director

[19] *Hart*, above n 1, at [180].
[20] *Hart,* above n 1, at [166].

This document was commissioned by Hobson's Pledge from lawyers Franks Ogilvie, to show by way of annotation and commentary, where LGNZ advice is wrong, misleading or inconsistent with applicable law.

GUIDE TO THE 2025 LGNZ STANDING ORDERS TEMPLATES

HE ARATOHU I TE ANGA TIKANGA WHAKAHAERE HUI A LGNZ

// UPDATED MARCH 2025

Franks Ogilvie annotated version June 2025

KEY:

"CERD" ~ International Convention on the Elimination of All Forms of Racial Discrimination

"LGA" ~ Local Government Act 2002

"LGOIMA" ~ Local Government Official Information and Meetings Act 1987

Highlighted text ~ Exercise caution, and consider comments

Contents

Introduction
Kupu whakataki

Good local governance requires us to ensure that the way in which we undertake public decision-making is open, transparent, fair and accountable.

Local authorities, local boards and community boards must adopt standing orders for the orderly conduct of their meetings. In the world of local government, the word 'meeting' has a specific meaning that refers to gatherings that conform to rules and regulations laid down in the Local Government Act 2002 (LGA 2002) and Local Government Official Information and Meetings Act 1987 (LGOIMA).

The Guide is allegedly designed to help Councils comply with the LGA and LGOIMA, but it goes far beyond this.

The LGNZ standing orders templates (SO) have been designed to help councils achieve just this. Standing orders are a critical element of good governance and great local democracy, because well-run meetings and hui should increase community awareness and understanding of our decision-making processes and build trust in our local political institutions. LGNZ has published three standing orders templates: one for city and district councils, one for regional councils, and one for community boards.

It is important to distinguish between the legal obligations of local authorities and those that they have the discretion to adopt.

This Guide has been developed to assist with councils applying their standing orders in practice and provide examples of good practice. It has been updated to provide guidance on changes made to the 2025 standing orders templates, such as:

- Additions to the "principles";
- Changes that allow people joining by non-audio-visual means to be counted as part of a quorum;
- The addition of "urgent meetings" in the event of delays caused by an equality of votes following an election; and
- Advice on how to operate committees with co-chairs (SO. 5) within the existing framework of rules.

The LGNZ standing orders templates[1] draw heavily on the 2003 model standing orders published by Te Mana Tautikanga o Aotearoa Standards New Zealand, and the Department of Internal Affairs' Guidance for Local Authority Meetings published in 1993. The template is updated every three years to ensure it incorporates new legislation and evolving standards of good practice.

We would like to thank the members of Taituarā's Democracy and Participation Working Party for their assistance with publication of the 2025 standing orders templates, which have been updated and refreshed through the increased use of plain English and the introduction of a more user-friendly format.

[1] All standing order references refer to the territorial authority standing orders template. Numbers may vary slightly in the regional council and community boards templates.

LGNZ is continually looking at ways to make the standing orders templates more accessible to members and flexible enough to allow councils to adjust them to local circumstances. We're always keen to hear your feedback.

Options for adopting the templates

Ngā kōwhiringa mō te whakamahi i ngā anga

The LGNZ standing order templates contain options that enable councils to adapt standing orders to meet their own styles and preferences. It is essential that councils consider these options before adopting the standing orders.

A new council may wish to delay adopting the new standing orders until after it has had an opportunity to discuss, and agree on, a future governance style, a discussion that would normally occur at a post-election induction workshop (see below for more information). Staff might also like to encourage members to set time aside, at least once a year, to review how the standing orders are working and whether their decision-making structures are effective.

To ensure that standing orders assist the governing body to meet its objectives in an open and transparent manner, while also enabling the full participation of members, governing bodies and local or community boards intending to adopt an LGNZ template need to decide which of the following options they wish to include in their standing orders.

Should members have a right to attend by audio or audio-visual link?

The LGA 2002 allows members to participate in meetings if they are not physically present, via audio or audio-visual means, if that participation is enabled by the council's standing orders.

Should a governing body, local, or community board decide they do not wish to allow members to do this, then standing order SO 13.7 ("Right to attend by audio or audio-visual link") must be deleted from the template before it is adopted. (see Part 3: Meeting Procedures for more information).

Since 1 October 2024, members who join meetings by audio/audio-visual means will be counted as part of the quorum. This only applies where a council has adopted SO 13.7 or an equivalent provision allowing members to attend meetings by audio visual means.

Should Mayors/Chairs have a casting vote?

The LGA 2002 allows a chairperson (chair) to use a casting vote if this is specified in standing orders. The vote can be used when there is a 50/50 split in voting. The LGNZ standing orders template includes the casting vote option. Should a governing body, local or community board decide that it does not wish for its chairs to have a casting vote, then SO 19.3, "Chairperson has a casting vote," will need to be deleted before the template is adopted.

Some councils have opted for an intermediate position, in which a casting vote can only be used for prescribed types of decisions, such as when there is an equality of votes for the adoption of a statutory plan (see Part 3: Meeting Procedures for more information).

Options for speaking and moving amendments

The LGNZ template offers councils a choice of three frameworks for speaking to and moving motions

and amendments, see the discussion on SO 22.1 for more information.

- Option A (SO 22.2) is the most formal of the three and limits the number of times members can speak and move amendments. For example, members who have moved and seconded a motion cannot then move and second an amendment to the same motion, and only members who have not spoken to the motion, or a substituted motion, may move or second an amendment to it. This is the framework used in the 2003 Standards New Zealand Model Standing Orders.
- Option B (SO 22.3) is less formal. While limiting the ability of movers and seconders of motions to move amendments, this option allows other members, regardless of whether they have spoken to the motion or a substituted motion, to move or second an amendment.
- Option C (SO 22.4) is the least formal of the three options. It gives members more flexibility by removing the limitations in options one and two that prevent movers and seconders speaking.

The council might also consider whether the option selected for the governing body should also apply to committees. Given that committees are designed to encourage more informal debate, and promote dialogue with communities, the informal option, Option C, might be the most appropriate.

Providing sufficient time to prepare advice

Standing orders provide for members of the community to engage directly with councils, standing committees and local or community boards, often by deputation (SO.16). When deputations are made it is common for officials (staff) to be asked to prepare advice on the items to be discussed.

The most common examples are SO.16 Deputations and SO.17 Petitions. In both cases the default standing orders give officials five days in which to prepare any necessary advice. Whether five days is sufficient time for staff to prepare advice will depend upon the size of a council and the way it works.

Before adopting the LGNZ template, the council should ensure that the five-day default is appropriate and practicable, and if not, amend the number of days.

Deciding when to adopt and review your standing orders

There is a tendency for new council to adopt the standing orders, the code of conduct and the governance arrangements of the former council soon after they are formed. This is not recommended.

Proposed resolution for adopting your standing orders

Once a decision has been reached on which discretionary clauses to incorporate, then a resolution to adopt the original or amended standing orders can be tabled. Such a resolution could, for example, take the following shape:

That the council (council name) adopt the standing orders with the following amendments:

1. *That the standing orders enable members to join hui by audio visual link - yes/no.*
2. *That the chair be given the option of a casting vote – yes/no.*
3. *That Option X be adopted as the default option for speaking and moving motions.*
4. *That SOs 16 and 17 require that requests for deputations or petitions are made at least XX days any presentation is made to the council.*

LGNZ recommends that local and community boards, and joint committees (if not set out in their terms of reference), undertake the same considerations before adopting their standing orders.

These matters should be discussed in detail at the initial members' induction hui or at a specially designed workshop or meeting held within a few months after the local body elections. The reason for this suggestion is to allow time for new members to fully understand how local government works, complete any induction training, and form a view on whether the existing standing orders and governance structures are working or not.

It is important that elected members fully understand the policies and frameworks that will influence and guide their decision-making over the three years of their term, and the implications of each. This applies not only to your choice of standing orders but also to your code of conduct and your governance structure, such as whether to have committees or not and the delegations, if any, to be given to those committees.

Please note that the approval of at least 75 per cent of members present at a meeting is required to adopt (and amend) standing orders. In addition, it's good practice for members to reassess their governance arrangements, including standing orders, halfway through the second year of their term to ensure they remain inclusive and effective, given potential changes in community make-up, values and expectations.

The principles

Ngā mātāpono

The 2025 edition of the LGNZ standing order templates include an enhanced principles section which has been placed before the contents section to reinforce its importance.

The role of the principles is to highlight the overall purpose of standing orders and to assist chairs and their advisers when required to both interpret specific clauses or make rulings on matters that may be ambiguous. The principles state that members will:

1. Conduct their business in a transparent manner through public notice of meetings, provision of access to information, publicly open discussions, and meetings that are open to the public.
2. Respect confidentiality, in accordance with relevant legislation, when making decisions that contain sensitive information.
3. Represent their community when making decisions by taking account of the diversity of its communities, their views and interests, and the interests of communities in the future.
4. Acknowledge, and, as appropriate, make provision for Te Ao Māori and local tikanga in meeting processes.
5. Ensure that decision-making procedures and practices meet the standards of natural justice, in particular, that decision-makers are seen to have open minds.
6. Have a high standard of behaviour which fosters the participation of all members, including the expression of their views and opinions, without intimidation, bullying, or personal criticism.
7. Act with professionalism by ensuring their conduct is consistent with the principles of good governance and the behaviours outlined in the Council's Code of Conduct.

Standing orders must not contravene the LGA, LGOIMA, or any other Act.

The LGA only requires local authorities to facilitate participation by Māori in decision-making processes, Councils have discretion about how to achieve this.

In addition to the principles, meetings should comply, as appropriate, with the decision-making provisions of Part 6, LGA 2002 and be consistent with section 39, LGA 2002, which states that "governance structures and processes are effective, open, and transparent" (LGA 2002, s 39).

The principles have been brought to the front of the document to make it clear they are the foundation upon which the standing orders are based. The 2025 standing orders templates include additional principles to highlight the potential value of incorporating te ao Māori and local tikanga in meeting processes, recognise the importance of fostering participation and the expression of members' views, and reinforce the importance of acting professionally in line with the values set out in your council's code of conduct.

The new principles focus on processes and behaviours to enhance community trust in councils as democratic institutions. Poor behaviour can lead to unsafe outcomes for both staff and elected members and bring councils into disrepute. We hope that the new principles will help Mayors and Chairs who can face challenges in some of these areas.

LGNZ have placed greater weight on their constructed principles than what is legally required. We have outlined the legal requirements in the attached letter.

It is incorrect and misleading to state LGNZ's "principles" are the foundation upon which standing orders are based.

As noted, standing orders only need to comply with the LGA, LGOIMA or other legislation.

Alternatives to formal (deliberative) meetings
He ara anō mō te hui ōkawa (whakatau)

While the purpose of the Guide is to assist members and their officers to interpret and implement the LGNZ standing orders templates, there are times when it's useful for members to come together in less formal settings that enable wide ranging discussions, or briefings, in which standing orders may not apply. Such settings can be described as workshops or briefings. This chapter summarises recent advice published by the Ombudsman about the use of workshops and briefings.

Workshops

Workshops are best described as sessions where elected members get the chance to discuss issues outside the formalities of a council meeting. Informal hui can provide for freer discussions than formal meetings, where standards of discussion and debate apply, such as speaking time limits. There are no legislative rules for the conduct of workshops, and no legal requirement to allow the public or media access, although it is unlawful to make decisions at workshops or briefings where the LGA and LGOIMA requirements have not been satisfied.

Workshops can be a contentious issue in local government because they may be with the public excluded and lack minutes, which can be perceived as undermining principles of transparency and accountability. The Ombudsman's 2023 report into local council meetings and workshops, Open for business, makes several recommendations designed to address these concerns, reflected in this Guide. The effect of these recommendations (which are not, of themselves, legal requirements) is to encourage accountability processes around informal workshops and briefings etc, which are more in line with those applying to formal meetings. It will be for a council to determine whether to adopt these recommendations, or some other approach to address any accountability or transparency concerns, which may involve the preparation and release of post-workshop reports.

Workshops and briefings can provide an effective way to have 'blue skies' discussions, seek information and clarification from officers, and give feedback to officials on early policy work before

an issue is advanced. This can involve identifying a range of options that would be comfortable to elected members, before officials then proceed to assess those options. In effect, workshops and briefings are a part of the educative and deliberative phases of council decision-making, but typically one step removed from the substantive, formal phase.

Workshops can have multiple functions. In their guide to hui structures, Steve McDowell and Vern Walsh, from Meetings and Governance Solutions, describe workshops as a:

"forum held to provide detailed or complicated information to councillors which if undertaken at a council or committee hui could take a significant amount of time and therefore restrict other business from being transacted. Workshops provide an opportunity for councillors to give guidance to staff on next steps (direction setting)." [2]

They note that workshops provide an opportunity to:

- receive detailed technical information, including information that would be time-consuming to work through in another forum
- discuss an approach or issues around a topic without time restrictions or speaking restrictions
- enable members to question and probe a wide range of options, and gain an understanding of proposals
- enable staff to provide more detailed answers to questions and explore options that might otherwise be considered not politically viable.

Workshops or informal meetings cannot be used to make an actual or effective decision. It is also potentially unlawful to make a 'de facto' decision at a workshop, that is, to agree a course of action and then vote it into effect at a following formal council meeting without genuine debate. It is good practice to advise participants in workshops to avoid discussion and deliberation on matters which could carry elected members too far down a path toward a substantive decision. This is a matter of degree, but if a range of options is narrowed down significantly, this could give the impression of a decision being "all but" made at the workshop. We note that in the *Open for Business* report, the Ombudsman makes it clear that their jurisdiction extends to complaints about behaviour at workshops.

When not to use workshops

Some councils have taken to holding regular workshops that alternate with meetings of their governing bodies. The rationale is that the workshops enable members to be fully briefed on the upcoming governing body agenda and to seek additional information at an early stage, rather than having to do so in a way that might complicate formal meetings.

[2] See https://www.meetinggovernance.co.nz/copy-of-learning-and-development

Such practices are regarded with some concern by both the Ombudsman and the Auditor General, as they are seen as inconsistent with transparency and openness. If councils find this a useful approach, then the pre-governing body workshop could be open to the public to avoid the suspicion that "de-facto" decisions are being made.

Briefings

One of the unique features of local government is that all councillors, sitting as the council, have 'equal carriage' of the issues to be considered. This means, for example, that when the budget is under consideration there is no minister for finance or treasurer to assume executive authority or to guide the decision-making process – all councillors have equal accountability.

Accordingly, all councillors are required to satisfy themselves about the integrity, validity and accuracy of the issues before them.

Councillors have many complex issues about which to make decisions and rely on the advice they receive from the administration. Complex issues often require more extensive advice processes which culminate in the council report.

