

# REGULATORY COMMITTEE POLICY

## *Operational policy and sub-delegations of the Auckland Council Regulatory Committee*

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## 1 PURPOSE AND SCOPE

The Governing Body of the Auckland Council has delegated to the Regulatory Committee responsibility for regulatory hearings (required by relevant legislation), regulatory policy, and bylaws.

The regulatory hearings which the Regulatory Committee is responsible for include decisions under the:

- a. Resource Management Act 1991 in relation to resource consents, plan changes, notices of requirement and appeals;
- b. Dog Control Act 1996 in relation to the consideration of objections under that Act;
- c. Sale and Supply of Alcohol Act 2012;
- d. Local Government Act 1974 and the Local Government Act 2002, in relation to drainage and works on private land; and
- e. Reserves Act 1977, in relation to public reserves.

The Regulatory Committee decides who the decision maker(s) should be in relation to regulatory decisions under these Acts. The Regulatory Committee may also delegate this power (except for Local Government Act 1974 and Local Government Act 2002 matters).

In addition, the Regulatory Committee holds responsibility for regulatory policy and bylaws, including recommending bylaws to the Governing Body for consultation and adoption. It is also responsible for setting regulatory fees and charges.

The purpose of this policy is to:

- a. provide an efficient, open and transparent framework for the decision making processes for which the Regulatory Committee is responsible, including recognition of mana whenua;
- b. set out sub-delegations from the Regulatory Committee.

The policy applies to elected and Independent Māori Statutory Board (**IMSB**) members, local board members appointed to hear matters, independent commissioners and council staff.

## 2 PRINCIPLES AND STRATEGIC ALIGNMENT

### Principles

The key principles which guide this policy are:

- a. Auckland Council values the knowledge of tangata whenua and actively seeks input from Māori in decision-making.

- b. Mana whenua are specialists in determining their values and associations.
- c. The Regulatory Committee will exercise its delegated responsibility itself but, may seek direction and guidance from the Governing Body. Where appropriate, the Regulatory Committee will sub-delegate its responsibilities.
- d. Suitable decision makers will be appointed for each matter to ensure high quality and timely decision making.
- e. The Regulatory Committee will maintain appropriate oversight of decision making under the regulatory legislation that it has responsibility for, regardless of who is making those decisions.
- f. All people making regulatory decisions on behalf of the Council will consider any views and preferences expressed by a local board, if the decision affects or may affect the responsibilities or operation of the local board or the well-being of communities within its local board area.

### **Strategic Alignment**

The operation of this policy aligns with Auckland Council strategy in relation to decision making. It should be read in conjunction with the Auckland Council Combined Chief Executives Delegation Register, which among other things, provides for specific sub-delegations to hearings commissioners and council staff in relation to powers and functions under the Resource Management Act and other relevant legislation. This Policy confirms those delegations, but also limits them by requiring them to be exercised as directed by the Regulatory Committee.

## **3 POLICY RELATING TO APPOINTMENT OF DECISION MAKERS**

The Regulatory Committee's policy for the appointment of decision makers to consider regulatory matters is outlined below. The Regulatory Committee expects that a uniform approach is taken where possible. Differences in approach will, however, result from the requirements of the different statutory regimes.

### **Process for Resource Management Act, Sale and Supply of Alcohol Act, and Dog Control Act matters**

#### ***Appointment of independent commissioners to a list***

- 3.1 In relation to decisions under the Resource Management Act, Sale and Supply of Alcohol Act and Dog Control Act, the Regulatory Committee:
  - a. will appoint independent commissioners to a list of commissioners approved to make decisions under the Resource Management Act;
  - b. will appoint the members of the District Licensing Committee approved to make decisions under the Sale and Supply of Alcohol Act; and

- c. may appoint independent commissioners to a list of commissioners approved to make decisions under the Dog Control Act.
- 3.2 The appointment of independent commissioners or members to each of these lists will follow an advertising and recruitment process, and will comply with relevant legislative requirements. The commissioner appointment panel will contain at least one IMSB Member. Unless directed otherwise, council staff will provide recommendations on the appointment of independent commissioners to each list, and the Regulatory Committee will have regard to these recommendations when making its appointments.
- 3.3 Following consultation with the independent commissioners, the Regulatory Committee will designate a number of independent commissioners appointed to carry out RMA functions to be duty commissioners who must be available on short notice to make decisions.
- 3.4 The Regulatory Committee will review the list of independent commissioners approved to make decisions under the RMA each March, and may otherwise review each list of commissioners as required.

