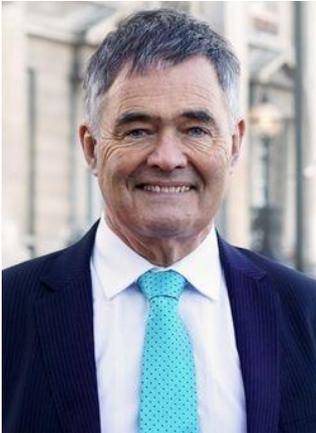


# The 2019 Guide to Standing Orders



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



## Preface

### Dave Cull, President, LGNZ

Democracy only really works if people trust it. And trust requires that our public decision-making processes are open, transparent and fair. In other words, citizens must be able to assure themselves that governments, at whatever level, work for the public interest. This is one of the reasons why standing orders are important. They provide a framework of rules for making decisions that gives effect to these principles; principles which are fundamental to a well-functioning democracy.

Whether councils apply their standing orders every time they meet, or refer to them only when faced with a complex or controversial issue, the fact that we have agreed and visible processes for making decisions is essential for public confidence in our decision-making. It is, therefore, important that our standing orders are not only fully compliant with legislation and best practice in the conduct of meetings, but that they are also easy to use.

The purpose of this Guide to Standing Orders is to assist those who are chairing meetings and the officials who advise them to ensure standing orders work well for the circumstances of each community. The Guide is designed to help interpret provisions which may be ambiguous in certain situations, and to address those matters that cannot be covered directly in the standing orders, because they are specific to an area.

This, the second edition of the Guide, has been expanded to include matters identified by practitioners over the last three years. I am sure you will find it helpful.

Dave Cull  
President  
LGNZ

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## Recommended process for adopting standing orders

Local authorities, local boards and community boards must adopt standing orders for the orderly conduct of their meetings. The approval of at least 75 per cent of members present at a meeting is required to adopt (and amend) standing orders.

The 2019 edition of the LGNZ standing orders contains a number of optional provisions and, as part of the adoption process, members need to be given the choice of which options to include prior to being asked to adopt the full set of standing orders. We recommend a process like the following:

### Officer's report to an ordinary meeting of the council

To adopt these standing orders, a report should be prepared for consideration at the first ordinary meeting of the governing body of the local authority (the council meeting).

The report should list the optional clauses in the standing orders template and briefly discuss the advantages and disadvantages of each. The optional clauses are:

- Members' right to attend by audio or audio visual link (clauses 13.11 – 13.16);
- A casting vote for the Chairperson (clauses 19.3); and
- The choice of a default option for speaking and moving motions:
  - A - formal, (cl. 22.2); or
  - B,- medium, (cl. 22.3); or
  - C - informal, (cl. 22.4).

### Factors to consider

#### Audio visual link

The LGA 2002 allows members of a local authority to participate in meetings if they are not physically present by audio or audio visual means. This provision was made in response to requests from councils that represent large geographic areas in which it is often difficult for some members to attend meetings at short notice. Its use, however, is not limited by statute and councils can develop policies should they wish to constrain the use of the technology to certain types of meetings or not.

To make use of this option the relevant rules must be incorporated within a council's standing orders. Please note that members attending by audio or audio visual means are not counted as part of a meeting's quorum.

#### Casting vote

The LGA 2002 allows chairpersons to use a casting vote if provision for such a vote is made in a council's standing orders. The vote can be used when there is an equality of votes and, despite some views to the contrary, a casting vote is not limited to supporting the status quo.

The LGNZ standing order template includes the casting vote option which will need to be removed should councils prefer that their chairpersons are unable to exercise such a vote.

A third option, in which a casting vote can only be used for prescribed types of decisions, is available. This option could specify, for example, that a casting vote can only be used for the adoption of statutory plans, such as the annual and long term plan (see p. 12 of this Guide).

### Speaking and moving options

The LGNZ standing orders template offers councils a choice of three frameworks, Options A, B or C, for speaking to and moving motions and amendments.