Briefings are a key feature of these processes. These are sessions during which councillors are provided with detailed oral and written material, and which provide councillors with the opportunity to discuss the issues between themselves and with senior staff. They often involve robust discussion and the frank airing of controversial or tentative views. Councillors who are well briefed are more likely to be able to debate the matter under discussion and ask relevant questions which will illuminate the issues more effectively. Councillors should be careful to not commit to formal decisions at these sessions.

Features of council briefings:

- They should be used when complex and controversial issues are under consideration
- They should involve all councillors and relevant senior staff
- All councillors should be offered the opportunity to attend and relevant senior staff should be involved
- Written briefing material should be prepared and distributed prior to the hui in order that the same information and opportunity to prepare is given to all councillors and officers
- They need to be chaired in such a way that open and honest communication takes place and all issues can be explored. Because time and availability are often limited, the chair must ensure that discussions are kept on track and moving towards a conclusion
- For more complex strategic issues, multiple briefings are usually necessary.

Traditionally, the content and form of briefings has meant they are not held in the public arena. This is to give councillors the opportunity to work through issues in a way that was not considered possible in an open council meeting. However, the Ombudsman's good practice guidelines for workshops (in *Open for business*, October 2023), which includes the principle of "open by default", apply equally to briefings. This is discussed further below.

To ensure transparency and accountability, it is important that the administration is made accountable for the formal advice it provides to the council meeting which subsequently takes place.

This advice may or may not be entirely consistent with the discussions which took place at the briefing.

Calling a workshop or briefing

Workshops, briefings and working parties may be called by:

- a resolution of the local authority or its committees
- a committee chair; or
- the chief executive.

The chief executive must give at least 24 hours' notice of the time, place and matters to be discussed. Notice may be given by whatever means are reasonable in the circumstances. Any notice given must expressly:

a. state that the session is not a meeting but a workshop,
b. advise the date, time and place, and
c. confirm that the hui is primarily for the provision of information and discussion and will not make any decisions or pass any resolutions.

Having a workshop or briefing open to the public

To build trust in council decision-making, councils should, unless dealing with confidential matters, consider whether workshops should be open to the public. The Ombudsman's view is that while it may be reasonable to close a workshop in a particular case, a general policy of having all workshops closed to the public is likely to be unreasonable.

Whether it is reasonable to close a workshop will depend on the individual case. Situations where it may be reasonable to hold a workshop in a public-excluded/private forum will include those where, if the workshop were a meeting, the public could be excluded under LGOIMA. However, the circumstances are not necessarily limited to those grounds in LGOIMA.

As mentioned above, the Ombudsman's view is that the same "open by default" approach should apply to briefings (and to forums, hui etc irrespective of the name given). Therefore, when deciding to hold either a workshop or a briefing, the first question to be considered is whether there is a convincing reason for excluding the public, or whether there is any reason why the briefing should not be open. Given the Ombudsman's report and recommendations, continuing with a practice of conducting all briefings outside the public arena runs the risk of drawing adverse comment from the Ombudsman.

That said, given the different function and nature of a briefing, as compared to a workshop (as explained above), it may be that the circumstances in which it is reasonable for a briefing to be closed to the public arise more readily than for a workshop.

Publicising upcoming workshops and briefings

Further to the above, details of *open* workshops and briefings should be publicised in advance so that members of the public can attend if they wish. These details should include the time, date, venue, and subject matter of the workshop or briefing.

For transparency reasons, it is also desirable for councils to publicise information about closed workshops and their subject matter, together with the rationale for closing them. This allows members of the public to make relevant information requests under LGOIMA if desired.

Making a record

The Ombudsman recommends that a written record of the workshop or briefing should be kept, to ensure that a clear, concise, and complete audit trail exists. Whether this is achievable or not will depend on the resource capacity of each council, but it would be good practice to attempt to create a record of what was discussed.

The record need not be as detailed as for formal meeting records and minutes, but should include:

- time, date, location, and duration of workshop,
- people present,
- general subject matter covered,
- information presented to elected members, if applicable, and
- relevant details of the topic, matter or information discussed.

Publishing the record

Councils should aim to publish records of workshops, briefings, and other informal meetings on their website as soon as practicable after the event.

Relationships with Iwi/Māori
Ngā hononga ki ngā Iwi/Māori

Since local governments receive their powers and authority from Parliament, they have a variety of duties that flow from the Crown's Te Tiriti obligations along with the discretion to involve and build relationships with mana whenua organisations, as they have with other organisations. Such relationships, with both hapū/Iwi and Māori as citizens, can be enhanced by the way in which councils conduct their meetings and arrange their decision-making processes.

The Local Government Act 2002 (LGA), and other acts of parliament, sets out a range of duties and responsibilities to Iwi/Māori that derive directly from the Crown's Te Tiriti obligations, some of which are directly relevant to the application of standing orders, namely:

1. Acknowledging, often through charters or memoranda of understanding, the historic mandate of mana whenua organisations as the traditional governors of Aotearoa New Zealand and your council's jurisdiction (relevant to Article 2 of Te Tiriti).
2. Enabling opportunities for the participation of Māori as citizens in council decision-making processes (relevant to Article 3 Te Tiriti).

Acknowledging Iwi/hapu as mana whenua (Article 2)

Iwi and hapū have a status that comes from their role as the indigenous governors of Aotearoa prior to Te Tiriti o Waitangi, and which is recognised in the United Nations Declaration on the Rights of

The Guide references "mana whenua" throughout, however the LGA contains provisions for "Māori" not mana whenua. The LGA doesn't define Māori, but the Local Electoral Act does, as "a person of the Māori race of New Zealand; and includes any descendant of such a person".

Local authorities are not part of the Crown, and are not bound by the Treaty. The only obligations that apply to local government in respect of Māori are those conferred by legislation.

It is important to acknowledge that the LGA does not create a 'higher' duty to Māori. Duties of participation are owed to all.

A supposed "historic mandate of mana whenua" has no legal basis.

There is no "duty" in the LGA to acknowledge Māori as the "traditional governors of NZ".

The UN Declaration on the Rights of Indigenous Peoples is not a Treaty, and has not been ratified by NZ, it has only been "approved". It is not legally binding at a domestic or international level.

To note, the CERD has been ratified by NZ and is binding international law. This aims to prevent racial discrimination which includes measures that "lead to the maintenance of separate rights for different racial groups".

Indigenous Peoples, to which NZ is a signatory. This status is different from the 'stakeholder' status given to many local organisations that councils usually work with. It is a status that is also acknowledged by many councils through ongoing relationship building initiatives.

In building relationships, it's important for councils to work with relevant iwi and hapū to determine how best to recognise their status. A common approach involves the development of a joint memorandum or charter of understanding to provide clarity around expectations, including how current and future engagement should occur. Such agreements could include:

- Processes for ensuring relevant mana whenua concerns are incorporated in governing body and committee hui agendas,
- Mechanisms for ensuring that papers and advice, as appropriate, incorporate the views and aspirations of mana whenua. Such mechanisms might include the co-design and co-production of policy papers and allowing mana whenua themselves to submit papers,
- A role for kaumatua in formal council processes, such as:
    - having a local kaumatua or mana whenua representative chair the inaugural council hui and swearing in of members, and/or
    - enabling kaumatua or other mana whenua representatives to sit at the governing body table as advisors.
- Placing information about significant aspects of your area's history as a regular item on the governing body's agenda,
- Holding hui on marae and other places of significance to Māori,
- Providing presentations at governing body meetings highlighting the history of the local area; and
- Inviting mana whenua organisations to appoint representatives on council committees and working parties.

Facilitating the participation of Māori as citizens (Article 3)

Standing orders are a mechanism for enabling members to work collectively to advance the public interests of their community – they are also a tool for promoting active citizenship. In recognition of the Crown's obligations under Article 3 of Te Tiriti and its responsibility to take account of Te Tiriti principles, parliament has placed principles and requirements in the LGA to facilitate the participation of Māori in council decision-making processes. These can be found in s.4 and parts 2 and 6 of the LGA.

Given that local government decisions are made in meetings governed by standing orders, councils should consider how their standing orders can facilitate such participation, such as by proactively taking steps to make it easy for Māori citizens to become involved in decision-making processes. The LGA 2002 provides some help, namely that local authorities must:

- Establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority, (LGA, section 14(1)(d)),
- Consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority, and
- Provide relevant information to Māori for the purposes of contributing to, and building 'capacity' to contribute to, the local authority's decision-making processes.

Local authorities should be careful to consider iwi and hapu as having a special status that is different from stakeholder status, as this risks treating members of the community differently, therefore creating discrimination.

There is no obligation to sign deeds of acknowledgement or memorandum under the LGA. Individual settlement Acts may allow for or require joint agreements but this is not a general duty.

Local authorities should be careful that by providing opportunities to some but not all, they are not creating discrimination.

There are no legal obligations to guarantee that mana whenua concerns are incorporated in agendas or requiring co-design of policy papers.

Local authorities should not delegate decision-making responsibilities.

S 41 of the LGA provides that a governing body of a local authority is responsible and democratically accountable for the decision-making of the local authority.

Local authorities are not part of the Crown, and do not need to consider the Treaty beyond what is required by legislation.

Opportunities for Māori to provide their views on matters affecting them is as important as it is for non-Māori. The Guide implies Māori should be given more opportunities than that of non-Māori. This is not what the law requires.

These provisions in the LGA do not provide "some help". Local authorities must comply with these provisions when making decisions and are not required to do anything beyond these (unless required by another enactment, or settlement agreement).

In relation to the LGA 2002, 'capacity' can be understood as the ability of a person (or group) to participate knowledgeably, given their resources and their understanding of the requisite skills, tools, and systems. Ways to build capacity include:

- Providing training and guidance on how council meeting and decision-making processes work,
- Holding meetings and workshops on marae and other community settings to help demystify local government processes, and
- Providing information about meetings in te reo Māori, including agendas and papers.

These suggestions have no legal basis. What is required by the LGA, is specified in the attached opinion.

This is not required - the LGA makes no reference to te reo.

Local authorities should be careful in adopting any of these suggestions, as they carry legal risks.

Councils should also consider the degree to which their facilities are culturally welcoming by incorporating Māori tikanga values and customs, such as protocols and mātauranga Māori (Māori knowledge). Examples include:

- Appropriate use of local protocol at the beginning and end of formal occasions, including pōwhiri and mihi whakatau,
- Using karakia timatanga for starting meetings and hui,
- Closing meetings and hui with karakia whakamutunga,
- Re-designing order papers and report formats to include te reo Māori, including headings,
- Reviewing council processes and cultural responses through a Te Tiriti o Waitangi lens, and
- Offering members the option of making the declaration in te reo Māori.

E.g. the use of karakia may infringe individual freedoms to thought, conscience and religion.

As the Crown has determined what Te Tiriti obligations there are on local authorities, any review of council processes needs to keep legal duties in mind.

Member declarations

Ngā whakapuakitanga a ngā mema

Before elected members can act as members of their council or local/community board, they must make a declaration. The declaration requires members, when making decisions, to put aside any partisan interests they may have to their ward or constituency, or sub-division, and exercise their skill and judgement in the best interests of their jurisdiction, whether a region, district/city, or community/local board area.

The declaration is designed for members of governing bodies, local, and community boards. It can be made in both te reo and English, or signed.

Clause 14 of Schedule 7 of the LGA requires a member to make a written declaration consisting of the elements described in (3) of that provision (see the English version below), which is to be dated and signed. Whilst it may be able to be made in te reo, so long as it consists of the same "elements", the LGA does not propose this.

Declaration

"I, [*full name of Mayor, councillor or board member*], declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of [name of region, district, city, local or community board], the powers, authorities, and duties vested in or imposed upon me as a member of the [*name of local authority*] by virtue of the LGA 2002, the Local Government Official Information and Meetings Act 1987 (LGOIMA), or any other Act."

Te reo declaration

Member declaration

Ko ahau, ko ……., e oati ana ka whai ahau i te pono me te tōkeke, i runga hoki i te mutunga kē mai nei o āku pūkenga, o āku whakatau hoki kia whakatutuki, kia mahi anō hoki i te mana whakahaere, te mana whakatau me ngā momo mahi kua uhia ki runga i a au kia whiwhi painga mō te takiwā o Te ……. hei kaicouncil o te Council-a-rohe o Te ……., e ai hoki ki te Ture Kāwanatanga-ā-Taiao 2002, ki te Ture Kāwanatanga-ā-Taiao Whakapae me te Hui 1987, me ētahi Ture anō rānei.

Waitohu: ……..

Waitohu mai ki mua i a: ……

Declarations by appointed community board members

A question often asked is whether members appointed to community boards need, in addition to their council declaration, to make a community board declaration.

Noting that councils have taken different approaches to this question in the past, we sought advice from our legal advisors, Simpson Grierson. In their view, the LGA 2002 is unambiguously clear: appointed members to community boards should make both declarations. The advice states that:

> While it is at least good practice to make the second declaration, clause 14 of Schedule 7 makes it a legal requirement that must be met before a member can fulfil their role. The main reason for this view is that the role of an elected member is statutory in origin, with clause 14 of Schedule 7 stating that a person "may not act as a member of a local authority until… that person has… made an oral declaration".
>
> The term "member" is defined to include members appointed or elected to community boards or local boards, as well as those members that are elected to a local authority. Because of the way in which "member" is defined, there is no distinction between appointed and elected community board members in terms of the requirements of clause 14.
>
> It should also be noted that the clause 14 declaration is not framed to only apply to local authorities (i.e. council as a whole), as it captures "elements" that will need to be modified dependent on the body/role that a member is to fulfil (e.g. to reflect that the role of a community board is to represent and advocate for the interests of their community, within the district). This further supports the view that this 'second' declaration must be made (as appropriate), before the office of a community board member can be fulfilled and a person can "act" as a member in a substantive manner (that is, they can make decisions).

It is also important to note section 54(2) of the LGA, which states "Part 1 of Schedule 7 (excluding clauses 15 and 33 to 36) applies to community boards, with all necessary modifications, as if they were local authorities". Between this provision (which does not exclude clause 14), and the discussion above regarding the 'elements' of the declaration, there is little room for question about the applicability of the declaration to community board members.

It is the combination of both declarations, where a person is both a councillor and a community board member, that enables that person to fulfil their roles.

The risks arising from having appointed members on community boards who have not made the community board declaration are primarily administrative. That is, a member who voted for or against a motion considered by a community board could conceivably expose that decision, or any non-decision, to judicial review.

Protocols for live streaming council meetings

Ngā tikanga mō te pāho mataora i ngā hui kaunihera

An increasing number of councils are livestreaming meetings, raising questions about what constitutes good practice. This section offers guidelines based on the practice of several councils for consideration.

Draft protocol

1. The default shot will be on the chairperson or a wide-angle shot of the meeting room.
2. Cameras will cover a member who is addressing the meeting. Cameras will also cover other key participants in a meeting, including staff when giving advice and members of the public when addressing the meeting during the public input time.
3. Members joining by virtual means will be incorporated in the webcast alongside those attending in person.
4. In the event of any interjections from elected members, any general disorder, or a disturbance from the public gallery, recording will continue unless the majority of members in attendance agree to stop the recording.
5. PowerPoint presentations, recording of votes by division and other matters displayed by overhead projector may be shown.
6. Shots unrelated to the proceedings or not in the public interest, are not permitted.
7. If there is general disorder or disturbance from the public gallery, coverage will revert to the chairperson.