***Appointment of commissioners to decide particular matters***

- 3.5 In most cases, council staff will be responsible for the appointment of decision makers for matters which require a decision under the Resource Management Act and the Dog Control Act.
- 3.6 Council staff may appoint one or more independent commissioners from the relevant list, local board members, staff members, or a mix. If it is appropriate to appoint an independent commissioner, and there are no suitable independent commissioners on the list, council staff may appoint any other suitably qualified independent expert.
- 3.7 Council staff must take the following factors into account when appointing decision makers:
  - a. The nature of the matter;
  - b. The issues raised in the matter;
  - c. The range of expertise necessary to assess the matter;
  - d. The potential for suitably qualified local board members to participate in the decision-making process on the matters noted in clauses f. and h. below (having particular regard to the issue of conflicts of interest); and
  - e. The desirability of appointing a person with relevant expertise in mātauranga Māori and tikanga Māori;
  - f. Whether it involves an element of policy making and the decision has implications for a large number of stakeholders;
  - g. Whether special circumstances apply in Resource Management Act

notification terms; and

- h. Whether the application is considered highly contentious, such as when the matter involves significant variance in cultural views.
- 3.8 Where a matter covers areas of significance to Māori, council staff will consult with IMSB staff on the appointments.
- 3.9 In relation to matters which require a decision under the Sale and Supply of Alcohol Act, council staff will appoint the members of the District Licensing Committee from the approved list.
- 3.10 Council staff may appoint commissioners to hear notices of requirement under the Resource Management Act in accordance with the requirements of clauses 3.6 to 3.8.
- 3.11 The Regulatory Committee will be responsible for appointing commissioners to hear Resource Management Act plan changes.
- 3.12 Where other considerations are met, commissioners will generally be appointed on a rotational basis.

#### **Process for other regulatory hearing matters**

- 3.13 The Regulatory Committee is also responsible for the appointment of decision makers in relation to other matters, including under the Local Government Act 1974 and Local Government Act 2002, and under the Reserves Act 1977.
- 3.14 In these cases, the Regulatory Committee will appoint the necessary decision makers on a case by case basis.
- 3.15 Council staff will make recommendations as to the appropriate appointment(s), taking into account the factors set out at clause 3.7 above. The Regulatory Committee will have regard to these recommendations and factors when making the appointment(s).

#### **Process for non-Resource Management Act policy and plan development**

- 3.16 The Regulatory Committee will decide who should hear submissions and/or undertake consultation, as the case may, be on policies and plans. In doing so, the Regulatory Committee will take into account the following matters:
  - a. The statutory requirements for decision making in the particular case.
  - b. The likely time commitment including pre-reading, attending a hearing(s) and time required to write a decision.
  - c. The availability of decision makers.
  - d. Whether any particular expertise is required including mātauranga Māori and tikanga Māori.
  - e. Whether the policy or plan or matter relates to the entire region or to only parts of the region.

- 3.17 Recommendations on policy and plan development matters will be made directly to the Governing Body or another Committee, as appropriate.
- 3.18 Development and consultation on Resource Management Act policy and plan changes will be the responsibility of the Planning Committee, or its successor committee.

## **4 CONFLICTS OF INTEREST AND CONDUCT OF HEARINGS**

### **Conflicts of Interest**

- 4.1 Every independent commissioner appointed to hear a matter will complete the Disclosure of Interests form (**attached** at Appendix 1) prior to the hearing of any matter. If any conflicts are noted, the following process will be followed:
- a. In the first instance, council staff will determine the seriousness of the potential conflict of interest.
  - b. If it is considered sufficiently serious to warrant the person being immediately removed from any hearing panel, a new decision maker will be appointed.
  - c. If council staff consider that any conflict of interest could be accepted by parties to the hearing:
    - i. as soon as possible, council staff will advise all parties of the nature of the potential conflict, and that with all parties' agreement, the person concerned could continue to determine the matter; and
    - ii. the parties must confirm their agreement or refusal to the continuation of the person in writing; and
    - iii. if the parties do not all agree, a new decision maker will be appointed; or
    - iv. if the parties all agree, the person may continue as decision maker and this must be recorded at the beginning of any decision given in relation to the matter.
- 4.2 If a conflict of interest is discovered during a hearing, the person concerned must immediately bring this to the attention of council staff and the parties and give them the opportunity to decide whether or not the person should continue to hear the matter; and
- a. if all parties do not agree, the person should excuse themselves and the matter continues to be heard by the remaining members of the hearing panel or, if none remain, a new hearing is convened; or
  - b. if all parties agree to allow the person to continue, that should be recorded at the beginning of any decision given in relation to the matter.
- 4.3 In either case, the advice of legal counsel or the Chair of the panel will be sought if considered necessary. The Chair of any panel is responsible for ensuring conflicts of interest are appropriately dealt with.