- Option A 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 a motion or substituted motion may move or second an amendment to it. (This is the framework used in the Standards New Zealand Model Standing Orders.)
- Option B is less formal than Option A. While limiting the ability of movers and seconders of motions to move amendments it allows any other members, regardless of whether they have spoken to the motion or substituted motion, to move or second an amendment.
- Option C provides substantial flexibility by removing the limitations placed on movers and seconders by the other two options.

The council is asked to agree on a default option which will apply to all meetings unless a chairperson, or meeting, agree to apply one of the other two options at specific meeting. It is recommended that the default option be marked as Default in the adopted standing orders.

### **Draft resolution**

Once decisions have been made on whether or not to incorporate the discretionary clauses, then a resolution to adopt the original or amended standing orders can be established. A resolution could take the following shape:

That the council adopt the standing orders as tabled with the following amendments:

- i. Provisions for meetings by audio visual link - yes/no.
- ii. A casting vote for chairpersons – yes/no.
- iii. Option A (formal), B (medium), or C (informal) as the default for speaking and moving motions.

The same process is recommended for local and community boards, and joint committees.

## Part 1: General matters

### Mayoral appointments under s.41A Local Government Act 2002

Included in the standing orders are provisions dealing with the ability of mayors to establish committees, appoint deputy mayors, committee chairs and members of committees (see standing orders 5.1 – 5.5).

Where a mayor chooses to use these powers, a council must make provision for ensuring the results of the Mayor's decisions are communicated as soon as practicable to members of the governing body. We recommend that either the Mayor or chief executive provide the information at the first meeting of the governing body that follows the Mayor's appointments.

It is critical that the chief executive of a territorial authority advises their mayor about s. 41A LGA as soon as possible after election results have been confirmed, so as to ascertain whether or not they wish to make use of those powers. Appendix 3 sets out a possible process for this.

#### The Mayor's leadership role

Under s.41A LGA mayors are responsible for the leadership of the "other members of the territorial authority" and the "people in the district of the territorial authority". They are also responsible for leading the development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.

Section 41A can have implications for the way these standing orders work, depending on how a mayor wishes to approach their leadership role, particularly in regard to plans, policies and budgets. Some mayors have chosen to put all plans, policies and budgets under their own names so as to give effect to their leadership responsibilities. The standing orders provide for a chairperson to stand down from the chair but still contribute to a debate, should they feel strongly about an issue, in order to ensure the objectivity of the chair.

#### Ensuring decisions meet requirements of Part 6 LGA 2002

The standing orders highlight the importance of recommendations, whether made in a chairperson's report or a Notice of Motion, complying with the decision-making requirements of Part 6 LGA.

Section 76 LGA specifies that every decision made by a local authority must be made in accordance with such provision of sections 77, 78, 80, 81 and 82 (LGA) as are applicable. This requirement applies to all decisions to the degree appropriate.

In some cases the impact of these provisions will require that a decision can only be made after consideration of options and related matters has taken place while in other cases, especially if the decision is a minor decision, no further analysis is required.

What is required is some evidence that consideration has been given to the degree to which a decision is or should be, subject to the matters specified in the relevant sections of Part 6.

These standing orders make provision within SO 26.2 for a chairperson to refuse to accept a Notice of Motion that fails to include sufficient information to satisfy the requirements of sections 77 – 82 of the LGA.

## Appointment of staff to sub-committees

While non-elected members may be appointed to committees and sub-committees, council staff, in the “course of his or her employment” can only be appointed to a sub-committee. When determining to appoint a sub-committee, a council or committee should, through the terms of reference, be clear about the nature 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.

## Policies for leave of absence by members of the governing body

The standing orders provide for a council to delegate the authority to grant leave of absence to a mayor or regional council chair. When deciding whether or not to give a member a leave of absence, a council or their delegate, may wish to consider. The impact of the leave of absence on the capacity of the council to conduct its business with regard to quorum, the number of members available to fulfil the councils’ responsibilities and other requests for leave of absences:

- A request for leave of absence should be made in advance of a meeting and would generally apply to a number of meetings that the member knows that he/she will be unable to attend; and
- Apologies are usually given when a member cannot attend a forthcoming meeting or inadvertently missed a meeting, in which cases the apologies are made retrospectively.

If a member is absent from four consecutive meetings without their leave, or apologies 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 had failed to appear without leave of absence.

Councils will need to establish their own policy as to whether or not a person who has a leave of absence for a length of time will continue to receive remuneration as an elected member, for example, a policy may provide for remuneration to continue to be paid for the first three months of a leave of absence.

## Extraordinary and emergency meetings – business

A question that is commonly asked about extraordinary meetings is whether or not business, other than the business for which the extraordinary meeting was called, should also be included on the agenda, or discussed at the meeting. The Standing Orders recommends that extraordinary meetings should only deal with the business for which they are called and should not be concerned with matters that could be considered at an ordinary meeting or have not been included in the grounds for which an extraordinary meeting has been called. Public forums should not be held prior to an extraordinary meeting.

Enacted in 2019, the Local Government Regulatory Matters Act has provided for a new type of meeting referred to as Emergency Meetings. The difference between extraordinary and emergency meetings is the time-frame involved and the process for calling them, see below.

**Table 1 Extraordinary and emergency meetings compared**

	<b>Extraordinary meetings</b>	<b>Emergency meetings</b>
<b>Called by:</b>	A resolution of the local authority or requisition in writing delivered to the CE and signed by: <ul style="list-style-type: none"> <li>• The mayor or chairperson; or</li> <li>• Not less than one-third of the total membership of the local authority (including vacancies).</li> </ul>	The mayor or chairperson; or if the mayor and chairperson are unavailable, the chief executive
<b>Process</b>	Notice in writing of the time and place and general business given by the CE.	By whatever means is reasonable by the person calling the meeting or someone on their behalf.
<b>Time frame:</b>	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.
<b>Notification of resolutions</b>	With two exceptions a local authority must, as soon as practicable, publicly notify any resolution passed at an extraordinary meeting.	No similar provision exists for emergency meetings however good practice would suggest adoption of the same process applies to extraordinary meetings.

## Use of extraordinary meetings

Extraordinary meetings are designed to consider specific matters which cannot, due to urgency, be considered at an ordinary meeting. It is for this reason that extraordinary meetings can be held with less public notification than ordinary meetings.

If councils need to hold meetings that are additional to those specified in their meeting schedule, then the appropriate response is to amend their meeting schedule to include additional ordinary meetings, rather than call extraordinary meetings to address what might be the general business of the council. Extraordinary meetings, as the name implies, are for business that cannot wait for an ordinary meeting and where grounds exist for shortening public notice.

## Part 2: Pre-Meeting

### Meeting times

Consideration should be given to choosing a meeting time that is convenient for members and facilitates the participation of the public. One approach would be to use the council induction workshop to seek agreement from members as to the times that will best suit them, their council and their community.

### Giving notice

The Standing Orders have now been updated to include the new definitions of what constitutes a public notice and how working days are defined. The new provisions are set out in the Local Government Regulatory Matters Act 2019. The full provisions are:

**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.

**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.

**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, 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.

### Advertising meetings to be held on or after the 21st of the month

Section 46(1) and (2) provide timeframes for the public advertising of meetings. The purpose of these subsections is to ensure sufficient notification to the public regarding when meetings will take place. However, the wording of these subsections can cause some confusion.

- Section 46(1) envisages that an efficient way of advertising meetings is to provide a monthly schedule, published 5-14 days before the end of the month.
- Section 46(2) envisages that meetings in the latter half of the month may not be confirmed sufficiently in advance to form part of a monthly meeting schedule published before the start of the month.

Therefore, Section 46(2) provides a separate mechanism for advertising meetings held after the 21st of the month, which councils can choose to follow. If councils wish to do so, meetings after the 21st of the month can be advertised 5-10 working days prior to the meeting taking place (that being 1-2 standard calendar weeks, unless public holidays fall during that time).

Basically, Councils must utilise the monthly schedule in Section 46(1) for meetings held between the 1st and 21st of the month, however, either method for advertising meetings can be used for meetings held after the 21st

### Re-locating meetings at the last minute

Local authorities must hold meetings at the times and places that it appoints, 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 re-located but will become extraordinary and the requirements set out in Standing Orders 8.5 and 8.10 will need to be met.

If a meeting is re-located, we recommend informing the public of the change in as many different ways as possible, for example:

- Customer Services made aware;
- Meeting invitations to elected members changed;
- Relevant notices visible outside both old and new venues;
- A sign on the original meeting room door, and/or; and
- Updates on the Council's website and social media pages.

### Process for putting matters on the agenda

An issue for many elected members, particularly those newly elected, is how to get matters on to the agenda of a meeting in order to achieve a decision. This issue is addressed in Standing Order 9.1 and Appendix 13. The provision applies to councils, subordinate decision-making bodies (these include committees and subcommittees), local and community boards. In short, a matter may be placed on the agenda as a result of any of the following:

- Through a direct request to the chief executive or an officer with the relevant delegated responsibility;
- From the Chairperson through their chairperson's report, although depending on the nature of the item and decision suggested, a staff report may be required;
- Through the report of a committee. Committee meetings are generally less formal than a meeting of the governing body and a committee can make recommendations to the governing body. Please note that any request should fall within the committee's terms of reference;
- Through a report of a local or community board. A councillor could, for example, ask a local or community board to support a matter and even recommend a course of action to the governing body; and
- Members may apply to place an item on the agenda through a notice of motion (see SO 27.1), however, a notice of motion must comply with the decision-making provisions of Part 6 LGA 2002 before it can be considered. If the mover of the notice of motion is unable to provide this information or the decision is likely to be deemed a significant decision, the notice of motion should provide that the proposal be referred to the chief executive for consideration and report.

Though any and all of these may be used it is important to remember that until presented to members (i.e. published), an agenda is ultimately the responsibility of the Chief Executive and the collation of the agenda and its contents must remain under the Chief Executive's control.

Where a matter is urgent and has not been placed on an agenda it may be brought before a meeting as "extraordinary business" as a result of a report by the Chief Executive or a report by the Chairperson. This process gives effect to Section 46A (7) and (7A) of LGOIMA.

Please note: the content or topic of any request must fall within the terms of reference of the specific body or meeting, for example, a request made to a community board should be for an item that falls within the decision-making authority of the board.

### Agendas – good practice

Underpinning open and transparent government is the opportunity for members of the public to know in advance what matters their local governments will be debating and making decisions about ahead of time. Consequently making copies of council and committee agendas available for members of the public is critical. Officials need to be aware of their communities' preferences for accessing information when deciding how access to draft agendas will be facilitated.

### 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 (and future research if necessary).

## Part 3 Meeting procedures

### Starting your meeting

Questions are sometimes asked whether or not council meetings should begin with some form of reflection to acknowledge the importance of our democratic processes.

There is no obligation on a local authority to start its meetings with a reflection or ceremony, however if a council wishes to begin its meetings with a formal procedure to recognise the civic importance of council meetings, we have made a few suggestions in this section. Which allow for tangata whenua processes which should alleviate any awkwardness around introducing such processes.

An example of a reflection used at the start of a meeting is the following karakia used by Hutt City Council.

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.	

### Voting systems

One of the issues that arose during preparation of the new Standing Orders concerned the performance of some of the electronic voting systems that are in use and whether or not the way in which they operate is consistent with what we understand as 'open voting'.

We have taken the view that open voting means that members should be able to see how each other votes 'as they vote' (i.e. simultaneously) as opposed to a system which votes are tallied (in a manner that does not show how individuals voted) and then a result is released.

It is also important to note that under these Standing Orders electronic systems should allow a member to abstain from voting, see Standing Order 19.7.

### The Chairperson's casting vote

Standing Order 19.3 allows the Chairperson to exercise a casting vote where there is an equality of votes. Incorporating a casting vote in a council's Standing Orders is optional under cl. 24 (2) Schedule 7, LGA 2002. The casting vote option has been included in the template to enable a meeting to conduct and conclude important business without the risk that a vote might be tied and as a result a significant statutory timeframe might be 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 18.3, 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 statutory decision e.g. adopt a Long Term Plan, the chair has a casting vote where there is an equality of votes.*

**Chairperson does not have a casting vote except in the case of statutory decisions**

The Mayor, Chairperson or any other person presiding at a meeting has a deliberative vote and, in the case of an equality of votes, does not have a casting vote (and therefore the act or question is defeated and the status quo is preserved) with the exception of statutory decisions such as (but not limited to) the adoption of Annual Plans, Annual Reports and Long Term Plans where a casting vote may be exercised (Western Bay of Plenty District Council Standing Orders 2016).

## Joining meetings by audio and audio visual means

The Local Government Act 2002 Amendment Act 2014 gave local authorities the option to include in their standing orders a provision to enable members to join meetings by audio or audio visual means.

These standing orders include this provision and if a council wishes not to make that option available to its members the specific standing orders should be removed before the standing orders are adopted. The relevant standing orders are 13.7 – 13.16.

A number of members have found the audio and audio visual provisions prescribing quorums and voting confusing. We have worked on the Standing Order to make it as clear as possible that while a member can take part in discussions and vote while joining a meeting electronically, they are not part of the quorum.

## Conduct

Section 20 of the Standing Orders deals with the lected member conduct at meetings. One feature of the LGNZ Standing Orders is the cross reference to each council’s Code of Conduct. The Code of Conduct sets standards by which members agree to abide in relations to each other. Clause 5.1 of the LGNZ Code of Conduct template sets out the following standards with regard to relations between members:

Given the importance of relationships to the effective performance of the council, members will conduct their dealings with each other in a manner that:

- Maintains public confidence;
- Is open and honest;
- Is courteous;
- Is focused on issues rather than personalities;
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language.

At the start of a triennium, councils as well as committees and local and community boards should agree on protocols for how meetings will work, including whether or not members are expected to stand when speaking and any specific dress requirements.

### Public forums: good practice

These standing orders state that a period of up to 30 minutes is set aside for a public forum. Members of the public may attend to address the meeting for up to five minutes on items that fall within the delegations of the meeting, provided the matters are not subject to legal proceedings, or to a process providing for the hearing of submissions. Speakers may be questioned through the Chairperson by members, but questions must be confined to obtaining information or clarification on matters raised by the speaker. The Chairperson has discretion in regard to time extensions.

Such presentations do not form part of the formal business of the meeting i.e. consideration of business items listed on the agenda. We recommend that a brief record be kept of matters raised during any public forum section of the meeting with matters for action to be referred to the Chief Executive or other person as requested by the meeting.

### Revoking a decision made under delegated authority

A council cannot directly revoke a decision made and implemented by a subordinate decision-making body which has the delegation to make the decision, assuming that the subordinate decision-making body, or local or community board, has exercised its decision-making powers in a lawful manner.

Where a decision of a subordinate body or a local or community board 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.

### Process for release of public excluded information

Councils have different processes for releasing the reports, minutes and decisions from public excluded meetings (material considered confidential under Section 6 or Section 7 of LGOIMA). It is important to be aware that reasons for withholding information from the public does not necessarily endure, for example, information that was confidential due to negotiations may not need to remain confidential when negotiations have concluded. Equally, documents may be released in part, with only parts withheld.

Generally information may only be publicly released by a decision of the meeting, or a decision of the Chief Executive. Each council will have systems and policy for controlling the release of information.

When a report is deemed to be 'In confidence' information can be provided on whether or not it will be publicly released and when. With regard to items under negotiation, such as contracts, land purchase or disposal, resource consents and district plan matters, 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 double handling and report writing.

The following clause can be included in report templates to address this issue:

*(If in confidence)* 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}.

## Returning from public excluded to open session

Councils take different approaches to the way in which a meeting moves from public excluded to open status. There are basically two approaches:

1. Meeting resolution - 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. End of the public excluded item – whereby 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 and is automatically lifted once discussion on that item is concluded.

Generally, moving out of public excluded sessions should follow the approach set out in option two. 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. Whether a motion to return to open meeting is required or not is a question of style.

## Conflicts of interest

Questions from elected members about when a conflict of interest may exist and how it should be managed are amongst the most common faced by governance staff. 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 with a financial or non-financial conflict of interest. However, determining whether a conflict exists or not is not always so clear.

### Financial conflicts of interest:

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. These are 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 Auditor General can, in certain situations, grant exemptions from the rule which 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.

In such cases the Auditor General can grant an exemption or a declaration to allow a member to participate. Members should be referred to the Auditor General if there is a possibility that their case would qualify for an exemption or declaration (see OAG’s guide on Conflicts of Interest published in 2004).

### 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.*

Bias involves not just actual bias but also the perception of bias. A claim of bias can be made on the basis of predetermination. A member who believes they may have a non-financial conflict of interest 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 chairperson and/or chief executive or their nominee, however, the decision whether to participate or not must be made by the members themselves.

The Auditor General cannot provide an exemption or declaration with regard to non-financial conflicts of interest.

### How should confidential information in an agenda be managed?

Occasionally councils have to address the issue of how confidential agenda items should be handled where there is a possibility, should it become public, that the information in the agenda could benefit a member or individuals. Some councils address this risk by tabling confidential papers at the meeting on the day and ensuring those papers are returned before members leave.

### What happens to a quorum when a member is 'not at the table'?

Whether or not members must be 'at the table' to constitute a quorum is a frequently asked question, usually in response to a member standing aside from the table due to a perceived or actual conflict of interest.

Standing Order 10.4 covers this situation when it states "a meeting is constituted where a quorum of members is present, whether or not they are all voting or entitled to vote". "Present" in the context of these standing orders is to be in the room, not necessarily around the table. Please note that if a member is excluded from the meeting room due to a financial conflict of interest they are no longer considered "present" for the purposes of the quorum.

### Members attending meetings of which they are not members

A common question involves the role of elected members who attend meetings of which they are not members and what their status at these meetings should be. The legislation and these standing orders are clear (cl. 19(2) Schedule 7, LGA 2002) that members can attend any meetings unless they are "lawfully excluded" (see definition of lawfully excluded in the Standing Orders).

An elected member who attends the meeting of a committee of which they are not a member may not necessarily be able to claim allowances, such as mileage, for attending that meeting. This question should be addressed in a council's allowances and expenses policy.

Elected members attending a meeting of which they are not a member have the same rights as the public. They may be granted additional speaking rights if permitted by the Chairperson. To remove the possibility of confusion about membership and speaking rights for both the public and the members concerned many councils require non-members to sit away from the meeting table i.e. in the public gallery.

## Attendance at hearings

There is often confusion as to whether or not elected members must be present throughout a hearing or submission process in order to be able to vote on the outcomes of the hearing. This is a case where 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 in order to take part and 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 and the analysis provided by officials of the written and oral submissions before taking part in any debate and vote on the plan or policy under consideration.

It is good practice to remove doubt on this matter that there be a record in the minutes stating that the members who have been absent have been provided with, prior to deliberations, all records of submissions made both orally and in written form.

Please note that 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” (Conflicts of Interest August 2004 p. 43). The guidance suggests that lengthy periods of nonattendance at a hearing could suggest an element of pre-determination.

## Divisions

Under Standing Order 19.5 a member can call for a ‘division’ for any reason. If a division 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 Chairperson to declare the result. It is important to remember to record the names of members in the minutes and the way in which they voted.

There are different approaches taken to ascertaining how people voted. For example:

- When asking each individual member 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” and the committee secretary will record those votes and names, followed by “all those against please stand” again with names recorded, followed (where abstention is provided for) with “all those abstaining, please stand” and again record those names.

## Where a motion is lost

A new provision has been added 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 with regard to 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 where this might be required following the defeat of a motion.

## What happens to items left on the table

Standing Order 25.2 *Procedural motions to close or adjourn a debate* provides five procedural motions to close or adjourn a debate. In relation to the procedural motion whereby the item of business is left to “lie on the table” we recommend that any such matters should cease to lie on the table and are withdrawn at the end of the triennium.

It is however good practice wherever possible to state (when an item is left to lie on the table) what action is required to finalise it and when it will be reconsidered. For example, “that the report on the sale of the land lie on the table until further information on land values is received and that on receipt of such information the item be reported to the next scheduled meeting of the Property Committee”.

## 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 so as to give greater flexibility when dealing with different situations.

Standing Orders (22.1 – 22.5) provide for 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 further flexibility.

When a council, committee or community board adopts their standing orders at the start of the triennium it should decide which of the three options will be the default option. We recommend that the default be the approach which will be used most frequently.

Reasons why a committee may consider using options B or C could be to enable more discussion on items and/or to avoid a meeting choosing to suspend standing orders altogether.

For joint committees the decision could be simplified by agreeing to adopt the settings used by whichever member council is providing the administrative services.

## Keeping minutes - additional guidance

Since the release of the 2016 standing orders a number of requests for further guidance have been raised.

### **Hard copy or digital**

A common question since the release of the LGNZ standing orders has been to do with whether or not minutes should only be kept in hard copy. Since the 2016 edition Archives New Zealand has released guidance on the storage of records by digital means. In short general approval has been given to public offices to retain electronic records in digital form, except in a few specified cases. The advice is set out below.

### **Mandate**

This Authority to retain public records in electronic form only (the Authority) is issued by the Chief Archivist under Section 229(2) of the Contract and Commercial Law Act 2017 (CCLA).

### **Purpose**

The purpose of the Authority is to grant general approval from the Chief Archivist to public offices to retain public records in electronic (digital) form only, subject to the exclusions listed in “4 Exclusions to this Authority” below. This means that the source public records do not need to be retained after digitisation and can be destroyed without further authorisation.

### Approval to retain in electronic form

The Chief Archivist approves public records not excluded under 4 *Exclusions to this Authority* below for retention in electronic form only, after these have been digitised.

#### Exclusions to this Authority

The following categories of public records are excluded from the general approval given in “*Approval to retain in electronic form*” above:

- 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/G13*. Archives New Zealand will consider applications to retain public records from these categories in electronic form only on a case-by-case basis.

#### Compliance with Section 229(1) of the CCLA

A public office can retain public records in electronic form only, and destroy the source information, only if the public record is covered by the 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:

- (a) *The electronic form provides a reliable means of assuring that the integrity of the information is maintained*

In accordance with Section 221 of the CCLA, “the integrity of information is maintained only if the information has remained complete and unaltered, except for the addition of any endorsement, or immaterial change that arises in the normal course of communication, storage, or display.”

The Chief Archivist considers that if any unique characteristics of the source information, which contribute to the value of that information, would be lost during digital conversion then the integrity of the information would not be maintained. The source information must then be retained.

- (b) *The information is readily accessible so as to be usable for subsequent reference*

Usable information is information that can be located, retrieved, presented and interpreted within a reasonable time period. A usable record should be connected to the business process or transaction that produced it. Linkages between records that document related business transactions should be maintained (sourced from ISO 15489-1:2016 *Information and documentation – Records management – Concepts and principles*).

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 detail, the Authority should be read in conjunction with the guide *Destruction of source information after digitisation 17/G13*<sup>1</sup>.

### Chairperson's signature

Where councils capture and store minutes digitally the traditional practice for authorizing 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.

### What to record?

The purpose of taking minutes is to meet legal requirements set out in LGOIMA 1987, "create an audit trail of public decision-making and to provide an impartial record of what has been agreed". But most of all having a clear and precise record of the decisions that our public agencies make strengthens accountability and helps build confidence in our local democracy.

The level of proceedings recorded will vary according to the preferences of different councils and their administrations. What is important is to ensure that the bodies on behalf of which minutes are being taken are fully aware of, and have agreed in advance, to the style of those minutes. 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.

In addition to the items set out in SO 27.2, a further reason why more detailed records might be taken is to record the reasons given for a meeting not accepting an officer's recommendations on a report - this might be important for future audit purposes.

Good practice
<ul style="list-style-type: none"><li>• Minutes should be a clear audit trail of decision-making.</li><li>• Less is best.</li><li>• Someone not in attendance will be able to understand what was decided</li><li>• Anyone reading the minutes in 20 years' time will understand them (Fleur Sweeney).</li></ul>

## Taking minutes for hearings held under 'other' statutes

The LGNZ Standing Orders are designed to comply with the LGA 2002 and LGOIMA 1987. Other statutes under which councils may have meetings and hearings can have specific requirements that are different to the general requirements of the LGA 2002. For example:

Minutes of hearings under the RMA, Dog Control Act 1996 and Sale and Supply of Alcohol Act 2012 include additional items, namely:

- Record of oral evidence;
- Questions put by panel members and the speaker's response;
- Reference to tabled written evidence; and
- Right of reply.

<sup>1</sup> See <https://records.archives.govt.nz/assets/Guidance-new-standard/17-Sp7-Authority-to-retain-public-records-in-electronic-form-only.pdf>

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 submission.

In cases where a council resolves a course of action in response to submissions which is contrary to advice provided by officials, the reasons why the Council 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.
- 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 won't always help you.

## Preparing for the next triennial election

There is often uncertainty about what, if anything, should be done to prepare for the triennial elections and the interregnum period during which elected members are unable to act.

### Governance hand-overs

To assist new councils get up to speed, councils, i.e. the governing bodies, may like to "prepare a letter to themselves", i.e. for their successors (noting that this may largely be the incumbents).

The purpose of such a letter or report is to provide the new members of the councils with an insight into what the outgoing councils 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 matters that new councils must address is to adopt a decision-making structure and in the vast majority of cases end up adopting the decision-making body of their predecessors.

We spend too little time looking at whether or not our councils have the right decision-making structure, as there is a very wide menu of options, from governing bodies that choose to make all decisions, to committees which are "committees of the whole" and committees with external appointments. We need to work with our 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 a 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 of the governing body be scheduled? Councils do take different approaches, and 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 meeting in the week before the campaign period begins.

This allows retiring members to make valedictory speeches away from the political atmosphere of the election and those members seeking re-election may not be fully occupied with their campaigns.

Council business still continues in the four weeks before polling day so expect some council committees/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 emergent 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, who should make any such decisions?

This is a question that is asked frequently and there is 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.*

## Feedback:

The 2019 edition of the Standing orders incorporates all relevant legislative changes made by Parliament since 2016 that we are aware of. If any changes have escaped our attention please let us know.

We are also keen to ensure that the Standing Orders continue to help councils run effective meetings so we appreciate any feedback users might like to make. For example, comments on the following would be appreciated:

- The layout and structure of the Standing Orders;
- Standing orders that are ambiguous or simply unclear;
- Jargon that could be replaced;
- Information that is missing; and
- Good practice ideas.

Please forward any comments or suggestions to [admin@lgnz.co.nz](mailto:admin@lgnz.co.nz).

## Appendix: Process for implementing s. 41A