8. Appropriate signage will be displayed both in and outside the meeting room alerting people to the fact that the proceedings are being livestreamed.

9. Council meetings shall be livestreamed in real time.

10. PowerPoint presentations and any other matters displayed by overhead projector shall be the focus of the recording.

11. Recordings shall be made available to the public through a link located on the council's website.

Some councils publish a disclaimer to acknowledge factors that might be beyond the council's ability to control, such as a loss of connection or, given that they are broadcast in real time and un-mediated, potentially offensive comments made by a participant at the meeting. For example, Waitomo District makes the following disclaimer:

Disclaimer – Webcasting of public council meetings

All public meetings of the council and its committees shall be webcast in real time, recorded and made available to the public after the meeting via a link on this website.

Webcasting in real time allows you to watch and listen to the meeting in real time, giving you greater access to Council debate and decision making and encouraging openness and transparency.

Every care is taken to maintain individuals' privacy and attendees are advised they may be recorded.

There may be situations where, due to technical difficulties, a webcast in real time may not be available. Technical issues may include, but are not limited to:

- the availability of the internet connection
- device failure or malfunction
- unavailability of social media platforms or power outages.

While every effort will be made to ensure the webcast and website are available, the council takes no responsibility for, and cannot be held liable for, the webcast should the council's website be temporarily unavailable due to technical issues.

Opinions expressed, or statements made by individual persons, during a meeting are not the opinions or statements of the …… Council. The council accepts no liability for any opinions or statements made during a meeting.

Access to webcasts and recordings of Council meetings is provided for personal and non-commercial use. Video, images and audio must not be altered, reproduced or republished without the permission of Council.

Protocols for members participating in meetings by audio-visual means
Ngā tikanga mō ngā mema e whai wāhi ana ki ngā hui mā te ataata-rongo

Given the increasing use of meetings held by virtual means, whether by Zoom, Microsoft Teams, or another provider, members need to agree to a new behavioural etiquette to ensure that business is conducted transparently and efficiently, and that members can participate freely and safely.

Draft protocol

The following protocol is suggested as a guide for governing members' behaviour in virtual meetings:

12. Members attending a meeting by audiovisual link must have their camera turned on unless having the camera off has been approved by the chair prior to the meeting.

13. Members must ensure that cell phones are silent and with no vibration during council, committee and advisory group meetings.

14. Before the meeting members should make sure they have the right equipment, including a reliable internet connection, a microphone, speaker, and camera. Members should test equipment and troubleshoot any issues.

15. Microphones must be muted when members are not speaking or after the welcome procedure.

16. Members should focus on the meeting, not on other matters.

17. Members wishing to contribute to the debate should speak in a normal tone.

18. When asking questions, allow time for delayed responses.

19. Direct questions to the chairperson.

20. Avoid interrupting others while they are speaking.

21. Establish how and when participants can interrupt. For example, should participants raise their actual or virtual hands to signal they want to speak.

22. Post questions via chat.

23. Call out participants who are not following meeting etiquette.

24. Wear appropriate clothing and avoid stripes and small patterns as they can become distorted in the camera.

25. Members should position the camera so that it shows their full face.

26. Ensure that the lighting in the room is optimal. If possible, adjust your primary lighting source to be in front of you, and consider a ring light to improve lighting even more.

In addition, there are specific matters that councils need to agree to, such as:

- How members should interrupt a speaker to raise a Point of Order
- How Notices of Motion will be submitted
- How voting will be carried out, and if challenged, how votes will be verified.

Approaches to these questions and others may vary depending upon the meeting software being used. Most councils are likely to make use of the chat and hand-raising functions.

Process for removing a chairperson or deputy Mayor from office

Te tukanga mō te whakakore i te tūranga o te upoko, te kahika tuarua rānei

1. At a meeting that is in accordance with this clause, a territorial authority or regional council may remove its chairperson, deputy chairperson, or deputy Mayor from office.

2. If a chairperson, deputy chairperson, or deputy Mayor is removed from office at that meeting, the territorial authority or regional council may elect a new chairperson, deputy chairperson, or deputy Mayor at that meeting.

3. A meeting to remove a chairperson, deputy chairperson, or deputy Mayor may be called by:

   (a) A resolution of the territorial authority or regional council; or

   (b) A requisition in writing signed by the majority of the total membership of the territorial authority or regional council (excluding vacancies).

4. A resolution or requisition must:

   (a) Specify the day, time, and place at which the meeting is to be held and the business to be considered at the meeting; and

   (b) Indicate whether or not, if the chairperson, deputy chairperson, or deputy Mayor is removed from office, a new chairperson, deputy chairperson, or deputy Mayor is to be elected at the meeting if a majority of the total membership of the territorial authority or regional council (excluding vacancies) so resolves.

5. A resolution may not be made, and a requisition may not be delivered, less than 21 days before the day specified in the resolution or requisition for the meeting.

6. The chief executive must give each member notice in writing of the day, time, place, and business of any meeting called under this clause not less than 14 days before the day specified in the resolution or requisition for the meeting.

7. A resolution removing a chairperson, deputy chairperson, or deputy Mayor carries if a majority of the total membership of the territorial authority or regional council (excluding vacancies) votes in favour of the resolution.

Please note that these provisions also apply to community boards.

LGA 2002, sch. 7, cl. 18.

Setting the agenda and raising matters for a decision
Te whakarite rārangi take me te whakaara take kia whakatauhia ai

One of the most common questions raised by elected members, especially new members, concerns the process for placing an item on a council or committee agenda. The process as set out in the standing orders states that matters requiring a decision at a meeting, may be placed on the meeting's agenda by a:

- Report of the chief executive;
- Report of the chairperson;
- Report of a committee;
- Report of a community or local board; or
- Notice of Motion from a member.

Where a matter is urgent and has not been placed on an agenda, it may be brought before a meeting as extraordinary business by a:

- Report of the chief executive
- Report of the chairperson.

When out of time for a Notice of Motion, a member may bring an urgent matter to the attention of the meeting through the chairperson.

Standing Order 9.12 describes the requirements that apply when a meeting resolves to consider a matter not on the agenda, requiring that the chairperson provide the following information during the public part of the meeting:

- The reason the item is not on the agenda; and
- The reason why discussion of the item cannot be delayed until a subsequent meeting.

Please note nothing in this standing order removes the requirement to meet the provisions of Part 6 of the LGA 2002.

Standing order 9.13 enables a meeting to discuss minor items which are not on an agenda only if the matter relates to council business and at the start of the public part of the meeting, the chairperson explains that the matter will be discussed.

Please note that while a meeting cannot make a resolution, decision, or recommendation on any minor matter that was not on the agenda for that meeting, it can refer the matter to a subsequent meeting for further discussion.

Pre-agenda meetings

Setting agendas involves finding a balance between being seen to be responsive to a topical or urgent issue, and the need for council officials to prepare advice members need to make an

informed and legal decision. In addition, members, whether of the governing body or committees, are likely to have matters that they want considered – but not all matters can be discussed at any single meeting, so councils need a process to prioritise agenda items.

One approach is to employ pre-agenda meetings.

Whakatāne District Council holds pre-agenda meetings when setting council, committee and community board agendas. Pre-agenda meetings for community boards involve:

- Face-to-face meetings approximately two weeks before each board meeting
- Meetings are ideally scheduled at a time which suits working community board members, but can be flexible. Meetings seldom if ever exceed one hour
- The community board chair requests any agenda items from board members prior to the pre-agenda meeting (excluding requests for service items)
- Pre-agenda meetings consist of a governance representative and a staff liaison person (but not limited to this), the community board chair and deputy chair
- The first items for consideration are those recommended by staff as 'must-haves'. Occasionally, some minor items can be resolved without going on the agenda, simply by having the staff representative follow-up with appropriate council teams. If there are too many items, the group prioritises and refers some to future meetings
- Pre-agenda meetings are more than simply agenda-setting meetings – they are another structured slot in the calendar to connect, build relationships with staff and smooth out little issues without bringing them to a meeting.

Mayors' powers (s.41A)

Ngā mana a te kahika (s.41A)

S. 41A (LGA 2002) describes the role of a Mayor as being to:

- Provide leadership to councillors and the people of the city or district
- Lead development of the council's plans (including the long-term and annual plans), policies and budgets for consideration by councillors.

The Mayor's powers	**The governing body's powers**
(a) to appoint the deputy Mayor.	Remove a deputy Mayor appointed by the Mayor.
(b) to establish council committees, their terms of reference, appoint the chair of each of those committees and the members.	Discharge or reconstitute a committee established by the Mayor

(c) to appoint themselves as the chair of a committee.	Discharge a committee chair who has been appointed by the Mayor
To decline to exercise the powers under clauses (a) and(b) above. The Mayor may not delegate those powers to another person.	

Mayor is a full member of committees (but not DLCs)

Under s.41A(5), a Mayor is a full member of each committee (though not community or local boards). This replaces the previous reference to Mayors being *ex officio* members of committees.

As a result, Mayors are counted for the purpose of determining a quorum, except in the case of a joint committee, where a Mayor whose membership is solely due to s.41A is not counted for the purpose of the quorum. However, if a Mayor has been appointed to a joint committee due to their role or experience (that is, named as a council representative on the joint committee) then they will count as part of the quorum (see Cl. 6A, Schedule 7 LGA 2002).

Clause 6A:

For the purposes of subclause (6)(b), a Mayor who is a member of the committee solely by operation of section 41A(5) is not counted as a member of the committee for the purposes of determining:

The number of members required to constitute a quorum, or whether a quorum exists at a meeting.

District Licensing Committees

A number of councils have asked whether s.41A(5), which states that Mayors are members of all committees, applies to District Licensing Committees. The short answer is no, DLCs are sufficiently different to typical standing orders, that S41A does not apply. The reasons, provided by our legal advisers at Simpson Grierson, are:

- Section 186 of the Sale and Supply of Alcohol Act (SSAA) requires the Council to appoint 1 or more DLCs as, in its opinion, are required to deal with licensing matters for its district. This is important, as it highlights the specific statutory role of the DLC.
- The functions of the DLCs include determining applications and renewals for licences and manager's certificates (section 187, SSAA).
- Section 189 requires the Council to “appoint” members to each DLC. The Chair is a specific appointment, and can be an elected member or a commissioner, and the other two members need to be appointed from the councils list held under section 192, SSAA. What this means is that a formal resolution needs to be made to determine the statutory appointees to the DLC, which for the Chair can be an elected member (including the Mayor) or commissioners.
- There is no strict requirement that an elected member who chairs the DLCs must have experience relevant to alcohol licensing matters. However, because being a chair of a DLC could involve a significant time commitment each week, there is generally consideration of

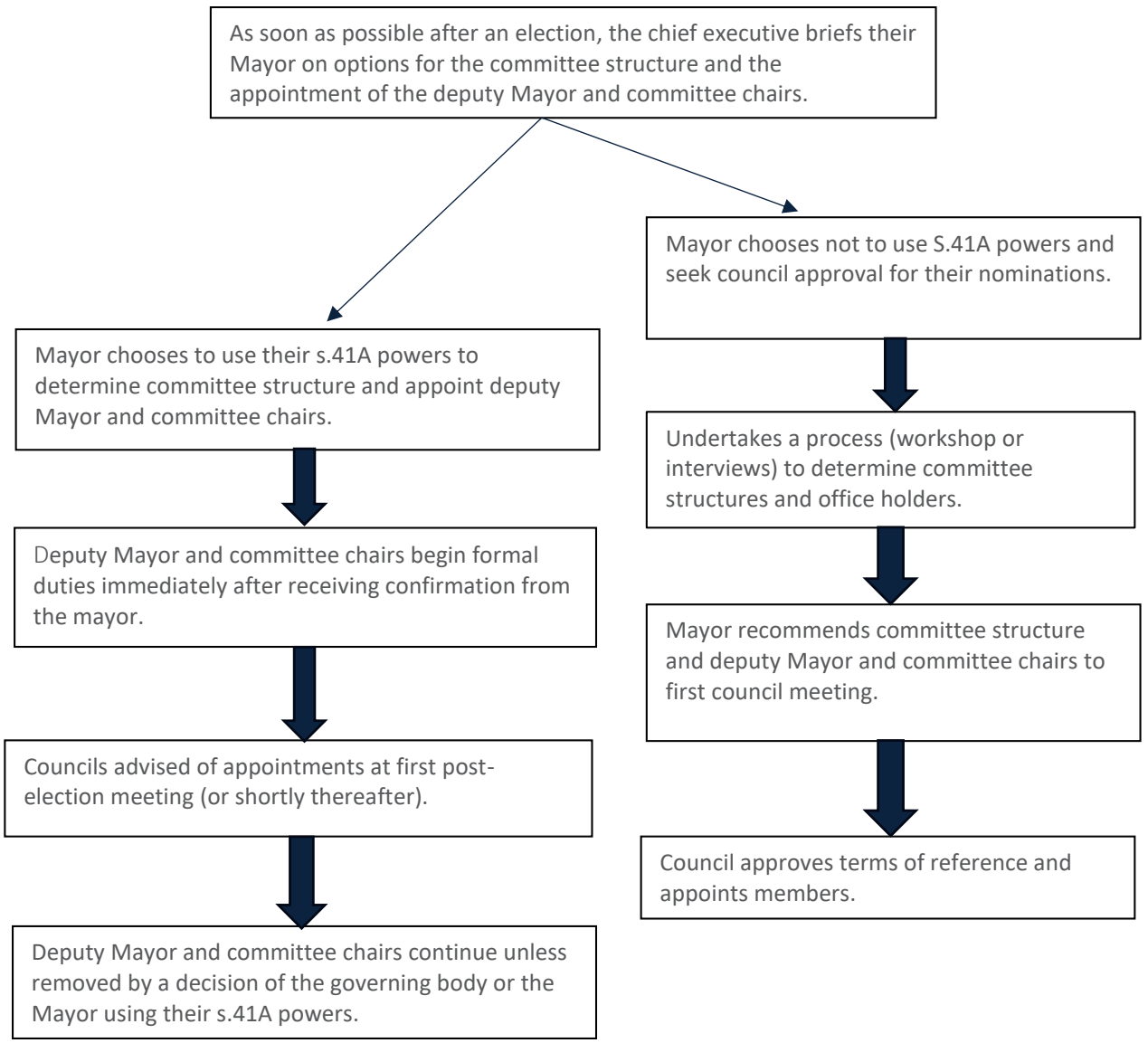
whether it would be appropriate for a Council to recommend the appointment of commissioners to be the DLC chair (instead of elected members).

- We tend to see that commissioners are appointed as the DLC Chair, given the quasi-judicial function of the DLC, and the significant time commitment involved. There is also often a need for specific training and experience to allow the Chair to properly fulfil the role.
- Sections 189(6) and 192(2 - 3) require a council to maintain a list of persons that can be appointed to the DLC, with those persons needing to have "experience relevant to alcohol licensing matters". Such experience may include knowledge of the legal and regulatory aspects of alcohol licencing and knowledge of the SSAA, and this would apply to the Chair as well.

The collective effect of these provisions is to set up a framework (and requirements) for the appointment of DLC members, although as noted above there are no strict requirements applying to the appointment of an elected member as the Chair. In practice, the council – through its officers – should assist with the appointment process and highlight the issues and constraints that will need to be considered when making appointments.

To the extent that section 200 says that LGOIMA applies to a DLC, other than Part 7, this highlights that while the DLC is a council committee, it is tasked with a specific set of function and is required to comply with the specific meeting provisions in the SSAA, rather than complying with the obligations in Part 7 of LGOIMA. This provision does not, in our view, relate to the Mayor's role but supports the interpretation that the DLC is different in substance from other council committees.

Process recommended for establishing committees.



Delegations

Ngā tukunga mana

Delegations are one of the most important instruments councils have for achieving their objectives, as governing is a complex endeavour and a governing body by itself cannot hope to hold all the information required. Councils make lots of decisions. For example, a parking warden makes decisions about whether to write a parking ticket, the parks department makes decisions about whether trees need to be pruned or not and governing bodies make decisions about the level of rates.

Ensuring that decisions are made at the appropriate level is vital to ensure the efficient and effective operation of your local authority.

Local authorities have broad powers of delegation, which are described in cl.32 of Schedule 7 of the LGA 2002. Other Acts also contain powers of delegation, although these are specific to the powers in those Acts, such as the Building Act 2004. **Certain decisions, however, must be exercised by the full council and cannot be delegated.** These include:

- The power to make a rate
- The power to make a bylaw (although local boards have the right to recommend these for their local areas)
- The power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term council community plan
- The power to adopt a long-term plan, annual plan, or annual report
- The power to appoint a chief executive.

Most other decisions can be delegated to committees, local or community boards and in some cases, the chief executive. Bodies with delegated decision-making powers, such as a committee, have the full authority of the council for the decision-making powers delegated. The council cannot usually rescind or amend a decision made by a committee to which the council has delegated the decision-making power (see the Guide to the LGNZ Standing Orders). Councils can change or revoke delegations at any time.

Role of committees

Unlike the governing body of a council, committees can work in a less formal manner, which allows in-depth discussion and debate about issues. This allows elected members to ask questions directly of staff involved in the preparation of advice and engage with stakeholder organisations and citizens themselves. It is an approach that ensures policy decisions are based on not only good information but also consider the views of interested parties from within your communities.

While committees focus on more detailed matters than the governing body, they need to avoid the temptation to get involved in operational activities, or duplicate the work of staff.

Similarly, it is not best practice if committees are simply a first-order rubber stamping process for issues, or resolutions, on the route to final approval by the full council.

Reasons for delegating

The LGA 2002 describes the purpose of delegations as being to promote efficiency and effectiveness in the conduct of a local authority's business. Although delegations allow a local authority to devolve certain decision-making, it will ultimately retain legal responsibility for exercising any powers it has delegated. The potential reasons for delegating include:

- Freeing up councillors so they can focus on strategic issues for the benefit of the entire district, city or region rather than be distracted by minor issues
- Meeting legislative requirements (for example, there are certain activities a council cannot delegate)
- Allowing complex and time-consuming issues to be effectively addressed, such as reviewing district plans, matters that are impractical for the governing body to handle
- Enabling decision-makers to build up additional knowledge and skill on important issues, such as a committee overseeing the council's infrastructure performance, or an Audit and Risk Committee
- Providing opportunities for elected members to debate and discuss issues in an informal setting, unlike the formal arrangements that apply to governing bodies
- Finding a mechanism that will allow the direct involvement of staff, such as a subcommittee
- Being able to appoint external experts to a council decision-making body, such as committee or sub-committee.

Ultimately, delegation is a tool for putting decision-making closer to communities and people affected by the matters under consideration while also allowing for the direct participation of those affected parties, such as Iwi/hapū.

Delegating to staff

Delegating specific powers, duties or functions to staff members can speed up council decisions and ensure that council meetings are not tied down by procedural and everyday administrative decisions. It also enables councils to use the technical knowledge, training, and experience of staff members to support its decisions.

Decisions to delegate specific powers to staff (and special committees) are made at a formal council meeting and specify what the delegate is empowered to do. They are usually required to observe the strategies, policies and guidelines adopted by the council and may be required to report periodically to the council on decisions made. Through the chief executive and senior managers, the council can monitor the actions of staff to ensure that they exercise their delegated authority correctly. In this way the council retains control over decision-making.

Delegating to community and local boards

A territorial authority must consider whether to delegate to a community board if the delegation would enable the community board to best fulfil its role. The advantage of delegating decisions that apply specifically to areas for which the community has responsibility is to use a community board's local knowledge, its networks and its ability to form partnerships with local agencies and communities themselves.

Different rules apply to councils with local boards. Where a unitary council has local boards (only unitary councils can have local boards) decision-making is shared between the governing body and the local boards. The LGA 2002 requires that, with the exception of regulatory activities, the governing body must allocate responsibility for decisions to either itself or the local board for the area. Allocation must be made in accordance with principles set out in section 48L(2). The principles require that local boards should be given delegated authority for decisions unless the following applies:

- The impact of the decision will extend beyond a single board area
- Effective decision-making will need to be aligned or integrated with other decisions that are the responsibility of the decision-making body
- The benefits of a consistent or coordinated approach outweigh the benefits of reflecting the diverse needs and preferences of the communities within local board areas.

Local boards also have their own plan and agreement with the governing body which includes a description of their roles and the budget necessary for them to carry out their responsibilities.

Can the council change a decision made by a committee using its delegated authority?

The answer is generally no, but exceptions can exist. As a rule, a council is ultimately responsible for the decisions made by a committee using its delegated authority. While it cannot reverse the decision, it can, however, withdraw the delegation and remake the decision as long as the decision has not been implemented. Councils can also apply conditions to a delegation, for example, specifying that the delegated authority only applies in a defined number of circumstances, and that beyond those circumstances the decision will revert back to the governing body.

Section 6 of the 2025 standing orders has been amended to provide additional clarity on the practice of making delegations, such as guidance on what should happen when a body with a delegation is unable to undertake that delegation due, for example, to having been disbanded.

The following scenarios have been prepared to help answer some of the common questions concerning delegations.

Delegation scenario 1

Following the 2019 election, the Mayor established a Parking Committee to which the council delegated authority to determine parking prohibitions. In 2020, the Committee resolved to create time restricted parking (P120s) on the north side of Clawton Street.

Following the 2022 election, the Parking Committee was not re-established which meant that the delegated authority to determine parking prohibitions passed back to the council as a whole.

In 2023, the Operations Committee began a review of the CBD upgrade and concluded that the time-restricted parking should be removed – can the Operations Committee revoke the 2020 resolution of the Parking Committee?

***Answer**: No, responsibility for determining parking prohibitions sits with the governing body. For the Operations Committee to remove the restrictions, it needs to ask the governing body to give it the necessary delegatory powers.*

Delegation scenario 2

Following the 2019 election, the Mayor established a Parking Committee and council delegated authority to the Committee to determine parking prohibitions. In 2020, the Committee resolved to create time-restricted parking to P120 on the north side of Main Street (the main thoroughfare in the CBD). The Committee was re-established, with the same powers, after the 2022 elections.

In 2023, the council undertook a review of the CBD and recommended the removal of the time restricted carparks approved by the Parking Committee in 2020. The proposed removal of the carparks has been advertised and there are 34 submissions objecting to the proposed removal and 40 in support.

Given the level of public interest in this matter can full council make the decision, rather than putting the onus on the CBD Parking Committee?

Answer: *The governing body can make the decision to remove the time-restricted car parks only if it resolves to remove the delegated power from the Parking Committee, or if the Committee itself resolves to refer the decision to the governing body. The governing body could possibly intervene if it had included a condition in the original delegation that allowed it to make the decision if, for example, public interest went beyond a specified threshold, as measured, perhaps, by the number of submissions.*

Delegation scenario 3

Following the 2019 election the then Mayor established a Parking Committee and council delegated authority to the Committee to determine parking prohibitions. In 2020, the Committee resolved to create time restricted parking to P120 on the north side of Main Street (the main thoroughfare in the CBD).

After the 2022 election the new Mayor established a Finance, Audit and Risk Committee and a Committee of the Whole to deal with all other business. Following a request from business owners the council is proposing to change the P120 car parks on main street to P60 carparks.

Now that the Parking Committee no longer exists, can the committee of the whole amend the Parking Committee's 2020 decision and change the parks to P60s?

Answer: *as the Parking Committee no longer exists, its powers (delegations) have passed back to the governing body. For the Committee of the Whole to change the parks to P60 the delegations need to be included in its terms of reference.*

Delegation scenario 4

Following the 2022 election, the Mayor established a Parking Committee and council delegated authority to the Committee to determine parking prohibitions. The Committee has three members with a quorum of two members.

An urgent resolution is required to create a section of no-stopping outside the primary school on Clawton Street. One of the Committee members is overseas and has a leave of absence. One of the other Committee members is the principal of the Clawton Road Primary School and has declared a conflict of interest.

Can the Mayor exercise their authority under s41A to change the membership of the Committee (for a short period of time) to ensure there is a quorum?

Answer: *Both the Mayor, using their s.41A powers, and the governing body, can make appointments to committees or sub-committees that they have established.*

If the Mayor chooses to use their s.41A powers he/she will need to inform the governing body in advance. As the LGA 2002 gives the governing body the right to "overturn" a Mayor's decision there is an implied obligation that they will be informed of the Mayor's decision before it is enacted.

Preparing for the next triennial election

Te whakarite mō te pōtitanga ā-toru tau e whai ake ana

The end of a triennium provides an opportunity to reflect on the efficacy of the policies, processes, and structures that collectively constitute a council's governance approach. Understanding what worked well and what didn't, can provide valuable lessons that the incoming council may wish to consider when deciding on their own governance approach. There is no point in replicating processes or structures that everyone agrees were sub-optimal. Possible initiatives include:

Governance handovers

To assist new councils in coming up to speed, councils, i.e. the governing bodies, may like to "prepare a letter to themselves" or a briefing for the incoming council.

The purpose of such a letter or report is to provide the new members of a council with an insight into what the outgoing council saw as the major challenges and what they learned during their term in office that they might have done differently. In other words, a chance to help the new council avoid the mistakes they may have made.

Whether or not to prepare advice for an incoming council and if so, what advice, is ideally a discussion that a Mayor/regional council Chair should have with their respective governing body before the last scheduled council meeting. It may be an ideal topic for a facilitated workshop.

Reviewing decision-making structures

One of the first decisions that new councils must make concerns their decision-making structure. Unfortunately, in most cases, new councils end up adopting the decision-making body of their predecessors.

We spend too little time looking at whether our councils have the right decision-making structure, as there is a wide menu of options, from governing bodies that choose to make all decisions, committees that are Committees of the Whole, committees with external appointments and portfolio models. We need to work with governing bodies to help them identify the right approach for their communities.

One way of doing this is to survey your elected members towards the end of the triennium to identify what worked well about their decision-making structure and what could be improved. Based on surveys and interviews the incoming councils should be presented with a menu of decision-making options with the strengths and weaknesses of each set out clearly.

Committees that are not discharged

Depending on the nature of their responsibilities, a council or group of councils in the case of a joint committee, can resolve that a committee continues beyond a triennial election. Typically, such a committee would be responsible for providing oversight of some form of project that has a long-term focus and may also contain appointed members.

Whether or not the committee is to be discharged at an election should be set out in its original terms of reference, adopted by resolution. Following an election the council, or councils by agreement in the event of a joint committee, can discharge and appoint new members to that committee.

When to schedule the last ordinary meeting

When putting together the schedule of meetings for the last year of a triennium, how close to polling day should the last meeting occur? Councils take different approaches and their practice may be affected by the nature of business that a council is facing prior to the coming elections.

Given that the election campaign properly starts four weeks before polling day, common practice would be to schedule the last ordinary council hui in the week before the campaign period begins.

This allows retiring members to make valedictory speeches away from the political atmosphere of the election.

Council business continues in the four weeks before polling day so expect some committees and sub-committees to still be meeting to deal with ongoing work, whether it is preparation of a submission or oversight of a local project. Urgent matters can still be addressed through an extraordinary or emergency meeting.

What about issues emerging in the interregnum?

Between polling day and the first meeting of the new council, at which members are sworn in, issues can arise that require an urgent council decision, so who should make such decisions?

This is a frequently asked question and there's only one practical answer, and that is your council's chief executive. Before the elections (and preferably at the first or second council meeting where delegations are agreed), a time-limited delegation should be adopted giving the chief executive broad discretion to act on behalf of the local authority. For example:

> *That from the day following the Electoral Officer's declaration, until the new council is sworn in, the Chief Executive is authorised to make decisions in respect of urgent matters, in consultation with the Mayor elect. All decisions made under this delegation will be reported to the first ordinary meeting of the new council.*

Guidance on individual clauses

This section of the Guide provides advice and guidance on specific clauses of the 2025 LGNZ standing orders and how they should be interpreted.

Part 1: General matters

Ngā take whānui

This section of the Guide deals with those matters that apply to the overall context in which standing orders operate including the role of Mayors and Chairs and the nature of decision-making bodies. It covers the following:

- Mayoral appointments,
- Meeting the decision-making requirements of Part 6, LGA 2002,
- Appointment of staff to sub-committees,
- Approving leave for members of the governing body,
- The relative roles of extraordinary and emergency hui, and
- Good practice for setting agendas.

SO 5.1: Mayoral appointments

It is critical that the chief executive advises their Mayor about their powers under section 41A Role and powers of Mayors, LGA 2022 as soon as possible after election results have been confirmed. This is to ascertain whether the Mayor wishes to make use of those powers.

Included in the standing orders are provisions regarding the ability of Mayors to establish committees and appoint deputy Mayors, committee chairs and committee members.

Where a Mayor chooses to use these powers, a council must ensure the results are communicated as soon as practicable to members of the governing body. We recommend that the information is provided by the Mayor or chief executive in the Mayor's report, for the first meeting of the governing body that follow the Mayor's appointments.

SO 5.5: Removing a Chair, deputy Chair or deputy Mayor

Clause 18, Schedule 7 of the LGA 2002 sets out the process for removing a Chair, deputy Chair or deputy Mayor. It is a detailed process that requires firstly, a resolution by the relevant meeting to replace the Chair or deputy, and secondly, a follow-up meeting, to be held no less than 21 days after the resolution, at which the change occurs.