## **Conduct of hearings**

- 4.4 All hearings will generally be conducted following the guidelines contained in the Making Good Decisions Programme run by the Ministry for the Environment, with modification as required for hearings on different types of matters.
- 4.5 The procedures for conducting hearings under the Resource Management Act are contained in the Resource Consenting Procedures Manual.

## **5 POLICY RELATING TO BYLAWS**

- 5.1 The Governing Body is responsible for making bylaws, and approving draft bylaws prior to consultation. It has otherwise delegated responsibility for bylaws to the Regulatory Committee.
- 5.2 The Regulatory Committee will recommend draft bylaws to the Governing Body for approval prior to consultation. If the Governing Body approves the draft bylaw for consultation, the Regulatory Committee will decide, on a case by case basis, how consultation on the draft bylaw will occur and appoint members to a hearing panel to undertake the required statutory process (including consultation) and to make recommendations on the consultation on behalf of council.
- 5.3 Recommendations on the draft bylaw will be provided directly to the Governing Body by the hearing panel. The Governing Body decides whether or not to make the bylaw.

## **6 POLICY RELATING TO REGULATORY FEES AND CHARGES**

- 6.1 Various Acts authorise the council to set and apply regulatory fees or charges for certain functions and activities.
- 6.2 The Regulatory Committee is responsible for setting the regulatory fees and charges for council. Where consultation is required, the Regulatory Committee will appoint members to undertake consultation and make recommendations following consultation on behalf of council.

## **7 SUB-DELEGATIONS**

The Regulatory Committee makes the following sub-delegations.

### **7.1 Appointments to decide particular matters**

For Resource Management Act and Dog Control Act matters that do not relate to policy and plan development matters, council staff will appoint independent commissioners, local board members, staff, or a mix to hear and decide the matter.

## 7.2 **Urgent matters**

For urgent Resource Management Act matters, a sub-committee of the Regulatory Committee consisting of the Chair or Deputy Chair, one IMSB member and one other member, will make decisions or provide directions. Any urgent decision or direction made by the sub-committee will be reported to the full committee at the next reasonable opportunity.

## 7.3 **Policy relating to appeals to courts or tribunals**

In relation to appeals to a Court or Tribunal of decisions falling within the Regulatory Committee's responsibility, council staff may:

- a. defend the council's decision;
- b. enter into mediation or other dispute resolution process, on the basis that any resolution and/or settlement does not undermine the council's original decision;
- c. in the case of appeals on resource consents or notices of requirement, settle the appeal, in circumstances where the council has declined an application or recommended decline, and on appeal the application is modified to adequately address the reasons that it was originally declined or recommended to be declined; and
- d. in the case of appeals relating to policy or plan provisions, (except those within the ambit of the Planning Committee or its successor committee) enter into mediation and reach an agreement in principle subject to approval by the Regulatory Committee.

## 7.4 **Sub-committee**

The sub-committee established in accordance with this Policy, may make urgent decisions or provide urgent directions on behalf of the Regulatory Committee in circumstances where the standard decision-making process cannot be given effect to due to time constraints.

# 8 **MAORI**

- 8.1 When making decisions, the Regulatory Committee and its delegates take into account Māori interests and the principles of the Treaty of Waitangi. The Regulatory Committee has statutory obligations to recognise and provide for the relationship of Māori and their culture and traditions within their ancestral lands, water, sites, wāhi tapu and other taonga.
- 8.2 Hearings panels have flexibility to adapt formal hearings processes to ensure that they are responsive to Māori as well as meeting the council's Treaty obligations and statutory requirements.
- 8.3 The IMSB's purpose and functions are to assist the Regulatory Committee to make decisions, perform functions, and exercise powers by:



- a. promoting cultural, economic, environmental, and social issues of significance for:
  - i. mana whenua groups; and
  - ii. mataawaka of Tamaki Makaurau;
- b. ensuring that the council acts in accordance with statutory provisions referring to the Treaty of Waitangi;
- c. to advise the on matters affecting mana whenua groups and mataawaka of Tamaki Makaurau; and
- d. to work with the Council on the design and execution of documents and processes to implement the Council's statutory responsibilities towards mana whenua groups and mataawaka of Tamaki Makaurau.

## **9 LOCAL BOARDS**

- 9.1 When making regulatory decisions, the Regulatory Committee and its delegates will consider any views and preferences expressed by a local board, if the decision affects or may affect the responsibilities or operation of the local board or the well-being of communities within its local board area.

