GUIDE TO THE LGNZ STANDING ORDERS TEMPLATES

HE ARATOHU I TE ANGA TIKANGA WHAKAHAERE HUI A LGNZ

// UPDATED FEBRUARY 2024

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.

Your kaunihera (council) standing orders (SO) aims to achieve just this. They are a critical element of good governance and great local democracy, as well-run meetings and hui should increase community awareness and understanding of kaunihera decision-making processes and trust in our local political institutions. Standing orders also have an important role to play in assisting kaunihera to meet their obligations and responsibilities under Te Tiriti o Waitangi, whether those responsibilities are set in legislation or reflect respectful practice.

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 LGNZ standing orders templates[1] draw heavily on those published by Te Mana Tautikanga o Aotearoa Standards New Zealand in 2001 and the Department of Internal Affair's Guidance for Local Authority Meetings published in 1993. The template is updated every three years to ensure it reflects new legislation and incorporates evolving standards of good practice.

The February 2024 update

This version of the guide has been updated to reflect 2023 legislative changes and other developments. The major changes are:

- Recommended amendments to councils' standing orders that allow members to attend meetings by audio-visual means to make it clear that, from October 2024, all members attending, whether physically or by audio-visual link, are part of the quorum (see recommended changes on page 7).
- Advice on how to operate committees with co-chairs (SO. 5) within the existing framework of rules;
- Guidance on how to apply the Ombudsman's advice on workshops as set out in his report, *Open for business* (October 2023).

Consequently, Appendix One, Alternatives to formal (deliberative) meetings, has, with considerable help from Simpson Grierson, been extensively re-drafted.

[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.

Process for adopting Standing Orders

The template contains a range of options to enable a kaunihera to adapt it to meet their own styles and preferences. It is essential that kaunihera consider these options before adopting the standing orders.

We recommend that kaunihera delay adopting new standing orders until after the new governing body, local and community boards have had a period operating under the incumbent ones. That way, the discussion about options will be informed by experience, especially from new members who may not be familiar with how standing orders work.

We also recommend that kaimahi should encourage members to set time aside, at least once a year, to review how they are working and whether their decision-making structures are effective. For suggestions on building inclusive cultures and self-assessment see LGNZ's Guide to the Code of Conduct.

The team at LGNZ are continually looking at ways to make the standing orders more accessible to members and flexible enough to enable adjustment to local circumstances. We are always keen to hear your feedback.

Recommended amendments to AV provisions

The Electoral Legislation Act, passed just before the parliamentary elections in 2023, changed the definition of quorum, as defined in the LGA 2002, for councils that allow remote participation.

The specific change makes it clear that anyone joining a meeting by audio visual means is to be counted towards the quorum. The amendment makes permanent the temporary arrangement put in place during the pandemic. However, it only applies to those councils with standing orders that enable remote participation by audio visual means.

For councils that allow remote participation, the provisions in the 2022 LGNZ standing orders template (and earlier templates, however paragraph numbers may vary) that need to be amended are:

- The definition, "*Present at the meeting to constitute quorum*".
- The definition of *Quorum*
- Clause 11.1 Council meetings
- Clause 13.8 Members' status: quorum
- Clause 13.9 Members' status: voting

The recommended changes are:

Delete the definition: Present at the meeting:

Present at the meeting to constitute quorum means the member is to be either physically present in the room or attending the meeting by audio/visual link, should this be enabled in their council's standing orders.

Amend Clause 11.1 **Council meetings**, by deleting the word "physically" in sub-clauses "a" and "b".

The quorum for a meeting of the council is:

(a) Half of the members ~~physically~~ present, where the number of members (including vacancies) is even; and

(b) A majority of the members ~~physically~~ present, where the number of members (including vacancies) is odd.

Delete Clause 13.8: **Member's status: quorum**.

~~13.8 Members who attend meetings by electronic link will not be counted as present for the purposes of a quorum~~

Amend Clause 13.9: **Member's status: voting**, by deleting the word "physically".

13.9 Where a meeting has a quorum, determined by the number ~~physically~~ present, the members attending by electronic link can vote on any matters raised at the meeting.

Local government's obligations under Te Tiriti o Waitangi / Ngā kawenga a te kāwanatanga ā-rohe i raro i te Tiriti o Waitangi

Local governments are part of the governing framework of Aotearoa New Zealand and consequently have duties and responsibilities under Te Tiriti that flow directly from the Crown's obligations. In addition, as mechanisms through which communities make decisions about matters of local importance, kaunihera need to build relationships and work in partnership with local organisations and businesses to achieve their objectives. Chief amongst such relationships are likely to be those iwi and hapū who hold traditional or indigenous authority in their hapori (community).

The Local Government Act 2002 (LGA), and other acts of parliament, set 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 the historic mandate or status of mana whenua as the traditional governors of Aotearoa New Zealand and the area of your kaunihera (relevant to Article 2 of Te Tiriti).
2. Enabling opportunities for the participation of Māori as citizens in kaunihera decision-making processes (relevant to Article 3 Te Tiriti).

Acknowledging the mandate of mana whenua

Iwi and hapū have a mandate based on their historic role as the indigenous governors of the land. It is a status that is quite different from the 'stakeholder' status given to many local organisations that kaunihera usually work with. It is a status that would exist even if not enshrined in Te Tiriti o Waitangi.

In building relationships, it is 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 going to meetings incorporates 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 kaunihera processes, such as:
    - having a local kaumatua, or mana whenua representative, chair the inaugural kaunihera hui and swearing in of members, and/or
    - enabling kaumatua, or other mana whenua representatives, to sit at the governing body table as advisors.

Other initiatives that can be included in standing orders and recognise the mandate of mana whenua, are:

- 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 kaunihera committees and working parties.

Facilitating the participation of Māori as citizens

Standing orders are a mechanism for enabling members to work collectively to advance the public interests of their hapori - they are 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.

The emphasis in this section is on facilitating the participation of Māori in decision-making processes. Since local government decisions are made in meetings which are governed by standing orders, kaunihera should consider how their standing orders facilitate such participation and proactively take steps to make it easy and encourage Māori citizens to become involved in decision-making processes.

The legislation itself 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.

In relation to the LGA 2002, 'capacity' is *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 kaunihera 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.

Kaunihera also need to look at the degree to which their facilities are culturally welcoming and incorporate Māori tikanga values and customs. This is about incorporating practices, protocols and values from mātauranga Māori or Māori knowledge. Examples to achieve this 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 kaunihera processes and cultural responses through a Te Tiriti o Waitangi lens, and

- offering members the option of making the declaration in te reo Māori.

Members 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 Wairoa hei kaikaunihera o te Kaunihera-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. He mea whakaū tēnei i Te Wairoa i tēnei rā rua tekau mā rua o Whiringa-ā-nuku i te tau rua mano tekau mā toru. Waitohu: _____ Waitohu mai ki mua i a: _____

I, [……..], 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 or district], the powers, authorities, and duties vested in or imposed upon me as a member of the [*name of local authority*] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Before adopting the standing orders template/ I mua i te whakamana i te anga whakahaere hui

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 LGA 2002.

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, any governing body or local or community board intending to adopt the LGNZ template, must decide from the following options and ensure the standing orders template is updated to reflect these decisions.

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 enabled by standing orders.

Should a governing body, local or community board decide they do not wish to allow members to do this, then this section of the standing orders (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).

Please note, that from October 1, 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 that allows 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 kaunihera 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 statutory plans (see Part 3: Meeting Procedures for more information).

Speaking and moving options

The LGNZ template offers kaunihera 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 a motion or 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 any other member, regardless of whether they have spoken to the motion or substituted motion, to move or second an amendment.
- Option C (SO 22.4) it the least formal. It gives members more flexibility by removing the limitations on movers and seconders speaking which exist in the other two options.

The kaunihera might also consider which of the three should apply to committees. Given that committees are designed to encourage more informal debate, and promote dialogue with communities, the informal option, Option C is recommended.

Time needed for kaimahi (staff) to prepare advice

Standing orders provide for members of the community to engage with kaunihera, their various committees and local or community boards. It is common for officials (kaimahi) to be asked to prepare advice on the items to be discussed.

Two examples are SO.16 Deputations and SO.17 Petitions. In both cases the default standing orders give officials five days in which to prepare the advice; whether this is practical will depend upon the size of a kaunihera and the way it works.

Before adopting the LGNZ template, the kaunihera should ensure that the five-day default is appropriate and practicable.

Adopting and reviewing your standing orders / Te whakamana me te arotake i ō tikanga whakahaere hui

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

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 they bring. This applies to standing orders, your code of conduct, and your governance structures, such as whether to have committees or not and what powers those committees will have to make decisions.

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 is good practice for members to reassess their governance arrangements, including standing orders, in the middle of the second year of their term to ensure they remain inclusive and effective against the shifts in community make-up, values and expectations.

Proposed resolution for adopting 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 kaunihera 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.*

LGNZ recommends that local and community boards, and joint committees, undertake the same considerations before adopting their standing orders.

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 kaimahi 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: Appointments and elections – can you appoint co-chairs?

The question, whether council 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, and a majority of councils agreed that LGNZ should take steps to enable this, such as changing legislation or regulation. As it turns out some councils have had co-chairs in place for some years. The following text, which was kindly provided by Tauranga City Council, helpfully shows one way that co-chairs can be established, despite the current wording of 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*). 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.

Such an 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 for a particular meeting.[2]

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

[2] 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

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.

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 kaunihera 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.

Appendix four sets out a recommended process for making 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 not 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 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 kaimahi (staff) can only be appointed to a sub-committee. When appointing a sub-committee, a kaunihera 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 kaimahi 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 kaunihera, or a group of kaunihera 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 kaunihera would need to resolve. In the case of joint committees, the appointment of new members and discharge of existing members sits with the Kaunihera 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: 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 kaunihera 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 kaunihera.

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 as applies to extraordinary meetings.

[3] The exceptions apply to decisions made during public excluded session or if the meeting was advertised at least five working days before the day on which it was held.

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 kaunihera 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 kaunihera'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 kaimahi report on the matter, or
- require members submit a draft NOM to kaimahi 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 kaunihera to delegate the authority to grant a leave of absence to a mayor or regional kaunihera chair. When deciding whether to grant a leave of absence, consideration should be given to the impact of this on the capacity of the kaunihera to conduct its business.

Requests should be made in advance of a meeting and would generally apply to several meetings that the member knows they will be unable to attend.

Kaunihera 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, for example, a policy may provide for remuneration to continue to be paid for the first three months of a leave of absence.

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 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 a leave of absence.

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 meeting
- 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 kaunihera induction training, or workshop, to seek agreement from members on the times that will best suit them, their kaunihera, and their hapori.

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 will 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, kaunihera 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 8.10: 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 re-located 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 kaunihera website and social media pages.

SO 9.8: Managing confidential information

Occasionally kaunihera must address the issue of how confidential agenda items should be handled where there is a possibility, that the information in the agenda could benefit a member or individual, should it become public. Some kaunihera address this risk by delaying the distribution of confidential papers until two days before a meeting, providing them in hard copy, and individualizing them, so that the specific copy each member receives is identified.

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 kaunihera and is heavily influenced by its size. Some principles of good practice include:

- Start the process with a hui of the kaunihera 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 kaimahi 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 kaunihera 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 (NOM). 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.

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.

Making agendas available

Underpinning open, transparent and accountable decision-making is providing 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 kaunihera 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 kaunihera and their communities.

Part 3 – Meeting procedures / Ngā tukanga hui

Procedures for making decisions are at the heart of kaunihera standing orders. This section of the Guide 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 10: Opening and closing your meeting

There is no obligation on a local authority to start their meeting with any reflection or ceremony, however, it is an increasingly popular approach.

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]

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).

[4] Examples of karakia, and general advice on the use of tikanga Maori, can be found via an app, titled Koru, developed by MBIE and available from most app stores.

SO 11.4: Requirement for a quorum – what happens when a member is 'not at the table'?

Whether or not members must be 'at the table' to constitute a quorum is a question that usually arises in response to a member standing aside due to a conflict of interest.

Standing order 10.4 states *"a meeting is constituted where a quorum of members is present, whether or not they are all voting or entitled to vote"*. 'Present' is to be in the room, not necessarily around the table.

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' (the definition of lawfully excluded is in the Standing Orders). If attending, elected members have the same rights as the public. They may be granted additional speaking rights if permitted by the chair.

Many kaunihera require non-members to sit away from the meeting table or in the public gallery to make it clear they are not a committee member.

Whether a member can claim allowances for attending the meeting of a committee they are not a member of is a question that should be addressed in a kaunihera allowances and expenses policy.

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.

SO 14.1: Council 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 kaunihera) must preside over each kaunihera 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 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 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 kaunihera 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: From October 2024, where a kaunihera's standing orders make provision for members to join meetings by audio/audio-visual means, all members who join 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.

Kaunihera 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 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, kaimahi 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 kaunihera 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

Kaunihera 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. Kaunihera 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

Kaunihera 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 though 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 kaunihera 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 kaunihera).

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 have 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 template 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 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"* 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's 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, kaunihera, 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 and 20.8: 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 with a financial or non-financial conflict of interest, determining whether one exists can be more challenging.

SO 20.7: 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, 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 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 still further flexibility.

When a kaunihera, 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 kaunihera 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 where this might be required.

SO 24.2: Revoking a decision

A kaunihera 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 kaunihera 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.

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? Kaunihera take different approaches and practice may be affected by the nature of business that a kaunihera 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 kaunihera 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.

Kaunihera 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 interim?

From the moment that the final results are released, and the first meeting of the new kaunihera is held, issues can arise that require an urgent decision. Given that councillors are yet to be sworn in, it is the chief executive who should make these decisions. To enable this a kaunihera, before the elections (preferably at the first or second ordinary council meeting when delegations are approved) should agree a time-limited delegation to the chief executive (preferably until the first or second ordinary council meeting, or when delegations are approved) giving them a broad discretion ..."

A standard delegation for the chief executive might read, 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."*

Part 4 - Keeping records / Te whakarite mauhanga

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 kaunihera 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 that 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; and
- 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 kaunihera 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. You can read it here. 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/G135.

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 kaunihera 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.

[5] See Authority to retain public records in electronic form only – Archives New Zealand

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 helps 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 Ombudsmen 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 kaunihera 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 to this effect could be made in the Minutes, with the relevant link, so that readers can access more information should they choose.

When recording Māori place names, or discussion in Te Reo Māori, please make sure to use correct and local spelling.

Regarding non-LGA 2002 hearings

The LGNZ Standing Orders are designed to comply with the LGA 2002 and LGOIMA 1987. Other statutes under which kaunihera 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 submission.

In cases where a kaunihera choses 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.
- 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 kaunihera to continue to hold a common seal as there are some statutes that refer to it. A kaunihera 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 kaunihera 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 kaunihera 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 kaunihera 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 kaunihera continues to hold a common seal, then it is up to the kaunihera 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: Alternatives to formal (deliberative) meetings / He momo hui ōkawa rerekē

Workshops

Workshops are best described as briefing sessions where elected members get the chance to discuss issues outside the formalities of a kaunihera 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 report into local council meetings and workshops (*Open for business*, October 2023) makes a number of recommendations designed to address these concerns, which are 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 kaunihera 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 kaunihera 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 kaunihera 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 kaimahi on next steps (direction setting)." [6]

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,

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

- enable members to question and probe a wide range of options, and gain an understanding of proposals,
- enable kaimahi 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 kaunihera 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 kaunihera 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.

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 kaunihera 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 kaunihera, have 'equal carriage' of the issues to be considered. For example, 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 an 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 kaimahi. 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 kaunihera briefings:

- They should be used when complex and controversial issues are under consideration.
- The should involve all councillors and relevant senior kaimahi.
- All councillors should be offered the opportunity to attend and relevant senior kaimahi 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 that they are not held in the public arena. This is to give councillors the opportunity to work through the issues in a way that was not considered possible in an open kaunihera 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 kaunihera 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 at it. 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 kaunihera decision-making, kaunihera 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 kaunihera 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 kaunihera, 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,
- relevant details of the topic, matter or information discussed.

Publishing the record

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

Appendix 2: Preparing for the next triennial election / Te whakarite mō te pōtitanga ā-toru tau e whai ake ana

Governance handovers

To assist new kaunihera to get up to speed, prior to an election, incumbent members may like to prepare a letter, or report, for their successor (noting that this may also involve many existing members).

This is to provide new members with an insight into what the outgoing kaunihera considered as the major challenges and what they learned during their term in office that they might have done differently.

Whether or not to prepare advice for an incoming kaunihera and what that might be, is ideally a discussion that a mayor or regional kaunihera chair should have with their respective governing body before the last scheduled kaunihera meeting. It may be an ideal topic for a facilitated workshop.

Reviewing decision-making structures

One of the first matters that new kaunihera must address is to decide their governance and decision-making structures. Frequently, new kaunihera end up adopting the decision-making body of their predecessors without much discussion.

When it comes to your governance arrangements, however, there is a wide menu of options. Kaunihera need to fully consider these to determine which best fits the culture they wish to establish over their term, and which will be best given the characteristics 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 kaunihera should be presented with a menu of decision-making options with the strengths and weaknesses of each set out clearly, see www.lgnz.co.nz.

Appendix 3: Mayors' powers to appoint under s.41A / Te mana o te koromatua ki te kopou i raro i te wāhanga 41A

The role of a mayor is:

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

The mayor has authority to:

- Appoint the deputy mayor.
- Establish council committees, their terms of reference, appoint the chair of each of those committees and the members.
- Appoint themselves as the chair of a committee.
- Decline to exercise the powers under clause a) and b) above but may not delegate those powers to another person.

The council retains the ability to:

- Remove a deputy mayor appointed by the mayor.
- Discharge or reconstitute a committee established by the mayor.
- Discharge a committee chair who has been appointed by the mayor.

The mayor is a member of each committee of the council.

Recommended process for establishing committees.