A common question is whether the individual facing a challenge to their position should be able to speak and vote – the answer is yes. Both natural justice and the nature of the question to be resolved allows those directly involved to be able to speak and lobby on their own behalf.

SO 6.1: Only the holder of a delegated authority can rescind or amend a previous decision

It is common to get questions about the status of a delegation, especially when the body given the delegation, such as a committee, has been disbanded. A number of points should be noted:

- While only the holder of a delegated authority can rescind or amend a previous decision, this is qualified by whether the previous decision has been executed or not, and whether the "holder" still exists. (Please note, that this is subject to clause 30(7), Sch 7 of the LGA 2002, if the body in question is not discharged).
- Where a delegation no longer exists, either because the body, member, officer or appointment has been disestablished or the delegation has been revoked, any purported decisions made by that decision-maker without a valid delegation will be unauthorised".
- Where a decision is made under a delegation that has already been revoked (or in law is deemed to be revoked), the decision will lack the requisite delegated authority.
- If the decision has been made and relied upon, the issue of ostensible authority arises. If it has not been acted upon, the more appropriate approach is to note that the decision was made without authority, which means there is no 'decision' to revoke or amend. The council or delegating body is then free to decide on the matter.

See Appendix 4 for more information.

SO 7: Committees – appointment of staff to sub-committees

While non-elected members such as community experts, academics, or business representatives, may be appointed to committees and sub-committees, please note that council staff (staff) can only be appointed to a sub-committee. When appointing a sub-committee, a council or committee should ensure the terms of reference provide clarity of the skills and competencies required. This may involve:

- Requesting that the chief executive, or their nominee, determine which member of staff is appropriate to be a member of the sub-committee, or
- Identifying a specific position, such as the chief executive, city planner or economist, to be a member of the sub-committee.

SO 7.10: Power to appoint or discharge individual members of a joint committee – committees that are not discharged

A council, or a group of council in the case of a joint committee, can resolve that a committee continues beyond a triennial election, although for this to be the case all participating councils would need to resolve. In the case of joint committees, the appointment of new members and discharge of existing members sits with the council that they are members of.

A related and often asked question is whether appointments to District Licensing Committees (DLCs), unlike other committees, can be made for longer than a term. This is possible as DLCs are statutory committees that are not automatically discharged at the end of a term.

SO 8.4/6: Regarding extraordinary and emergency meetings

Extraordinary meetings are designed to consider specific matters that cannot, due to urgency, be considered at an ordinary meeting. For this reason, extraordinary meetings can be held with less public notification than ordinary ones.

Standing orders recommend that extraordinary meetings should only deal with the business and grounds for which they are called and should not be concerned with additional matters that could be considered at an ordinary meeting. Public forums should not be held prior to an extraordinary hui.

If councils need to hold meetings that are additional to those specified in their schedule, then they should amend their schedule to include additional ordinary meetings, rather than call them extraordinary meetings, to address what might be the general business of the council.

The LGA was amended in 2019 to provide for 'emergency' meetings (in addition to extraordinary and ordinary meetings). The key differences between extraordinary and emergency meetings are outlined below.

Table 1 Comparison of extraordinary and emergency meeting provisions

	Extraordinary meeting	Emergency meeting
Called by	A resolution of the local authority or requisition in writing delivered to the chief executive and signed by: • the Mayor or Chair, or • not less than one-third of the total membership of the local authority (including vacancies).	The Mayor or Chair; or if they are unavailable, the chief executive
Process	Notice in writing of the time and place and general business given by the chief executive.	By whatever means is reasonable by the person calling the meeting or someone on their behalf.
Period	At least three days before the meeting unless by resolution and not less than 24 hours before the meeting.	Not less than 24 hours before the meeting.
Notification of resolutions	With two exceptions, a local authority must as soon as practicable publicly notify any resolution passed at an extraordinary meeting.[3]	No similar provision exists for emergency meetings however good practice would suggest adoption of the same process that applies to extraordinary meetings.

[3] The exceptions apply to decisions made during a public excluded session or if the meeting was advertised at least five working days before the day on which it was held.

SO 8.9: Urgent meetings

In August 2023, Parliament amended the LGA 2002 to enable a chief executive to call an urgent meeting of a council if, in the chief executive's opinion, the council needs to deal with a matter urgently before the first meeting of the council has been called, and members sworn in.

An urgent meeting can only be called if an application for a recount has been made, and can be called even if the results of that recount are yet to be known.

The only business able to be conducted at that meeting is set out in LGA 2002, Sch. 7 Cl21B. It includes member declarations, an explanation of critical legislation, the election of a member to preside if needed and the matter under consideration.

SO 9.5: Chair's recommendation – ensuring the decision-making requirements of Part 6 are met

Part 6 is shorthand for sections 77-82 of the LGA 2002, which impose specific duties on councils when they are making decisions. The duties apply to all decisions, but the nature of compliance depends on the materiality of the decision.

The most important provisions are found in s. 77 (bullets a-c) below) and s. 78 (bullet d) below), which require that local authorities must, while making decisions:

a. seek to identify all reasonably practicable options for the achievement of the objective of a decision,
b. assess the options in terms of their advantages and disadvantages,
c. if any of the options identified under paragraph a) involves a significant decision in relation to land or a body of water, consider the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga, and
d. consider the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

The level of compliance needs to be considered in light of the council's Significance and Engagement Policy. It is also important to be aware that these obligations apply to the following:

- Recommendations made as part of a chair's report, and
- Recommendations made by way of a Notice of Motion (NOM).

Chair's report

It is common for a chair to use their report to raise a new matter for council deliberation. If that matter is more than minor it should be accompanied by an officer's report setting out options, their relative strengths and weaknesses and include evidence that any citizen affected by the recommendation has had a chance to have their views considered. The same applies to a notice of motion that seeks members' agreement.

What to do if a chair's recommendation or a Notice of Motion are inconsistent with Part 6?

A chair should refuse to accept a NOM that addresses possibly significant matters, unless it is accompanied by an officials' report assessing the level of significance and the applicability of Part 6. The same also applies to a recommendation made in a chair's report.

Where a matter triggers the requirements of Part 6, the chair or mover of the NOM, should:

- Ask the chair or mover of the NOM to amend their motion so that it asks for a staff report on the matter, or
- Require members submit a draft NOM to staff in advance to determine whether it is likely to trigger the need to comply with Part 6.

This guidance also applies to Standing Order 27.2 Refusal of notice of motion and allows a chair to refuse to accept a NOM that fails to include sufficient information to satisfy the requirements of sections 77-82 of the LGA.

To reduce the risks of this happening, some councils:

- Require the mover of a notice of motion to provide written evidence to show that their motion complies with Part 6, or
- Ask members to submit a proposed NOM to staff before a meeting so that an accompanying report can be prepared.

SO 13.3: Leave of absence

The standing orders provide for a council to delegate the authority to grant a leave of absence to a Mayor or regional council Chair. When deciding whether to grant a leave of absence consideration should be given to the impact of the requested leave on the capacity of the council to conduct its business.

Requests should be made in advance of a meeting and, where a member intends to be away for more than a single meeting, include all affected meetings.

Extended leave of absence

Council will need to establish their own policy as to whether a person who has a leave of absence for a length of time will continue to receive remuneration as an elected member. A policy could, for example, provide for remuneration to continue to be paid for the first three months of a leave of absence.

Most elected members will take leave from time to time; however, elected members, unlike paid employees, do not have entitlements to prescribed holiday or sick leave. An extended leave of absence without pay could be for personal reasons such as family/parental leave, prolonged holiday, illness or in some cases, when standing for another public office.

The Remuneration Authority advises that:

- Leave of absence without pay can and may be granted for a period by formal resolution of the council.
- The period of leave must involve total absence. The member cannot undertake any duties either formal or informal, including council meetings, meetings with external parties and constituent work. Nor can a member speak publicly on behalf of the council or represent it on any issues.

While on a formal extended leave of absence without pay, the payment of remuneration, allowances and the reimbursement of expenses to an elected member (including Mayor or regional council Chair) must cease during the whole period for which formal leave of absence is granted. All other

benefits (including the use of a council provided vehicle for the Mayor or regional council Chair) will also be unavailable to the member during the whole of period for which formal leave of absence is granted.

Acting Mayor or chairperson

An important role of the deputy Mayor or deputy regional council Chair is to cover short absences by the Mayor or regional Chair. In these cases, the deputy is not eligible to receive the remuneration, allowances and benefits usually payable to the Mayor or regional council Chair.

However, if an elected member is acting as the Mayor or regional council Chair because the position is vacant, or the incumbent is on a formal extended period of leave of absence without pay (as described above), the acting member is eligible to receive the remuneration, allowances, fees and benefits usually payable to the Mayor or regional council Chair, instead of the acting member's usual entitlements listed in the current Local Government Members Determination and the council's members expenses and reimbursement policy. The acting member is also entitled to the use of the motor vehicle if one is provided to the Mayor or regional council Chair.

For more information go to https://www.remauthority.govt.nz/local-government-members/leave-of-absence#cessation-of-remuneration,-allowances-and-expenses-1

SO 13.4: Apologies

Apologies are usually given when a member cannot attend a forthcoming meeting or inadvertently missed one, in which cases the apologies are made retrospectively.

SO 13.6: Absent without leave

If a member is absent from four consecutive meetings without their leave or apologies having been approved, an extraordinary vacancy is created. This occurs at the end of a meeting at which a fourth apology has been declined, or a member has failed to appear without a leave of absence.

Please note that this rule only applies to meetings of the governing body (and community boards and local boards). It does not apply to committees of the whole.

Section 117(1) of the Local Electoral Act 2001 begins: 'If a vacancy occurs in the office of a member of a local authority or in the office of an elected member of a local board or community board...'. Therefore, the standing order applies to local boards and community boards in addition to the council, but will not apply to committees of the whole.

Part 2: Pre-meeting arrangements

Ngā whakaritenga i mua i te hui

The pre-meeting section of the Standing Orders covers the various processes and steps that need to be completed ahead of a meeting, including the preparation of an agenda. This section of the Guide includes:

- Setting and advertising meetings
- Relocating meetings at the last minute
- Putting matters on the agenda.

Setting meeting times

Consideration should be given to choosing a meeting time that is convenient for members and will enable public participation. One approach could be to use the council induction training, or workshop, to seek agreement from members on the times that will best suit them, their council, and their community.

SO 8: Giving notice

Section 46(1) and (2) of the LGOIMA prescribes timeframes for publicly advertising meetings. This is so the community has sufficient notice of when meetings are due to take place. However, the wording of these subsections can cause some confusion:

- Section 46(1) suggests providing a monthly schedule, published 5-14 days before the end of the month.
- Section 46(2) suggests that meetings in the latter half of the month may not be confirmed sufficiently in advance to form part of a monthly schedule published before the start of the month.

Therefore, Section 46(2) provides a separate option for advertising meetings held after the 21st of the month. These can be advertised 5-10 working days prior to the meeting taking place.

Basically, councils must utilise the monthly schedule in section 46(1) for hui held between the 1st and 21st of the month; however, both methods for advertising meetings can be used for meetings held after the 21st. This requirement does not, however, apply to extraordinary or emergency meetings.

SO 8.1 and 8.2: Public notice and notice to members – definitions

Prior to the last election, the standing orders were updated to include new definitions of what constitutes a 'public notice' and how 'working days' are defined. The full provisions are:

Public notice, in relation to a notice given by a local authority, means that:

(a) It is made publicly available, until any opportunity for review or appeal in relation to the matter notified has lapsed, on the local authority's Internet site; and
(b) It is published in at least:
  (i) One daily newspaper circulating in the region or district of the local authority; or

(ii) One or more other newspapers that have a combined circulation in that region or district at least equivalent to that of a daily newspaper circulating in that region or district.

Internet site, in relation to a local authority, other person or entity, means an internet site that is maintained by, or on behalf of, the local authority, person, or entity and to which the public has free access.

Working day means a day of the week other than:

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, Matariki, and Waitangi Day;
(b) If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday;
(c) The day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
(d) A day in the period commencing with 20 December in any year and ending with 10 January in the following year.

SO 8.15: Meeting schedules – relocating meetings at the last minute

Local authorities must hold meetings at the times and places as advertised, so if an appointed meeting room becomes unavailable at the last minute (i.e. after the agenda has been published), and an alternative room in the same venue or complex cannot be used, the meeting can be relocated but will become an 'extraordinary' meeting and the requirements set out in Standing Orders 8.4 and 8.9 will need to be met.

If a meeting is relocated, we recommend informing the public of the change in as many ways as possible, for example:

- Alerting customer services,
- Changing meeting invitations to elected members,
- Updating notices visible outside both old and new venues,
- A sign on the original meeting room door, and
- Updates on the council website and social media pages.

SO 9.1: Preparation of the agenda – good practice

Deciding what to put on an agenda and the process used to make that decision is an important consideration. An agenda is ultimately the responsibility of the chair of the meeting and the chief executive, with the collation of the agenda and its contents sitting with the chief executive's control. The process varies between councils and is heavily influenced by size. Some principles of good practice include:

- Start the process with a hui of the council committee chairs to identify upcoming issues and determine which committee will address them first
- To strengthen relationships, mana whenua organisations could be invited on a regular basis to contribute items for an agenda or share their priorities, for consideration by a future meeting

- Seek regular public input into forthcoming agendas by engaging with a representative panel of community members
- Ensure elected members themselves can identify matters for upcoming hui agendas.

If a member wants a new matter discussed at a meeting, they should give the chair early notice, as the matter may require the chief executive to prepare an accompanying report.

Matters may be placed on the agenda by the following means:

1. By a direct request to the chair of the meeting, chief executive, or an officer with the relevant delegated responsibility.
2. By asking the chair to include the item in their report, noting that the matter might require a staff report if it involves a decision.
3. By the report of a committee. Committees are a mechanism for citizens, or elected members, to raise issues for council consideration. A committee can make recommendations to the governing body.
4. Through a local or community board report. Community boards can raise matters relevant to their specific community for consideration by the governing body. A councillor could approach a community board to get their support on a local issue.
5. Through a Notice of Motion. See Standing Order 27.1 for more detail. A NOM must still comply with the decision-making provisions of Part 6 LGA 2002 before it can be considered. Generally, a NOM should seek a meeting's agreement that the chief executive prepare a report on the issue of concern to the mover.

Where a matter is urgent, but has not been placed on an agenda, it may be brought before a meeting as 'extraordinary business' via a report by the chief executive or the chair. This process gives effect to section 46A (7) and (7A) of the Local Government Official Information and Meetings Act (LGOIMA) 1987. (Also see Setting the Agenda and Raising Matters for a Decision for more information.)

The topic of any request must fall within the terms of reference, or the scope of delegations, given to the meeting or relevant committee, board or subsidiary body. For example, business referred to a community board should concern a matter that falls within the decision-making authority of the board.

SO 9.7: Making agendas available

Underpinning open, transparent and accountable decision-making involves providing an opportunity for members of your community to know in advance what matters will be debated at which meeting. Making governing body, committee and community board agendas publicly available, whether in hard copy or digitally, is critical.

Section 46A of the LGOIMA requires agendas and reports to be made publicly available at least two working days before a meeting. This is a minimum requirement – agendas and papers should be posted on the council website with as much notice as possible before the meeting date.

Different communities will have different challenges and preferences when it comes to how they access information. Not all communities have reliable access to the internet, and you will need to

consider the abilities of young, old and visually or hearing impaired when determining how to provide access to information. Distributing information using a range of digital and traditional channels with consideration for accessibility needs will be a step toward strengthening trust in local democracy and narrowing the gap between council and their communities.

SO 9.8: Managing confidential information

Occasionally, councils must address the issue of how confidential agenda items should be handled, such as if there is a possibility that the information in the agenda could benefit a member or individual, should it become public. Some councils address this risk by delaying the distribution of confidential papers until two days before a meeting, providing them in hard copy, and individualising them, so that the specific copy each member receives is identified.

Part 3 – Meeting procedures
Ngā tukanga hui

Procedures for making decisions are at the heart of council standing orders. This section includes:

- Opening and closing your meeting with a karakia timatanga or reflection
- Voting systems
- Chair's obligation to preside and chair's casting vote
- Joining by audio-visual means
- Member conduct
- Quorums
- Revoking decisions
- Members attending meetings that they are not members of
- Moving and debating motions
- Discharging committees.

SO 4.5: Timing of the inaugural meeting

In 2023 the LGA 2002 was amended to increase the time between the declaration of results and the first meeting (swearing in) of a council. The new wording of Clause 21 Schedule 7 (LGA 2002) states:

1. *The first meeting of a local authority following a triennial general election must be called by the chief executive as soon as practicable after the date by which a candidate may apply for a recount has passed and*
    a. *the results of the election are known; or*
    b. *if an application for a recount is filed by a candidate or the electoral officer, the recount has been completed and the candidates to be declared elected are known.*

The implication of this change, brought in to deal with potential tied votes, is that notice of the first meeting cannot be given by the CE until three days after the declaration of results (or earlier if a recount is completed within the three days).

SO 10: Opening and closing your meeting

Local authorities have no obligation to start their meeting with any reflection or ceremony, however, it has become increasingly popular as a way of signalling the kaupapa of a council meeting and acknowledging its ceremonial importance. An example of a reflection used at the start of a meeting is the following karakia. This approach allows for tangata whenua processes to be embraced.[4]

As stated in the Guide, there is no legal obligation to implement karakia in council meetings.

In fact, Councils should be wary of doing so, as there are potential legal implications. Karakia are not culturally neutral, and a member may object to its incorporation based on section 13 of the NZ Bill of Rights Act - the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

Opening formalities – Karakia timatanga	
Whakataka te hau ki te uru	Cease the winds from the west
Whakataka te hau ki te tonga	Cease the winds from the south
Kia mākinakina ki uta	Let the breeze blow over the land
Kia mātaratara ki tai	Let the breeze blow over the ocean
E hī ake ana te atakura	Let the red-tipped dawn come with a sharpened air
He tio, he huka, he hau hū	A touch of frost, a promise of a glorious day.
Tīhei mauri ora.	

When a meeting opens with a karakia it should close with a karakia (unless there's multiple meetings/workshops in a day – in which case the closing karakia comes at the end of the day). Examples of karakia can be found from multiple sources, including from Te Puni Kōkiri.

SO 11.4: Requirement for a quorum – what happens when a member is 'not at the table'?

If a council has made provision in its standing orders for meetings to be held by audio visual means, then all members who join, whether virtually or physically, are counted as part of the quorum. This reflects a change to the LGA 2002 that took effect in September 2024.

SO 13.1: Members' right to attend all meetings

The legislation (cl. 19(2) Schedule 7, LGA 2002) and these standing orders are clear that members can attend any meeting unless they are 'lawfully excluded' (see the LGNZ standing order template for a definition of lawfully excluded). If attending, elected members have the same rights as the public. They may be granted additional speaking rights if permitted by the chair.

Many councils require non-members to sit away from the meeting table or in the public gallery to make it clear they are not committee members.

[4] Examples of karakia, and general advice on the use of tikanga Māori, can be found via an app, titled Koru, developed by MBIE and available from most app stores.

Whether a member can claim allowances for attending the meeting of a committee that they are not a member of is a question that should be addressed in the relevant council's allowances and expenses policy.

SO 13.7: Right to attend by audio or audio visual link

Local authorities can allow members to participate in meetings online or via phone. This can reduce travel requirements for councillors in large jurisdictions and facilitates participation for councillors when travelling.

If a council wishes to allow members to join remotely, then provision must be made for this in the standing orders. The LGNZ template contains the relevant provisions. If not, then standing orders 13.7-13.16 should be removed before the template is adopted.

Please note: Since October 2024, in situations where a council's standing orders make provisions for members to join meetings by audio/audio-visual means all members who join such a meeting by audio/audio-visual means are now counted as part of that meeting's quorum.

SO 13.16: Protecting confidentiality at virtual meetings

Some members have raised concerns that meetings held by audio-visual means may create confidentiality risks, such as the risk that a member may not be alone while a confidential matter is being discussed.

Councils should avoid, if possible, dealing with public-excluded items in a meeting that allows people to join virtually. While this may not be possible in extraordinary circumstances, we have strengthened the ability of a chair to terminate a link if they believe a matter, which should be confidential, may be at risk of being publicly released, see SO 13.13.

SO 14.1: Governing body meetings – must the Mayor or Chair preside?

Schedule 7, Clause 26(1) of the LGA 2002 provides that the Mayor (or Chair of a regional council) must preside over each council meeting they are present at. This reflects the Mayor's leadership role set out in section 41A. However, the requirement is subject to the exception "unless the Mayor or Chair vacates the chair for a particular meeting". This exception would usually be invoked if there is

Do members have to be present at hearings to vote?

The rules vary according to the legislation under which the hearing or submission process is occurring.

Hearings under the LGA 2002, such as Annual Plan or Long-Term Plan hearings, do not require all elected members to have participated in the submission process to vote on the outcomes of that process. Elected members who cannot participate at all, or who miss part of a hearing, should review all submissions, any AV recordings, and the analysis provided by officials before taking part in any debate and voting on the item under consideration.

It is good practice to make it clear in the minutes that the members who were absent had been provided with records of all submissions oral and written, prior to deliberations.

The Auditor General recommends that members should be present for the whole of a hearing "to show a willingness to consider all points of view" (OAG, Conflicts of Interest, August 2004 p. 43). The guidance suggests that lengthy periods of non-attendance at a hearing could suggest an element of pre-determination.

a situation in which they should not lead for some legal reason, such as where they have a conflict of interest or are prohibited from voting and discussing, such as by virtue of section 6 of the Local Authorities (Members' Interests) Act 1968, where the member has a pecuniary interest in the matter being discussed.

It is implicit in clause 26(1), that the Mayor or Chair will still be present in the meeting, and except in situations where the law prevents them from discussing and voting on a particular matter, they can continue to take part as a member. The clause only relates to vacating the chair, not leaving the meeting.

SO 14.2 Other meetings

The co-chairs option

The question, whether councils can appoint co-chairs to committees, or not, has been raised by several councils over the last few years. Indeed, the question was the subject of a remit at the 2013 LGNZ Annual General Meeting, with most member councils agreeing that LGNZ should take steps to enable this, such as changing legislation or regulation. It turns out that some councils already have co-chairs. The following text, kindly provided by Tauranga City Council, sets out a process for establishing co-chairs under the LGA 2002.

The provisions of the LGA 2002 relating to the appointment of a chairperson of a committee refer to the appointment of a singular person as the chairperson. This does not allow for the appointment of a co-chair. Consequently, the positions of chairperson and deputy chairperson are appointed and remain separate.

However, the chairperson can vacate the chair for all or part of a meeting and thus enable their deputy chairperson to chair the meeting (Clause 26(2) Schedule 7, LGA 2002). Consequently, the chairperson is able to be present and participate in the meeting, including the right to vote, while not chairing the meeting (unless they vacated the chair due to a conflict of interest). This would enable the two roles to effectively act as co-chairs.

This arrangement pre-supposes that the chairperson agrees to vacate the chair to enable the deputy chairperson to chair the meeting at pre-agreed times. The committee's terms of reference would need to state that it is the intention that this occurs, however, there is no ability to enforce this practice should the chairperson decides not to vacate the chair or a particular meeting.[5]

Only one person can chair a meeting at any one time. The person chairing the meeting has the powers of the chairperson as set out in standing orders. They would also have the option to use the casting vote (under Standing Order 19.3) in the case of an equality of votes. It is recommended that this be explicitly stated in the terms of reference for clarification.

[5] Options include alternating meetings or agreeing to chair for a specific time e.g. for the year. The chairperson will need to formally vacate the chair at the start of each meeting where it is pre-agreed the deputy chair will chair, and this needs to be recorded in the minutes of that meeting.

Can a chair stand down and stay in the meeting?

A common question raised with LGNZ is whether a chairperson can step down from their role as chair for all or part of the meeting to give another member chairing experience for example and stay in the room. The answer is yes. Simpson Grierson have provided the following advice:

> Our view is that it is acceptable for a person to vacate their position as chair and remain at the meeting, whether that is to allow another person to have training or otherwise.
>
> Clauses 26(1) and (2) of Schedule 7 state: 'The Mayor or chairperson of the local authority [or a chairperson of a committee] must preside at each meeting of the [local authority/ committee] at which he or she is present unless the Mayor or chairperson vacates the chair for a particular meeting.'
>
> Clause 26 does not state when a Mayor or chair may or must vacate the chair, or otherwise clarify the circumstances when a chair might decide to vacate. In many cases it may be because they have a conflict of interest, or another interest which means they consider it is appropriate that they do not remain the chair (for all or part of a meeting). For example, they may have an exemption or declaration from the Auditor-General under the LAMIA, but decide that it is better that they not chair the meeting for the particular agenda item concerned, or the entire meeting.
>
> In a conflict of interest situation the person should stand aside from the part of the meeting that engages with the conflict situation, but in other situations it appears they can still participate in the meeting. Clause 26 does not stipulate that the person vacating the chair must also leave the meeting.
>
> There are no other provisions in the LGA 2002 or the LGOIMA, or statements in relevant case law, that suggest that when a person vacates the chair for the meeting, they must also 'vacate' the meeting.

It is important to note that the language used in clause 26 anticipates that the chair can still be present, even if they have vacated the chair role for a particular meeting. If the chair was required to leave a meeting, there may be problems achieving a quorum, and it is clear in clause 23 that a meeting is constituted if a quorum is present 'whether or not all of the members are voting or entitled to vote.'

SO 15: Public forums

The standing orders provide for a period of up to 30 minutes, or longer if agreed by the chair, for members of the public to address the meeting.

The template allows this to be for up to five minutes each on items that fall within the delegations of the meeting, unless it is the governing body and provided matters raised are not subject to legal proceedings or related to the hearing of submissions. Speakers may be questioned by members through the chair, but questions must be confined to obtaining information or clarification on matters the speaker raised. The chair has discretion to extend a speaker's time.

While the forum is not part of the formal business of the meeting, it is recommended that a brief record is kept. The record should be an attachment to the minutes and include matters that have been referred to another person, as requested by the meeting.

SO 16: Deputations

In contrast to public forums, deputations allow individuals or groups to make a formal presentation to a meeting, as an item on the agenda. Given the additional notice required for a deputation, staff may be asked to prepare advice on the topic, and members may move and adopt motions in response to a deputation, when the matter is debated in the meeting.

SO 18.1: Resolutions to exclude the public

A resolution to exclude the public should clearly identify the specific exclusion ground and also explain in plain English how the council has applied that ground to the meeting content under consideration.

It is not good practice to simply cite the section number of LGOIMA as the “grounds” on which the resolution is based and quote the text of the section as the “reason” for passing the resolution. Rather, the “reason” should set out in plain English and in reasonable detail (where appropriate) the reason for public exclusion i.e., how the LGOIMA ground applies to the information and weighing that against any countervailing public interest arguments for non-exclusion. The extent to which this level of detail can be given may depend on the information concerned, and the ground(s) relied on. For example, the reason should not be described in a way which jeopardises the reason for public exclusion itself. With that in mind, a short description of the topic or matter being considered, alongside the withholding ground, may be all that can be safely disclosed in certain cases.

Excluding the public: good practice

In his report, Open for Business, the Ombudsman made observations on the processes that councils should follow when deciding to exclude the public from a meeting. Key points made in the report include:

A primary requirement is that public exclusion may only be made by way of formal resolution of elected members at the meeting itself. It is important that elected members take this responsibility seriously and carefully consider the advice of council officials. The resolution must:

- Be at a time when the meeting is open to the public, with the text of the resolution being available to anyone present.
- Be in the form set out in Schedule 2A of the LGOIMA.
- Only exclude on one of the grounds set out in section 48(1).
- State reasons for the resolution, including the interests it is protecting in the case of section 6 or 7 withholding grounds.
- Where exceptions to the exclusion are made for particular individuals, the resolution must detail their relevant expertise to the topic for discussion.

In his report the Ombudsman observed that some councils cited grounds for exclusion that were ultra vires, such as, for the expression of free and frank advice, which is not an eligible ground. A further issue raised by the Ombudsman was that many councils were not reporting the reasons

for excluding the public as clearly as they should be, and he has recommended that meeting minutes need to document public exclusion resolutions in a clear manner. He also favoured the use of "plain English" descriptions of the reasons for exclusion, rather than just, "clipping the wording from the legislation" (Open for Business, page 31).

SO 18.5: Release of information from public excluded session

Councils have different processes for releasing reports, minutes and decisions arising from public-excluded meetings, which can comprise material considered confidential under section 6 or section 7 of the LGOIMA. Documents may be released in part, with only some parts withheld.

The reasons for withholding information from the public do not necessarily endure in perpetuity – for example, information that was confidential due to negotiations may not need to remain confidential when the negotiations have concluded.

When a report is deemed to be 'in confidence', information can be provided on whether it will be publicly released and when. Regarding any items under negotiation, there is often an end point when confidentiality is no longer necessary.

If no release clause is provided, a further report may be needed to release the information creating more work. The following clause can be included in report templates (if in confidence) to address this issue:

> *"That the report/recommendation be transferred into the open section of the meeting on [state when the report and/or recommendation can be released as an item of open business and include this clause in the recommendation]."*

The above comments apply to release of information in the immediate context of a publicly excluded meeting. Councils are also encouraged to formalise the process for reconsidering the release of publicly excluded content at a time when the basis for withholding it may no longer apply.

In addition to the above, the public can of course make a LGOIMA request at any time for information heard or considered in the public excluded part of a meeting. Such a request must be considered on its merits and based on the circumstances at the time of the request. It cannot be refused simply because the information was earlier heard at a public excluded meeting.

Public excluded business – returning to an open session

Councils take different approaches to the way in which a meeting moves from public excluded to open status. There are two approaches:

1. By a resolution of the meeting, whereby the chair, or a member, moves that since the grounds for going into public excluded no longer exist, the public excluded status is hereby lifted.
2. At the end of the public excluded item, where public excluded status is 'tagged' to only those items that meet the criteria in the sample resolution set out in Appendix Two of the Standing Orders. Status is automatically lifted once discussion on that item is concluded.

Generally, option two should be followed. However, option one might apply where, during a substantive item, it is necessary to go into public excluded for a section of that item. In this case, the chair or a member should signal through a point of order that the grounds for excluding the public no longer apply. It is only a question of style as to whether a motion to return to open meeting is required.

In the event that a meeting moves into a public excluded forum, there is a requirement that the council make a resolution to that effect. Schedule 2A of the LGOIMA sets out a template resolution for that purpose, which should be adopted (with potential modifications to align with the style or preference of a particular council).

SO 19.3: Chair's casting vote

Standing Order 19.3 allows the chair to exercise a casting vote where there is a 50-50 split. Including this in standing orders is optional under Schedule 7, cl. 24 (2), LGA 2002. The casting vote option has been included in the template to avoid the risk that a vote might be tied and lead to a significant statutory timeframe being exceeded.

There are three options:

1. The casting vote provisions are left as they are in the default standing orders
2. The casting vote provision, Standing Order 19.3, is removed from the draft standing orders before the standing orders are adopted
3. The standing orders are amended to provide for a 'limited casting vote' that would be limited to a prescribed set of decisions only such as statutory decisions, for example: *where the meeting is required to make a statuary decision e.g., adopt a Long-Term Plan, the chair has a casting vote where there is an equality of votes.*

SO 19.4: Method of voting

One of the issues that arose during preparation of the new standing orders concerned the performance of some electronic voting systems and whether the way in which they operate is consistent with what we understand as 'open voting'.

LGNZ has taken the view that open voting means members should be able to see how each other votes 'as they vote', as opposed to a system in which votes are tallied and then a result released in a manner that does not show how individuals voted.

It is also important to note, when using electronic voting systems, that the LGNZ standing orders templates supports the right of members to abstain from voting, see standing order 19.7.

SO 19.5: Calling for a division

Understanding order 19.5, a member can call for a 'division' for any reason. If one is called, the standing orders require the chief executive to record the names of the members voting for and against the motion, as well as abstentions, and provide the names to the chair to declare the result. This must also be recorded in the minutes.

There are options for gathering this information. For example:

- When asking individual members how they voted, vary the order in which elected members are asked e.g., alternate between clockwise and anti-clockwise,
- To get a clear picture, ask members who voted for or against a motion or amendment to stand to reflect how they voted i.e., "all those in favour please stand" with votes and names, recorded, followed by "all those against please stand" etc.

SO 20: Members' conduct

Section 20 of the standing orders deals with elected member conduct at meetings. One feature of the LGNZ standing orders is the cross reference made to a council's Code of Conduct, which sets standards by which members agree to abide in relation to each other. The Code of Conduct template, and the draft policy for dealing with breaches, can be found at https://www.lgnz.co.nz/learning-support/governance-guides/.

At the start of a triennium, councils, committees and local and community boards, should agree on protocols for how meetings will work, including whether members are expected to stand when speaking and if there are specific dress requirements.

SO 20.7: Financial conflicts of interest

While the rules are clear that a member of a local authority may not participate in discussion or voting on any matter before an authority in which they have a financial or non-financial conflict of interest, determining whether one exists can be more challenging.

It is an offence under the Local Authorities Members' Interests Act 1968 to participate in any matter in which a member has a financial interest. Financial interest is defined by the Auditor General as:

> *"whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member involved"* (p. 25 Conflicts of Interest OAG 2004).

The rule makes it an offence for an elected member with a financial conflict of interest discussing and voting on a matter, for example, where an interest is in common with the public.

The Auditor General can grant exemptions from this rule, allowing a member to participate. Members should seek approval from the Auditor General if there is a possibility that their case would qualify for an exemption or declaration where it involves matters under s.6(4) LAMIA. For matters involving s3(a) and 3(aa) the council makes the application (see OAG's guide on Conflicts of Interest published in 2004).

SO 20.8: Non-financial conflicts of interest:

The Auditor General defines a non-financial conflict of interest or 'bias' as:

> *"is there, to a reasonable, fair minded and informed observer, a real danger of bias on the part of a member of the decision-making body, in the sense that he or she might unfairly regard (with favour or disfavour) the case of a party to the issue under consideration."*

The Auditor General cannot provide an exemption or declaration for non-financial conflicts of interest.

Bias, both actual and perceived, is a form of non-financial conflict of interest. A claim of bias can be made on the grounds of predetermination. A member who believes they may have a non-financial conflict of interest, or be perceived as having a bias, should:

- Declare they have a conflict of interest when the matter comes up at a meeting,
- Ensure that their declaration is recorded in the minutes, and
- Refrain from discussing or voting on the matter.

In such cases the member should leave the table and not take part in any discussion or voting on the matter. In determining the level of conflict, members should discuss the matter with the meeting chair, chief executive, or their nominee. However, the decision whether to participate or not must be made by the members themselves.

SO 22.1: Options for speaking and moving motions

One of the new features in these standing orders is the ability to use different rules for speaking to, and moving, motions to give greater flexibility when dealing with different situations.

Standing Orders 22.1-22.5 provide three options. Option A repeats the provisions in the Standards New Zealand Model Standing Orders, which limit the ability of members to move amendments if they have previously spoken. Option B provides more flexibility by allowing any member, regardless of whether they have spoken before, to move or second an amendment, while Option C allows still further flexibility.

When a council, committee, or community board, comes to adopt their standing orders, it needs to decide which of the three options will be the default option; this does not prevent a meeting from choosing one of the other two options, but it would need to be agreed by a majority of members at the start of that specific meeting.

The formal option A tends to be used when a body is dealing with a complex or controversial issue and the chair needs to be able to limit the numbers of speakers and the time taken to come to a decision. In contrast, options B and C enable more inclusive discussion about issues, however some chairs may find it more difficult to bring conversations to a conclusion.

For joint committees the decision could be simplified by agreeing to adopt the settings used by whichever member council is providing the administrative services.

SO 23.10: Where a motion is lost

This standing order was added in 2019 to make it clear that when a motion is lost, it is possible to move an additional motion if it is necessary to provide guidance or direction. For example, if a motion “that the council’s social housing stock be sold” was defeated, the organisation might be left without direction regarding the question of how the stock should be managed in the future.

Standing Order 23.10 enables a meeting to submit a new motion if required to provide direction to management.

SO 24.2: Revoking a decision

A council cannot directly revoke a decision made and implemented by a subordinate decision-making body which has the delegation to make the decision, provided its decision-making powers were exercised in a lawful manner.

Where a decision has been made under delegated authority but has not been implemented, a council can remove the specific delegation from that body and resolve to implement an alternative course of action.

SO 25.2: Procedural motions to close or adjourn a debate – what happens to items left on the table

Standing Order 25.2 provides five procedural motions to close or adjourn a debate.

When an item is left to lie on the table, it is good practice wherever possible to state what action is required to finalise it and when it will be reconsidered.

Item (d) states: "That the item of business being discussed should lie on the table and not be further discussed at this meeting; (items lying on the table at the end of the triennium will be deemed to have expired)".

We recommend that at the end of the triennium, any such matters should cease to lie on the table and are withdrawn.

Part 4: Keeping records
E whakarite mauhanga

SO 28: Keeping minutes

What to record?

The purpose of taking minutes is to keep a record of the proceedings of a council meeting and the actions a meeting has agreed to take or not. The minutes create an audit trail of public decision-making and provide an impartial record of what has been agreed. Good minutes strengthen accountability and help build confidence in our local democracy.

Good practice

- Minutes should provide a clear audit trail of the decision-making path.
- They should be succinct, but without sacrificing necessary content.
- Someone not in attendance should be able to understand what was decided.
- Anyone reading the minutes in 20 years' time will understand them.

In the recent *Open for Business* report, dated October 2023, the Ombudsman recommends that minutes should contain a clear audit trail of the full decision-making process, including any relevant debate and consideration of options (as well as the decision itself). It will be for each council to determine how this is best achieved in the particular circumstances. For example, it is common for reports to decision-makers to contain an options analysis and where this

is the case (and those options are endorsed) it would seem unnecessary to duplicate that in the minutes.

The level of detail recorded in minutes will vary according to preferences; however, the style adopted should be discussed with, and agreed to, by the bodies whose discussions and decisions are to be minuted. One way of doing this is to include, as part of the resolution adopting the minutes, either a stand-alone motion stating the level of detail that will be recorded or including this within the standing orders themselves.

SO 28.2: Matters recorded in minutes

SO 28.2 sets out what the minutes must record. In addition, it is recommended a record is made of the reasons given for a meeting not having accepted an officer's recommendations in a report; this might be important for future audit purposes.

While it is not a legal requirement, the Ombudsman has recommended that it is good practice for minutes to record how individual elected members voted. Whether to adopt this practice in general, or exercise discretion on when to record voting, may depend on the significance and nature of the decisions involved. When divisions are called, it is necessary to record voting. Where meetings have been live-streamed or recorded, a reference could be made in the minutes with the relevant link so readers can access more information if they choose.

When recording Māori place names, or discussion in Te Reo Māori, please make sure to use correct and local spelling.

Recording reasons for decisions

Recent decisions of the courts have highlighted the importance of recording decisions in a manner that clearly and adequately explains what was decided and why. Keeping good meeting records also:

- Helps ensure transparency of decision-making by providing a complete and clear record of reasoning
- Provides a reference in the event of issues arising around decision-making processes
- Provides an opportunity to create a depository of knowledge about how council make decisions and so develop a consistent approach.

In these decisions, the Courts have acknowledged that the provision of reasons is one of the fundamentals of good administration, by acting as a check on arbitrary or erroneous decision-making. Doing so assures affected parties that their evidence and arguments have been assessed in accordance with the law, and it provides a basis for scrutiny by an appellate court. Where this is not done, there is a danger that a person adversely affected might conclude they have been treated unfairly by the decision-maker and there may be a basis for a successful challenge in the courts (Catey Boyce, Simpson Grierson 2017).

While each situation is different, the extent and depth of the reasoning recorded should consider:

- The function and role of the decision maker, and nature of the decision being made
- The significance of the decision in terms of its effect on persons
- The rights of appeal available
- The context and time available to make a decision.

In short, the level of detail provided should be adequate to provide a 'reasonably informed' reader of the minutes an ability to identify and understand the reasons for the recommendations/decision made. In reaching a view on the appropriate level of reasoning that should be provided, the Significance and Engagement Policy of a council may be useful to guide the types of decision that warrant more detail.

Hard copy or digital

Te Rua Mahara o te Kāwanatanga Archives New Zealand has released guidance on the storage of records by digital means. General approval has been given to public offices to retain electronic records in electronic form only, after these have been digitised, subject to the exclusions listed below.

The following categories of public records are excluded from the general approval given:

- Unique or rare information, information of importance to national or cultural identity or information of historical significance;
- Unique or rare information of cultural value to Māori (land and people) and their identity; and
- All information created prior to 1946.

For more detail on each of these categories, refer to the guide 'Destruction of source information after digitisation 17/G133'. Te Rua Mahara o te Kāwanatanga Archives New Zealand will consider applications to retain public records from these categories in electronic form only on a case-by-case basis.

The Authority to retain public records in electronic form only is issued by the Chief Archivist under Section 229(2) of the Contract and Commercial Law Act 2017 (CCLA).

Compliance with Section 229(1) of the CCLA

A public office can retain public records in electronic form, and destroy the source information, only if the public record is covered by an approval given in this Authority (or specific authorisation has otherwise been given by the Chief Archivist), and the conditions of Section 229(1) of the CCLA are met. The two conditions of Section 229(1) are:

1. The electronic form provides a reliable means of assuring that the integrity of the information is maintained, and
2. The information is readily accessible to be usable for subsequent reference.

Note: Public offices should be aware that Section 229 of the CCLA does not apply to those enactments and provisions of enactments listed in Schedule 5 to the CCLA (Enactments and

provisions excluded from subpart 3 of Part 4). For further clarification, the Authority should be read in conjunction with the guide –Destruction of source information after digitisation 17/G13[6].

Information tabled at meetings

Any extra information tabled after the reports and agendas have been distributed should be specified and noted in the minutes, with copies made available in all places that the original material was distributed to. A copy must also be filed with the agenda papers for archival purposes.

Chair's signature

Where councils capture and store minutes digitally the traditional practice for authorising minutes of the chair's signature is not at all practical. For the digital environment, one approach would be to include, with the motion to adopt the minutes, a sub-motion to the effect that the chair's electronic signature be attached/inserted.

Regarding non-LGA 2002 hearings

The LGNZ standing orders are designed to comply with the LGA 2002 and LGOIMA 1987. Other statutes under which council may have meetings and hearings can have different requirements. For example:

Minutes of hearings under the Resource Management Act, Dog Control Act 1996 and Sale and Supply of Alcohol Act 2012 include additional items, namely:

- Record of any oral evidence,
- Questions put by panel members and the speaker's response,
- Reference to tabled written evidence, and
- Right of reply.

Information required in minutes of hearings of submissions under a special consultative procedure, such as Long-Term Plan hearings, include:

- Records of oral submission,
- Questions put by elected members and the speaker's response to them, and
- Reference to tabled written submissions.

In cases where a council chooses a course of action in response to submissions which is contrary to advice provided by officials, the reasons why it chose not to follow official advice should be recorded.

In summary:

- For procedural matters a pre-formatted list of statements can be useful for slotting in the minutes as you go

[6] See Authority to retain public records in electronic form only – Archives New Zealand

- Avoid attributing statements to specific politicians as it creates opportunity for debate during the confirmation of minutes
- Do attribute statements when given as expert advice
- Be flexible. Minutes are live recordings of real events – the rules will not always help you.

Affixing the council seal

The requirement to have a common seal was removed by the LGA 2002. However, there is an implied requirement for a council to continue to hold a common seal as there are some statutes that refer to it. A council may decide to require or authorise the use of its common seal in certain instances.

For example:

- Section 174(1) of the LGA 2002, states that if an officer of a local authority or other person is authorised by the LGA 2002 or another enactment to enter private land on behalf of the local authority, the local authority must provide a written warrant under the seal of the local authority as evidence that the person is so authorised.
- Section 345(1)(a) of the LGA 1974, which provides for the council conveying or transferring or leasing land, which is no longer required as a road, under common seal.
- Section 80 of the Local Government (Rating) Act 2002, which provides that the council must, in the case of sale or lease of abandoned land, execute under seal a memorandum of transfer (or lease) on behalf of the ratepayer whose interest has been sold or leased.
- Clause 17 of Schedule 1 of the Resource Management Act 1991 (RMA), which provides that approvals of proposed policy statements or plans must be affected by affixing the seal of the local authority to the proposed policy statement or plan.

However, given that there are no requirements in these provisions as to how the common seal may be affixed, it is therefore up to each local authority itself to decide.

Where such requirements continue to exist, the legal advice (sourced from Simpson Grierson) recommends that council have any deeds signed by two elected members. While the common seal could be affixed in addition to this, it is not legally required.

If a council continues to hold a common seal, then it is up to the council to decide which types of documents it wishes to use it for, and which officers or elected members have authority to use it. The process for determining this should be laid out in a delegation's manual or separate policy.

Appendix 1: Sample order of business
Āpitihanga 1: He tauira rārangi take

There is no single correct way of structuring the order of business to be considered at a meeting. Determining the appropriate order of agenda items will be influenced by the type of council, its size, the decision-making structures and the governance culture, as well as the preferences of the chair. A commonly used order of business is set out below:

Open section

(a) Apologies
(b) Declarations of interest
(c) Confirmation of minutes
(d) Leave of absence
(e) Acknowledgements and tributes
(f) Petitions
(g) Public input
(h) Local and/or community board input
(i) Extraordinary business
(j) Notices of motion
(k) Reports of committees
(l) Reports of local and/or community boards
(m) Reports of the chief executive and staff
(n) Mayor, deputy Mayor and elected members' reports (information)

Public excluded section

(o) Reports of committees*
(p) Reports of the chief executive and staff*
(q) Mayor, deputy Mayor and elected members' reports (information)*

*Only those aspects of these reports that are confidential should be considered in public excluded.

Appendix 2: Childcare allowance policy – guidance & template

Āpitihanga 2: Kaupapahere mō te utu tiaki tamariki – aratohu me te anga

LGNZ has developed the following template policies on child-care allowances to reflect our commitment to diversity and inclusivity. These are for councils to consider and adopt if they see fit.

- The draft "childcare allowance clauses" could be included in a council's "Elected Member Expenses, Allowances and Reimbursements Policy" (Expenses Policy). Councils can also adopt them as a separate policy if they wish
- Before any council decides to adopt any clauses/new policy, it will need to comply with its usual decision-making requirements in the Local Government Act 2002.

Both policies have been developed by LGNZ's legal advisers and both have been reviewed by the Remuneration Authority.[7]

Background and objectives

In 2017/18, the Remuneration Authority carried out a comprehensive review of its approach to determining remuneration and allowances for local government elected members. In this review they noted that caring for dependents was one of the barriers to participation as an elected member, particularly for younger women. As a result, in 2019 provision was made for councils to adopt an elected member childcare allowance.

The consultation document that led to the introduction of the childcare allowance raised questions, and included proposals, about leave of absence for other personal reasons. However, the Remuneration Authority did not make any specific determinations about leave of absence, other than a determination which requires an acting Mayor/Chair to be paid the remuneration and allowances that are normally payable to the Mayor/Chair when they are fulfilling that role (in an acting capacity).

The Remuneration Authority currently provides discretion for local authorities to make childcare allowances: see clause 14, Local Government Members (2022/23) Determination 2022.

LGNZ encourages all councils to provide for this allowance in their policies, for both councillors and community/local board members. While it is for eligible elected members to decide whether they will claim the allowance, ensuring all discretionary allowances are made available to elected members helps to minimise financial barriers for those who wish to hold office.

The Remuneration Authority reviews allowance limits annually, so before any childcare allowance is paid in any year, the current determination (and possibly the council policy) should be reviewed:

- Existing Expenses Policies will specify when allowance claims are to be made and paid

[7] Please note that any reference to 'parental leave' in these draft policy clauses does not mean 'parental leave' as that term is used in the Parental Leave and Employment Protection Act 1987.

- Councils should consider whether amendments are required to these clauses in conjunction with adopting these template clauses
- The placeholder text in [brackets] is for each council to choose/insert for consistency with other council documents, as part of their decision-making process.

The council will review this policy at least every three years, immediately following the local government election.

Please note: The council can only include additional 'rules' relating to an elected member claiming this allowance if the Remuneration Authority approves these in accordance with clause 6(3)(e), Schedule 7 of the Local Government Act 2002. However, instead of seeking approval from the Remuneration Authority, a council may decide to add 'notes', or parameters, that align with any preferences it has in relation to an elected member claiming the allowance. For example, by requiring that specific childcare centres be used, see below:

> *The council encourages elected members to use [XYC childcare centre] which is [owned and operated by the [council/council's CCO]] OR [which receives grant funding from the Council each year]*

Childcare allowance template:

The placeholder text in [brackets] is for each council to choose/insert for consistency with other Council documents and policies. Childcare allowance policy: draft clauses:

1. From the day the official result of the [*2022*] election is declared, eligible [*Members*] may claim a childcare allowance of up to *[$6,000*] per annum only, per child, to contribute towards expenses incurred by the [*Member*] for childcare provided while they are engaged on local authority business.[8]
2. In accordance with the Local Government Members Determination issued by the Remuneration Authority, a [*Member*] is eligible for the childcare allowance only if:
    a. the member is a parent or guardian of the child, or is a person who usually has responsibility for the day-to-day care of the child (other than on a temporary basis); and
    b. the child is under 14 years of age; and
    c. the childcare is provided by a person who—
        i. is not a parent of the child or a spouse, civil union partner, or de facto partner of the member; and
        ii. does not ordinarily reside with the member; and
3. the member provides satisfactory evidence to the Council of the amount paid for childcare.

[8] To find out whether your council provides a childcare allowance and, if so, the amount of that allowance, go to the council's Governance Statement, which can be found on its website. Alternatively, approach the council's administration officer.

Appendix 3: Parental leave of absence policy: notes and guidance

Āpitihanga 3: Kaupapahere tamōtanga mātua: he kupu ārahi me te aratohu

A good democracy needs to be inclusive and reflect as far as practicable the diversity of our communities. This applies not only to what councils do but also to the way in which decisions are made, including the membership of governing bodies and community and local boards. It is important that all eligible citizens not only feel able to stand for election and but also to participate fully if elected.

As the law stands, elected members are not entitled to statutory 'parental leave,' as they are not subject to the Parental Leave and Employment Protection Act 1987. Consequently, any decision to approve parental leave for an elected member is a council decision. The draft policy clauses below are intended to assist councils with their decision-making if an elected member seeks a leave of absence for parental leave.

LGNZ has developed the following template on parental leave to reflect our commitment to diversity and inclusivity. These are for councils to consider and adopt if they see fit. We recommend that the draft "parental leave" clauses are adopted as a standalone policy, given that they concern the matter of leave, rather than the payment of a specified allowance.

- Councils should ensure that any parental leave of absence policy clauses are consistent with existing standing orders, insofar as they relate to the approval of a leave of absence. A council may need to amend their standing orders to reflect:
    - That where a leave of absence is approved on the basis that an elected member will not perform any services (e.g., a total leave of absence), remuneration (and allowances) will not be payable for the period.
- The Parental Leave of Absence policy clauses assume that a parental leave of absence will be a total leave of absence, where no usual duties or functions are performed.

The placeholder text in [brackets] is for each council to choose/insert for consistency with other council documents and policies.

Parental leave of absence policy template

1. When a [*Membe*r] gives birth or adopts a baby under [*XX* age] old, the council may approve a leave of absence under [*standing order #*] (parental leave of absence).
2. A parental leave of absence may be approved for up to [*X]* months on request.
3. Approval of parental leave of absence will mean that the [*Member*] must not carry out any duties, either formal or informal. This will mean that the [*Member*] will not attend any council, community board, local board, or committee meetings, meetings with external parties or constituent work. The [*Member*] is also not able to speak publicly on behalf of the council or represent the council on any issue.
4. A [*Member*] will not be paid any remuneration or allowances while on an approved parental leave of absence.
5. If a member continues in their role in a more limited (partial) capacity, such as attending to constituent enquiries (e.g., phone calls and engagements where possible), and reading etc,

but not attending council meetings or workshops, their remuneration should revert to the remuneration received by a councillor with minimum allowable remuneration for their council, as set out in its determination.

6. The council will offer members returning from full parental leave a programme to assist them to transition back into their former role, this may involve a briefing from the chief executive officer on matters of importance that occurred during the member's absence.

APPENDIX D: HOBSON'S PROCLAMATIONS OF SOVEREIGNTY

Numb. 19900. 2179

The London Gazette.

Published by Authority.

FRIDAY, OCTOBER 2, 1840.

Downing-Street, October 2, 1840.

DISPATCHES have been received from Captain Hobson, R. N. Lieutenant-Governor of New Zealand, enclosing the following Proclamations, which have been issued by virtue of the powers confided to him by Her Majesty, and in pursuance of the instructions he received from the Marquess of Normanby, one of Her Majesty's Principal Secretaries of State:

PROCLAMATION,

In the name of Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland, by William Hobson, Esq. a Captain in the Royal Navy, Lieutenant-Governor of New Zealand.

Whereas by a Treaty, bearing date the fifth day of February, in the year of our Lord, one thousand eight hundred and forty, made and executed by me, William Hobson, a Captain in the Royal Navy, Consul, and Lieutenant-Governor in New Zealand, vested for this purpose with full powers by Her Britannic Majesty, of the one part, and the Chiefs of the Confederation of the United Tribes of New Zealand, and the Separate and Independent Chiefs of New Zealand, not members of the Confederation, of the other; and further ratified and confirmed by the adherence of the Principal Chiefs of this island of New Zealand, commonly called the Northern Island, all rights and powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation;

Now, therefore, I, William Hobson, Lieutenant-Governor of New Zealand, in the name and on the behalf of Her Majesty, do hereby proclaim and declare to all men, that, from and after the date of the above-mentioned Treaty, the full Sovereignty of the Northern Island of New Zealand vests in Her Majesty Queen Victoria, Her heirs and successors, for ever.

Given under my hand, at Government-house, Russell, Bay of Islands, this twenty-first day of May, in the year of our Lord, one thousand eight hundred and forty.

(Signed) WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
(Signed) WILLOUGHBY SHORTLAND,
Colonial Secretary.

PROCLAMATION,

In the name of Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland, by William Hobson, Esq. a Captain in the Royal Navy, Lieutenant-Governor of New Zealand.

Whereas I have it in command from Her Majesty Queen Victoria, through Her Principal Secretary of State for the Colonies, to assert the Sovereign rights

of Her Majesty over the southern islands of New Zealand, commonly called "the Middle Island," and "Stewart's Island," and also the island commonly called "the Northern Island," the same having been ceded in Sovereignty to Her Majesty;

Now, therefore, I, William Hobson, Lieutenant-Governor of New Zealand, do hereby proclaim and declare to all men, that, from and after the date of these presents, the full Sovereignty of the islands of New Zealand, extending from thirty-four degrees thirty minutes, north, to forty-seven degrees ten minutes, south, latitude, and between one hundred and sixty-six degrees five minutes to one hundred and seventy-nine degrees of east longitude, vests in Her Majesty Queen Victoria, her heirs and successors, for ever.

Given under my hand, at Government-house, Russell, Bay of Islands, this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty.

(Signed) WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
(Signed) WILLOUGHBY SHORTLAND,
Colonial Secretary.

War-Office, 2d October 1840.

2d Regiment of Dragoon Guards, Veterinary Surgeon Opie Smith, from the 11th Light Dragoons, to be Veterinary Surgeon, vice William Woodman, who retires upon half-pay. Dated 2d October 1840.

11th Regiment of Light Dragoons, James Robertson, Gent. (Acting Veterinary Surgeon to the Depôts of the 1st Dragoon Guards and 7th Light Dragoons) to be Veterinary Surgeon, vice Smith, appointed to the 2d Dragoon Guards. Dated 2d October 1840.

13th Regiment of Light Dragoons, Thomas Davis Lloyd, Gent. to be Cornet, by purchase, vice Wint, promoted. Dated 2d October 1840.

3d Regiment of Foot, Lieutenant Henry Torrens Walker, from the Ceylon Rifle Regiment, to be Lieutenant, vice Underwood, who exchanges. Dated 2d October 1840.

18th Foot, Ensign Scroope Bernard to be Lieutenant, by purchase, vice Dunne, who retires. Dated 2d October 1840.

John Pole Mayo, Gent. to be Ensign, by purchase, vice Bernard. Dated 2d October 1840.

21st Foot, Captain Nicholas Wrixon, from half-pay Unattached, to be Captain, vice Arthur L'Estrange, who exchanges. Dated 2d October 1840.

53d Foot, Ensign Robert Newton Phillips to be Lieutenant, by purchase, vice Nethercote, who retires. Dated 2d October 1840.

John Chester, Gent. to be Ensign, by purchase, vice Phillips. Dated 2d October 1840.

58th Foot, Ensign Charles Chester Master to be Lieutenant, by purchase, vice Oxenden, who retires. Dated 2d October 1840.

Henry Stone, Gent. to be Ensign, by purchase, vice Master. Dated 2d October 1840.

97th Foot, Thomas Biggs, Gent. to be Ensign, by purchase, vice Lynch, who retires. Dated 2d October 1840.

Rifle Brigade, Second Lieutenant Robert Craufurd to be First Lieutenant, by purchase, vice Gage, who retires. Dated 2d October 1840.

The Honourable Richard Charteris to be Second Lieutenant, by purchase, vice Craufurd. Dated 2d October 1840.

3d West India Regiment, Assistant-Surgeon Thomas Rhys, from the Hospital Staff, to be Surgeon. Dated 2d October 1840.

Ceylon Rifle Regiment, Lieutenant William Henry Underwood, from the 3d Foot, to be Lieutenant, vice Walker, who exchanges. Dated 2d October 1840.

HOSPITAL STAFF.

Deputy Inspector-General of Hospitals Hugh Bone, M. D. to be Inspector-General of Hospitals, in the Windward and Leeward Islands only, vice Thomas Draper, who retires upon half-pay. Dated 2d October 1840.

John Holt Elkes Stubbs, M. D. to be Assistant-Surgeon to the Forces, vice Rhys, promoted in the 3d West India Regiment. Dated 2d October 1840.

Commission signed by the Lord Lieutenant of the County of Worcester.

The Queen's Own Regiment of Worcestershire Yeomanry Cavalry.

James Arthur Taylor, Gent. to be Lieutenant, vice John Guest, resigned. Dated 28th September 1840.

Whitehall, September 25, 1840.

The Lord Chancellor has appointed Richard Dawson, of Epworth, in the county of Lincoln, Gent. to be a Master Extraordinary in the High Court of Chancery.

Whitehall, September 29, 1840.

The Lord Chancellor has appointed Henry Chads Barney, of Southampton, Gent. to be a Master Extraordinary in the High Court of Chancery.

NOTICE is hereby given, that a building, named the Scots' Church, situate in Coleman-street, London-wall, in the parish of St. Giles,