## **10 REPORTING ON AND MONITORING OF REGULATORY DECISION MAKING**

- 10.1 Council staff must provide the Regulatory Committee quarterly reports on hearings held and the results of them. The reports may be in summary form but the Regulatory Committee may require more detailed information for particular matters.
- 10.2 Where complaints are made against decision makers, council staff will investigate the complaint, and report the results to the Regulatory Committee.
- 10.3 Council staff involved in hearings will ensure that Democracy Services is provided with all decisions of hearings panels. Democracy Services will ensure all decisions are available (either in hard copy or electronically, including by posting on a website) to all independent commissioners to assist in achieving consistency in approach across the region.

## **11 REVIEW OF POLICY**

- 11.1 The Regulatory Committee will review this policy annually, and more frequently at its discretion.

## **12 POLICY DEFINITIONS**

**Decision making** means the making of relevant decisions under any of the enactments stated in this policy, including through a public hearing, or on the papers, and decision

maker has a corresponding meaning.

**Democracy Services** means that part of council with responsibility for Democracy Services.

**Duty commissioner** means a member of the pool of independent commissioners who is available on short notice to make decisions not requiring a hearing.

**Elected member** means the councillors and mayor of the governing body and local board members.

**Legal counsel** means the Auckland Council Director of Legal and Risk or their delegate.

**Making Good Decisions programme** means the programme run under the auspices of the Ministry for the Environment and focused on helping councillors, community board members, (local board members in Auckland's case) and independent commissioners make better decisions under the RMA. It provides RMA decision-makers with the skills they need to run fair and effective resource consent, plan change and designation hearings, and to make informed decisions.

**Mātauranga Māori** refers to the knowledge, understanding and comprehension of all things tangible and intangible including te reo (language) and sensitive information.

**Tikanga Māori** identifies a range of practices and customs associated with social behaviour and connectedness to land and relationships to Māori.

## **13 RELATED POLICIES**

Resource Consents Procedures Manual

Hearings Practice Notes: Māori participation in hearings

## **14 RELATED LEGISLATION AND REGULATIONS**

### **Related legislation:**

Biosecurity Act 1993

Building Act 2004

Bylaws Act 1910

Civil Defence Emergency Management Act 2002

Dog Control Act 1996

Fencing of Swimming Pools Act 1987

Gambling Act 2003

Health Act 1956

Land Transport Act 1998

Litter Act 1979

Local Government Act 1974

Local Government Act 2002

Māori Language Act 2016

Reserves Act 1977

Resource Management Act 1991

Sale and Supply of Alcohol Act 2012

Waste Minimisation Act 2008

**Related regulations:**

Council Bylaws

**APPENDIX A**

**DISCLOSURE OF INTEREST FORM**

**DISCLOSURE OF INTEREST**



**Application No.:** \_\_\_\_\_

**Address:** \_\_\_\_\_

You are required to disclose the nature and extent (including monetary value, if quantifiable) of all interests that you have, or are likely to have, in matters relating to the decision you have been asked to make.

A “matter” is defined as:

- The subject of the decision you have been asked to make;
- The applicant, submitters and/or any other person (including a company, trust or incorporated or unincorporated society) involved in the decision you have been asked to make; and
- Any advisors or consultants to any people involved in the decision you have been asked to make.

Without limiting the types of interest, you are interested in a matter if you directly or indirectly:

- a) may derive a financial benefit (including as an employee, consultant or as the beneficiary of a trust) from the matter; or
- b) are the spouse, de facto partner (whether of the same or different sex), child, parent or close friend of a person who may derive a financial benefit from the matter; or
- c) may have a financial interest in a person to whom the matter relates; or
- d) are a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
- e) may be interested in the matter because of your non-financial association with the matter; or
- f) have expressed strong political or personal views that may indicate prejudice or predetermination for or against the matter; or
- g) are otherwise directly or indirectly interested in the matter.

However, you are not interested in a matter:

- a) only because you are a member or an officer of a wholly-owned subsidiary of an entity or of a subsidiary that is owned by an entity together with another entity or entities; or
- b) because you receive an indemnity, insurance cover, remuneration, or other benefits authorised by an Act from a person to whom the matter relates; or
- c) if your interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence you in carrying out your responsibilities as a decision maker.

I am not aware of any actual, potential or perceived interests of relevance to my responsibilities as decision maker.

Please tick

**OR**

I have the following interests which may conflict with my responsibilities as decision maker.

Please tick

Please state interests on an additional page

Name:

Date:

Address:

Postcode: