**Designing decision-making structures:**

**A guide for councils**

LGNZ

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**The Local Government Committee System**

While abolished under Labour the 2011 Localism Act gave councils the freedom to revive the system in 2012. This could bring more people (including tenants) into debates around and scrutiny of decision making. The Committee System allows councils to delegate decision-making on certain areas (e.g. housing or planning) to committees or sub committees comprised of elected councillors.

Rather than decisions being made behind closed doors by a cabinet or an elected Mayor, this opens the process up to greater accountability and scrutiny. We challenge more councils to take up this opportunity and – as often occurred in the past – to extend invitations to local elected tenant representatives who could speak up for social housing in their borough (Pat Turnbull, Centre for London 2019).

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# Introduction

Decision-making structures matter. The ability of a local authority to meet the needs of its community and achieve the objectives set by its governing body is strongly influenced by the nature of its governance system which has a direct effect on elected members’ workload, the opportunities for citizens to engage and participate, responsiveness to local concerns and the quality of governance oversight and strategic thinking. A poorly designed system will frustrate elected members, alienate citizens and diminish oversight and scrutiny.

This guide is primarily concerned with the core decision-making elements of a governance structure. It does not consider in detail the broader range of mechanisms such as workshops, briefings, joint committees and Post-Treaty co-governance arrangements which occur in many councils or the various bespoke committees that councils have established to address local issues.

Designing a governance or decision-making system that works will also be strongly influenced by the circumstances of each council, in particular the number of members on the governing body, the specific geography and whether or not it has community boards. There are also some important principles that should also be considered, namely:

* **Accountable and transparent**: decision-making structures should enable citizens to understand who is accountable for decisions made and the reasons behind those decisions;
* **Responsive**: the structure should be able to respond to issues brought to the council’s attention without unnecessary delay;
* **Participation and diversity**; decision-making structures should facilitate direct engagement between elected members and members of the public and the expression of diverse views;
* **Strategic focus**; Decision-making structures should be designed so that members’ ability to consider strategic matters is not “crowded out” by the urgent and reactive;
* **Equitable and inclusive;** Decision-making structures should be accessible to all communities;
* **Efficient and effective;** Decision-making structures should enable decision to be made in a timely manner, without unnecessary duplication.

Decision-making structures play a big role in whether or not a council is responsive to community concerns, innovative, focused, open and inclusive. Most importantly the nature of these models shape the interactions between elected members themselves, their officials and communities.

**Figure 1 Elements of a good governance system**

The over-riding consideration when designing your governance system is to ensure it is able to manage the complex and diverse responsibilities that councils undertake in an efficient and effective manner while also accounting for the future needs of communities.

# Getting Started

The first challenge when designing a decision-making structure is to find a structure that fits the specific circumstances of each councils as well as its priorities and the challenges its communities face. This section of the guide sets out the generic decision-making models, discusses their advantages and disadvantages of each model as well as suggesting ways of addressing any perceived disadvantages.

A number of generic models are described below. The models fall into one of two categories – those that have no delegations (except those delegations to the chief executive and essential sub-committee like Audit and Rick and CE performance) and those that do, see table 1.

**Table 1 Generic models**

|  |  |
| --- | --- |
| **No delegations** | **Delegations** |
| 1 Governing body acting by itself | 4 To committees of the whole |
| 2 Governing body with committees of the whole | 5 To committees |
| 3 Governing body with committees |  |

Each model is presumed to have what in our view are the two essential committees or sub-committees, namely a chief executives performance committee and an audit and risk committee. Each model also includes the necessary delegations made to the chief executive officer and staff. These are discussed in more detail towards the end of the Guide.

**Models with no delegations**

**Model 1 Governing body acting by itself (no committees)**

In this approach the governing body makes all decisions except for those delegated to the chief executive. It has no committees or community boards but may establish short term project teams (often composed of councillors and external appointees) to undertake or oversee specific projects, or respond to particular issues.

This model is most likely to suit a council with a small and diverse number of councillors with limited resources as the cost of administration is likely to be less than other governance models.

**Advantages:**

* Administrative simplicity
* Speed and agility of decision-making process
* Clarity
* Accountability of decision-making is clear

**Challenges and solutions**

The challenges created by this approach include the difficulty of applying multiple perspectives as part of the decision-making process, the large amount of material governing bodies need to handle and the capability of the governing body itself. Possible solutions are discussed below in table 2.

**Table 2 Strengthening Model 1**

|  |  |
| --- | --- |
| **Challenge** | **Possible solution** |
| Capability to deal with complex issues may not be sufficient. | Establish ad hoc project groups with external representatives chosen for knowledge and mandate. Opotiki District Council successfully used this approach to upgrade its underground infrastructure. |
| Risk that the governing body will be overwhelmed by reactive and minor issues at the expense of strategic and significant matters | Increase delegation to the chief executive and staff. |
| The model is not conducive to taking an inclusive approach or reflecting community diversity | Create partnerships with, for example, local Iwi/Maori, business organisations or other sector bodies; Hold public forums at the start of council meetings;Set up mayoral advisory panels to give under-represented groups additional voice.  |
| Due to the need to meet frequently, multiple workshops and briefings are required – concerns about secrecy are common. | Make all workshop open to the public. |
| Members have limited opportunity to build a community profile | Consider creating portfolios which give each member the role of spokesperson on one or more policy matter. |

**Community boards**

Councils with community boards that adopt Model 1 frequently make provision for community board chairs to attend governing body meetings and personally put forward any recommendations from the board. They can also give their community boards specific terms of reference.

# 2 Governing body with committees of the whole

In this model the governing body decides to create one or more “committee of the whole”. These are committees which are made up of all members of the governing body and may be established for a variety of reasons, such as to allow councillors to “drill down” into issues that are strategic and highly significant or relate to a major council responsibility. Some regional councils, for example, have established committees of the whole to handle public transport, a major responsibility for them.

Within the non-delegation model committees of the whole make recommendations to the governing body.

**Advantages**

* The committee of the whole enables member to focus on a single issue without distraction;
* In theory this approach can also limit distractions for the governing body and enable it to focus on strategic and significant matters, however this only applies if committee recommendations are accepted without too much debate;
* Councils can choose who chairs each committee so building up their skill and experience;
* Councils can co-opt external members on to committees, including committees of the whole thus increasing diversity if needed and bringing on specialised knowledge and skills;
* The model can build collegiality and perhaps strengthen non-partisanship amongst members of the governing body.

**Challenges and solutions**

The big problem with Model 2 is that of “double handling” and the risk of re-litigation when committees report back to the governing body, see table 3.

**Table 3 Strengthening Model 2**

|  |  |
| --- | --- |
| **Challenges** | **Possible solution** |
| The problem of members recommending to themselves and then re-litigating the matter is an issue with this model. | Require committees to seek consensus or virtual consensus on issue before reporting back to the governing body;Amend standing order to require adoption of committee recommendations when unanimous and no contextual changes. |
| Work load – with all councillors on all committees the work load can be problematic, particularly the lack of flexibility to fit around other commitments some members might have. | Look at having variable meeting times to ensure that no one is consistently inconvenienced. |
| The risk of having the same group of members consider all matters throughout the electoral term could potentially lead to “group think”, where issues are only considered from a single perspective.  | One possible solution is to have a policy of co-opting representatives, as required, to assist the committees by providing alternative perspectives.  |

**Community boards**

Where a Model 2 council has community boards then it will need to determine how the boards align with the committees of the whole. It may, for example, require boards to report to the committees on any matters that fall with the committee’s terms of reference.

# 3 Governing body with committees

The key difference between model 2 and 3 is the make-up of the committees. In model 3 councillors do not sit on all committees which, as a result, allows for a greater number of committees focussing on a broader range of topics (see page 14 for information on defining terms of reference).

**Advantages**

* Greater opportunities for councillors to develop leadership skills as committee chairs
* Easier (due to smaller number of members and less formality) for citizens and organisations to directly engage with councillors;
* Ability to create more focussed committees, such as a focus on a council’s strategic objective, and include appointed members;
* Flexibility – as committees can be quickly established in response to emerging issues such as, for example, a housing crisis or influx of visitors. This allows attention to be focused on a single policy issue with minimal distraction;
* Enables establishment of special purpose advisory bodies, such as Maori Advisory Committees.

**Challenges and solutions**

As with model 2, this approach requires committees to consider matters and make recommendations to the governing body, creating an element of duplication although not to the same degree, see table 4.

**Table 4 Strengthening Model 3**

|  |  |
| --- | --- |
| **Challenges** | **Possible solution** |
| Possible tension due to fact that members are on different committees and the feeling of being “left out” | Adopt a policy of changing membership after 18 months to enable all members to be members of each committee |
| The risk of recommendations being re-litigated by members not on the committee which made the recommendations. | Require committees to seek consensus or virtual consensus on issues before reporting back to the governing body;Amend standing orders to require the governing body to adopt committee recommendations if they have been passed unanimously by the committee. |
| More complex administration and servicing needs. | Invest in capability and capacity of governance team. |

**Community boards**

For model 3 councils with community boards t is common for community boards to be able to make recommendations to the relevant committee (according to terms of references) which may or may not endorse those recommendations to go forward to the governing body.

**Models with delegations**

# Model 4 Governing body with committees of the whole (with delegations)

In this model the governing body chooses to create “committees of the whole”. Committees consist of all members of the governing body, as full members, and maybe established for a variety of reasons, such as to allow councillors to “drill down” into a topical issue or oversee a major council responsibility. Some regional councils, for example, have established committees of the whole to handle public transport, a major responsibility for them.

Unlike Model 2 the committees have the delegated decision-making authority, and requisite budget lines, to fulfil their terms of reference without seeking the agreement of the governing body. Whangerei District Council is a good example of this approach, see <http://www.wdc.govt.nz/YourCouncil/WhatWeDo/Documents/Local-Governance-Statement.pdf>

**Advantages**

The addition of delegated decision-making powers increases the advantages of Model 2 with the following:

* Accountability for decision-making is clear and duplication is removed;
* Ability to establish meaningful co-governance arrangements, for example with Iwi/Maori;
* Members of the committees of the whole are more strongly incentivised to “get the decision right”;
* Governing body can concentrate on major issues with less distraction on operational matters.

**Challenges and solutions**

While the addition of delegated decision-making powers addresses the major problems found with Model 2, namely duplication and risk of re-litigation, there are still challenges with the Model, see table 5.

**Table 5 Strengthening Model 4**

|  |  |
| --- | --- |
| **Challenges** | **Possible solution** |
| Work load – with all councillors on all committees the work load can be problematic, particularly the lack of flexibility for councillors who may have other commitments. | Look at having variable meeting times to ensure that no one is consistently inconvenienced. |
| The risk of having the same group of members responsible for considering all matters could potentially lead to “group think”, which occurs where issues are only considered from a single perspective.  | One possible solution is to have a policy of co-opting representatives to assist the committee by providing an alternative perspective.  |

**Community boards**

Councils that have adopted this approach and also have community boards are more likely to give boards a level of decision-making authority over local neighbourhood issues. If a community board is dealing with a matter that falls within the mandate of a committee of the whole any recommendations would go to the committee for action.

# Model 5 Governing body with committees (with delegations)

In this model the governing body chooses to create committees to assist achieve its objectives and delegates decision-making powers to those committees. Members are allocated to different committees with membership numbers determined by committee purpose, members’ interests and workload.

Unlike Model 3, “committees without delegations” the committees have sufficient delegated decision-making authority, and requisite budgets to fulfil their terms of reference without seeking the agreement of the governing body, unless they choose to do so.

**Advantages**

The model has the same advantages as Model 3, “committees without delegations” with the added benefits of:

* Because the ‘buck stops” with the committee, members are more incentivised to make a good decision (which is not necessarily the case when a decision can be re-litigated at a later date);
* Accountability for decision-making is clear and duplication is reduced;
* Governing body can concentrate on major issues with less distraction on operational matters.

**Challenges and solutions**

Model 5 is best suited to larger councils that have a sufficient number of members to share between committees and rotate over the term, see table 6.

**Table 6 Strengthening Model 5**

|  |  |
| --- | --- |
| **Challenges** | **Possible solution** |
| Possible tension due to fact that members are on different committees and the feeling of being “left out” | Adopt a policy of changing membership after 18 months to enable all members to experience each committee |
| More complex budget management as committees have spending authority | Ensuring budget software has the capability to handle the additional complexity; |
| More complex administration and servicing needs. | Build up capability and capacity of governance team and look at ways of working smarter.  |

**Community boards**:

Councils which have decentralised their decision-making to committees tend to also extend delegations to community boards or require boards to report to the relevant committee.

**Governance approaches**

|  |  |  |  |
| --- | --- | --- | --- |
|  Centralised Decentralised | 1 | **Governing body makes all decisions**, except decisions that need to be made by the administration, statutory committees or joint committees involving other councils etc.  | Variations can include providing members with “portfolios”, regular workshops (usually prior to governing body meetings) for informal discussions and specialised sub committees, such as CE Performance and Audit and Risk. |
|  |  |  |
| 2 | Governing body makes decisions with “**committees of the whole” providing advice,** including community boards if established.  | Committees of the whole involve all members of the governing body. May be established to address topical issues or to provide oversight for a significant function. |
|  |  |  |
| 3 | Governing body makes all decisions but has a **range of committees charged with providing advice,** including community boards if established**.** | Committees may include appointed experts and/or representatives of relevant organisations e.g. Iwi or business. Appointees may vary according to each terms of reference. |
|  |  |  |
| 4 | Governing body **delegates decision-making on specified policy areas to “committees of the whole”.** Delegations can be extend to community boards if established | Delegations to committees of the whole reduces risk of re-litigation and double-handling.Committee chairs act as spokespeople for matters within their committee’s mandate. |
|  |  |  |
| 5 | Governing body limits its decision-making to strategic and district wide issues and **delegates** **decisions to committees and community boards.** | Greater flexibility than Model 4 with membership of committees determined by interest, capability and workload. . |

# The case for delegation

Delegations are the secret to effective decision making as they enable governing bodies to manage their work loads, shift decision-making to those levels of the organisations/officials best suited to address particular topics and ensure attention is given to the important and strategic.

Councils have broad powers of delegation however there are some decisions that can only be exercised by the full governing body and cannot be delegated, these include:

* the power to make a rate
* the power to make a bylaw (although local boards have the right to recommend these for their local areas)

Delegating authority is a key process for municipalities to ensure operational efficiency, transparency in municipal transactions and preserving public confidence in municipalities’ decision-making (City of St Albert, Canada, Governance Review).

* the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term council community plan
* the power to adopt a long term plan, annual plan, or annual report
* the power to appoint a chief executive (cl. 32 of Schedule 7 of the LGA 2002).

Apart from the decisions set out above, and some duties in other statutes, most other decisions can be delegated to committees, local or community boards and in some cases, the chief executive. A delegation means that the body with the delegated power has the full authority of the governing body in respect of the decision-making powers defined in the delegation. The governing body, while retaining legal responsibility for the exercise of any powers it has delegated, cannot overturn or amend a decision made by a body which is exercising a delegation, although it can always revoke the delegation at some later point. The reasons for delegating include:

* **focusing on strategic matters**: delegation can reduce problems of governing bodies spending time on detailed issues or matters that are urgent but minor;
* **scale**: some decisions are better made in a smaller groups where all members can participate and matters be explored in detail. For example, decisions about procurement and decisions about the performance of a chief executive;
* **work load**: some issues, such as a review of a district plan, will require frequent meetings and considerable reading/research. This is simply impractical for the governing body as a whole;
* **building knowledge and capability**: some issues may require decision-makers to build up expertise in a specific area, such as asset management, to enable them to properly scrutinise management’s performance. In some cases the members may not have the necessary expertise. External appointments can be made to committees but not the governing body;
* **facilitating community engagement**: governing bodies tend to operate in a formal manner with limited time for debate. This is not conducive to citizen engagement. Delegations to committees or community boards enables citizens and local organisations to be more actively involved with the council.

Once approved, the delegations made by the governing body can be found in the council’s Governance Statement and in many cases, a delegations manual will be published. Please note that a governing body can remove or amend delegations it has made to a subsidiary body.

# Committees - terms of reference and other matters

Just as they have the ability to use discretion on whether to have committees or not councils have discretion about the type of committee and whether they have delegations or not. Typically, terms of reference tend to be functional, procedural or have an outcome or theme focus.

## 1 The Functional approach

Under the functional approach committees are given responsibility for activities that the council delivers or is responsible for. The normal practice is to group activities by common characteristic, taking note to ensure that workloads are roughly equivalent. Depending on the size of the local authority, a typical distinction might be between activities that are community related and those that are network related. For example “community services” “transport” and “water and drainage” committees.

## 2 The procedural approach

Under the procedural approach committees are more likely to be concerned with the processes that councils undertake, both external and internal. Some example include a “strategy and policy committee”, a “planning committee” and a “regulatory” committee.

Select Committees enable citizens to engage directly with members of parliament across party boundaries. Standing committees are the local government equivalent.

## 3 The outcome approach

Some committee structures are designed to focus on the outcomes councils want to achieve rather than the services that are delivered or commissioned. Such models are often designed to align with the Long Term Plan or the council’s outcomes, or the four well-beings and are designed to focus elected members’ minds on the results of council activity, rather than simply the activities themselves – these are often expressed as themes, such as the “keep the city moving committee” or the “safer communities committee”.

In practice most committee structures have elements of all three, a good example being Rotorua Lakes Council’s committee structure, which consists of two standing committees, Strategy, Policy and Finance and Operations and Monitoring as well as six working/strategy groups based around key themes. The strategy groups are:

* People and engagement
* Creative Communities
* Sustainable Economy
* Sustainable living
* District revitalisation
* Sport and recreation

The strategy groups oversee the development and implementation of key strategies for the council. Membership is drawn from community organisations that contribute to each groups’ focus area

## Resourcing committees

If committees are given delegated decision-making powers then budgetary provision should follow, with budgets commensurate with a committee’s responsibilities. Determining the appropriate budget level is likely to be more straightforward where a committee is established on a functional basis. For example a community services committee would normally oversee a number of discreet business units, such as libraries.

## The importance of review

Councils frequently stay with the same decision-making structure established at the beginning of a term throughout the triennium, yet in many cases it may not be helping the local authority to achieve its objectives in a responsive and inclusive way. At the start of the triennium a time should be scheduled to evaluate the effectiveness of a council’s decision-making structure. Such a review should be undertaken by someone external to the council who is more likely to be able to review the governance structure with fresh eyes.

## Implications for organisational structure

In making a choice about governance structure elected members should also be mindful of how that structure fits with the council management and organisational structure. There are schools of thought that an organisation structure should align with its governance structure, for example, a situation where a community services department reports to the community services committee, and the library and art gallery reports to the culture committee.

Where committees are theme-based they cross organisational boundaries and it may be necessary for each committee to have an organisation leader whose role is to help align the work and priorities of departments with the objectives of their specific committee.

## Joint committees

Joint committees are a way of working collaboratively with neighbouring councils on matters of joint interest or concern and are able to have an ongoing life beyond the three year electoral cycle. Joint committees can be used as an alternative to establishing jointly owned Council Controlled Organisations (CCOs). In comparison to CCOs they are less expensive to establish or de-establish and more transparent.

# Specialist committees

Regardless of the decision-making structure adopted there are a number of “specialist” committees or sub-committees that are recommended, the most important being Audit and Risk and CE performance.

## Audit and Risk committee

Audit and risk management is an essential function of any governance body, but is not a function that a governance body as a whole can easily fulfil. To assist an Audit and Risk committee achieve its purpose it is recommended that they have delegated authority and at least one external member, more information can be found at <http://www.lgnz.co.nz/assets/Uploads/458c6ff032/LGNZAudit-and-Risk-Guide.pdf>.)

The role of an audit and risk committee is to use good governance skills to gain an assurance that the risks have been identified and where possible have been mitigated. An effective audit and risk committee will be based on the following attributes:

**Delegations for your Audit and Risk Committee**

To be effective an audit and risk committee shall have a range of delegated powers, such as:

* The authority to approve the appointment of the internal auditor of risk management and internal audit programmes, audit engagement letters and letters of undertaking for audit functions and additional services provided by the external auditor.
* The authority to conduct and monitor special investigations in accordance with council policy, including engaging expert assistance, legal advisors or external auditors, and, where appropriate, recommend action(s) to Council.
* The ability to recommend to the council the:
	+ adoption or non-adoption of completed financial and non-financial performance statements;
	+ governance policies associated with Council’s financial, accounting, risk management, compliance and ethics programmes, and internal control functions;
	+ accounting treatments, changes in generally accepted accounting practice; and
	+ new accounting and reporting requirements.

The chairperson of the audit and risk committee shall have delegated authority to approve the letter of engagement for the external appointee to the audit and risk committee.

* it will have a degree of independence from council and management which will enable the robust consideration of Council’s financial and non-financial risks; and
* the audit and risk committee will consist of both elected and non-elected (external appointee) members who have an enquiring mind and are not afraid to ask the tough questions. The committee will encourage open and effective relationships with external and internal auditors and with management

Depending upon the council’s governance structure an audit and risk committee may report directly to the governing body or to a committees, such as a Finance Committee.

When introducing an audit and risk committee a number of issues need to be considered:

* Size of the committee – the common practice is for audit and risk committees not to be “committees of the whole”
* Number of external appointees – common practice is for an external appointee with financial skills. Given the nature of the risks facing communities it may be important to consider whether appointees with other specialist knowledge may also be needed, such as climate change experts.
* Whether an external appointee should be the chair or not – being a chair can be inhibited from fully contributing fully to a discussion. If an appointee is not the chair thought needs to be given to the process for deciding a meeting’s agenda.

In addition, if an audit and risk committee is to undertake robust consideration of a council’s financial and non-financial risks it will require some independence from the governing body. (See Appendix 2 for information on terms of reference).

## CE Performance Committee

The governing body is responsible for employing the chief executive and managing the relationship on a day to day basis. For practical reasons however, despite the fact that the governing body will make the final decision, there are a range of matters that are not ideally undertaken by the full council, such as the negotiation of remuneration and employment conditions, regular feedback on, employment performance and annual assessments.

LGNZ recommends that liaison between the governing body and the CE is undertaken by a chief executive performance committee or sub-committee, should it report to a committee. Factors that should be taken into account when designing a CE performance committee include:

* Size of the committee
* Membership and whether a member should be an external appointee;
* Terms of reference;
* Delegations.

A committee is to be responsible for negotiating with its council’s chief executive must also have access to a budget in order to be able to contract independent advice during any such negotiations. Please note that appropriate delegations to allow for the allocation of expenditure are vitally important.

Please note; the terms of reference of a CE Employment committee are set out in Appendix 1.

# Portfolios

Over recent years a number of councils have chosen to complement their governance structures by the appointment of portfolio holders. Portfolio holders are councillors with responsibilities for a specific policy area, such as transport, arts and culture or recreation.

The nature of a portfolio holder’s responsibilities are not prescribed and vary between councils, ranging from being the public spokesperson for issues affecting their portfolio to leading policy discussions related to their portfolio.

## Why appoint portfolio holders?

Councils tend to appoint portfolio holders for a variety of reasons, for example:

* To keep councillors engaged
* To make up for having no committee structure
* To ensure issues get air/attention
* To create issue specific spokespersons who can act as champions.

The decision to appoint portfolio holders should only be made in the context of selecting the decision-making structure that is appropriate for each council’s specific circumstances and needs. While the use of portfolio holders provides a way of engaging councillors and arguably improving media relationships issues can emerge if they are not designed to complement the overall decision-making model, particularly the relationship between governance and administration, for example:

* *Confusion over spokesperson and accountability*: it needs to be clear, especially when the media is looking for comment, who the relevant spokesperson is on any issue. Is it the portfolio holder, the chair of the relevant committee or the mayor?
* *Openness and transparency*: Portfolio holders are frequently allocated an appropriate senior staff person for liaison and advice. This can create transparency concerns as the interactions do not take place in an open environment and the provisions of LGOIMA difficult to apply;
* *Provider capture*: A consequence of the lack of transparency in the relationship between portfolio holder and staff can be a lack of diversity in the advice given to the portfolio holder. This is sometimes known as provider capture, which can happen when "governors" uncritically accept the advice of their officials.

## Determining portfolio subjects

Portfolio subjects can reflect topical issues, such as a climate change portfolio, or simply each of the major activities that a council is responsible for. The choice of portfolio subject will be heavily influenced by the number of councillors in the governing body. For example, after reviewing their governance structure the Hastings District Council made the decision to give all 13 members of the governing body a portfolio.

*I wanted to create a more inclusive governance structure that engaged all councillors. The new structure of having portfolio leaders will allow all councillors to be involved across the broad spectrum of council activity - with particular links to our annual plan and long term plan (Mayor Sandra Hazlehurst, Mayor of Hastings District Council, 26 June 2018).*

Hastings District created 13 portfolios which reflected the outcome pillars on which the council's LTP was structured (see Appendix 3). In contrast Wellington City Council, with 14 councillors, has approximately 35 portfolios.

## Remuneration and other factors

Portfolio holders are often given higher levels of remuneration to reflect their additional responsibilities.[[1]](#footnote-1) When considering remuneration at least two questions need to be considered:

* What level of remuneration should a portfolio holder receive?
* Should remuneration vary amongst portfolio holders reflecting the differing amount of work associated with their portfolio?

Regardless of the way in which portfolios are defined, some will always be more demanding than others and require more time and effort from the portfolio holder. To ensure portfolio holders are remunerated at a level appropriate to the demands of the portfolio some councils have introduced a weighting system (similar to "job-sizing") to come up with the right level of payment. Weighting could consider, for example the level of accountability, the degree of complexity, the importance of relationships, the required expertise, the amount of time needed and the size of the budget.

* **Term**: Policies on the use of portfolios should specify whether or not the responsibility is for the full three years of the term or for a lesser period. One option is for portfolios to have a limited period, say 12 months, so that the knowledge and experience can be shared around all councillors. Enabling councillors to take turns at a specific portfolio helps to address the risk that some councillors may feel left out or jealous at councillors who might appear to be favoured.
* **Method of selection**: One matter a council’s policy on portfolios should address is the process for making portfolio appointments. Is it made, for example, on the basis of a member’s interest or on the basis of a member’s experience of expertise? Are appointments made through a process involving all councillors or is the mayor entrusted to negotiate with councillors on a “one to one” basis.
* **Job description**: Portfolio holders need a “job description” that sets out the purpose of their position, the extent of their discretion and the process by which they liaise with officials. Clarity is also needed about how policy positions that portfolio holders promote are decided, as well as a reporting back system to the full governing body. (See Appendix 6 for a sample portfolio holder job description.)

# Appendix 1 Chief executive performance committees

Under the Local Government Act 2002 (Act), every local authority must appoint a chief executive. Under clause 34(2) of Schedule 7 of the Act, the local authority and the chief executive must enter into a performance agreement. It is usual for a performance agreement to provide for periodic reviews and a structure will need to be put in place for the reviews to be completed. A local authority may wish to have a permanent structure in place to deal with any issues that arise in relation to the management of the chief executive.

This attachment looks at the types of structures a local authority may put in place to undertake performance reviews and to deal with any other management issues that may arise in relation to the chief executive's employment.

## Structures

If a local authority wishes to implement a formal structure, the two main options to choose from are a committee or a subcommittee.[[2]](#footnote-2) A committee reports to the local authority. A subcommittee can report to another committee or to the local authority directly (clause 30 of Schedule 7 of the Act).

Each local authority has a certain amount of flexibility associated with its committee/subcommittee structures. A local authority is able to discharge or reconstitute a committee or subcommittee at any time. However, unless the local authority resolves otherwise, following a triennial general election, a committee or subcommittee will be deemed to be discharged on the coming into office of the newly elected members (clause 30 of Schedule 7 of the Act**). In this situation, we recommend that this sort of committee/subcommittee should be subject to a non- discharge resolution. It avoids the situation, where after the triennial general election, there is no direct liaison point for the chief executive.**

Similarly, it is desirable to have a standing committee or subcommittee rather than appoint an ad hoc committee each time an issue arises with a chief executive. A standing committee or subcommittee can build a more meaningful relationship with the chief executive and this makes it more manageable to deal with issues in a timely manner if they arise.

## Membership

The local authority may appoint or discharge any member of a committee or subcommittee. The minimum number of members for a committee is 3 and the minimum number of members for a sub-committee is 2 (clause 31(6) of Schedule 7 of the Act).

In the case of a committee, at least one member must be an elected member of the local authority (clause 31(4) of Schedule 7 of the Act). In the case of both a committee and a subcommittee, a person who is not an elected member may be appointed to the committee but only if, in the opinion of the local authority, that person has the skills, attributes, or knowledge that will assist the work of the committee or subcommittee (clause 31(3) of Schedule 7 of the Act).

The Act expressly prohibits an employee acting in the course of his or her employment from acting as a member of a committee unless that committee is a subcommittee (clause 31(4) of Schedule 7 of the Act).

It is up to each local authority to determine the size and membership of the committee or subcommittee. However, in this situation, a relatively small committee or subcommittee would seem appropriate where the body is dealing with the performance review and management issues of one employee albeit the chief executive.

The local authority may well want to consider whether or not it appoints a non-elected member to a committee or subcommittee. Any non-elected members would need to have relevant experience in such areas as executive employment issues and performance management.

## Powers

The local authority needs to consider what delegations will be made to the committee or subcommittee. There are two options for a local authority. The committee/subcommittee can have delegated authority to carry out activities within its terms of reference or alternatively, it can have the more limited power to recommend to the local authority a particular course of action. However, it should be noted that under clause 32(1)(e) of Schedule 7 of the Act, a local authority is not permitted to delegate the actual power to appoint a chief executive.

Examples of delegations could include:

* Approving the employment agreement between the local authority and the chief executive and setting key performance indicators in a performance agreement.
* Working with the chief executive on the implementation of the performance agreement.
* Conducting any performance reviews required by the performance agreement.
* Making decisions about the remuneration of the chief executive.
* Conducting any statutory performance reviews under clauses 34 and 35 of Schedule 7 of the Act.
* Deciding any other issues that may arise in relation to the employment or performance of the chief executive.
* Fulfilling the local authority's contractual obligations to the chief executive.
* Disciplinary or performance issues that may need to be addressed/investigated relating to the chief executive.

If external advisers are not members of the committee or subcommittee, then it would be appropriate for the committee/subcommittee to take advice from people who have relevant experience in executive employment issues and performance management. This should be provided for in the delegations to the committee/subcommittee. A financial limit may also be appropriate so that the committee/subcommittee may contract for advice up to a certain amount. If the power to take advice from external advisers is omitted from the delegations, the committee/subcommittee will have no power to seek external assistance as and when required.

## Reporting to and involvement of full Council

The establishment of a committee or subcommittee does not mean that the full Council will not be involved in the performance review process for a chief executive or have knowledge of various employment issues that have arisen between the Council and the chief executive. In this respect, we recommend that the committee/subcommittee reports to the full Council on a regular basis.

During the performance review process, it would also be appropriate for the committee or subcommittee to seek input from councillors who are not members of the committee on the performance of the chief executive.

## Meetings

Meetings of the committee or subcommittee will need to be conducted in accordance with the Act, the Local Government Official Information and Meetings Act 1987 (LGOIMA), and the Council's Standing Orders. In addition:

* A chairperson will need to be appointed to the committee or subcommittee.
* The Council will need to decide whether the committee or subcommittee meets on a regular basis or as and when required. If meetings are scheduled on a regular basis, this will provide an opportunity for the chief executive and the Council to discuss issues at regular intervals.

A further decision will need to made as to whether particular meetings should be conducted with the public excluded. This would be the usual practice but the local authority will need to meet the requirements of section 48 of the LGOIMA.

A common ground for excluding members of the public in this instance would be to protect the privacy of natural persons (sections 48(1)(a)(i) and 7(2)(a)). Although, it is not possible to exclude members of the public on the ground of protecting the free and frank expression of opinions by or between or to members or officers or employees of a local authority in the course of their duty (sections 48(1)(a)(i) and 7(2)(f)).

Finally, it should be noted that under section 45(2) of the LGOIMA, any meeting of a local authority or of any committee or subcommittee of a local authority, at which no resolutions or decisions are made is not a meeting for the purposes of part 7 of the LGOIMA. This means part 7 will not apply if the committee/subcommittee and the chief executive get together simply for a general discussion.

# Appendix 2 Audit and Risk Committees

**Example terms of reference: the Whanganui Audit and Risk Committee**

The objectives of the Audit and Risk Committee are to assist the Council to discharge its responsibilities for:

1. The robustness of the internal control framework and financial management practices;
2. The integrity and appropriateness of internal and external reporting and accountability arrangements;
3. The robustness of risk management systems, processes and practices;
4. Compliance with applicable laws, regulations, standards and best practice guidelines; and
5. The establishment and maintenance of controls to safeguard the Council’s financial and non-financial assets. In fulfilling their role on the Audit and Risk Committee, members shall be impartial and independent at all times.

**Delegated Authority**

The Council has delegated to the Audit and Risk Committee the necessary authority to effectively carry out the tasks assigned to it.

# Appendix 3 Portfolio holder Job description

**Portfolio holder job description - Wellington City Council**

* Ensure progress is made towards the council's strategic priorities and projects within their portfolio responsibilities
* Play a strategic and policy leadership role in their areas of responsibility assisting the council to meet its strategic objectives
* Enhance relationships with key stakeholders
* Act as the Council's spokesperson and point of contact for those activities within their portfolio responsibility
* Collaborate with committee chairs and other portfolio leaders where objectives are shared
* Work effectively with council officers
* Attend any advisory groups or external appointments made and ensure an alternate is available if they cannot attend projects and activities
* As far as possible attend council launches of new activities and projects in their area of responsibility
* Ensure council's advisory groups have effective input into their areas of responsibility
* Meet regularly with the Mayor, Deputy Mayor, Chief Executive, Chair and senior staff
* Keep the Mayor informed of emerging issues
* Maintain a no-surprises approach for elected members and staff
* Raise issues of Council performance with assigned executive leadership staff member in the first instance, following up with the chair, mayor and CE if necessary.

The portfolio leader also facilitates informal policy discussion between elected members, public and officials on matters within their responsibility.

**Portfolio topics – Hastings District Council**

|  |  |
| --- | --- |
| Long term financial planningSafeguarding our moneyOur placesOur economyProtecting our communitiesOur water | Planning our assets for tomorrowAmbassador for HastingsCommunity engagementOur peoplePartnerships and uplifting our communitiesOur environmentMoving around and operations. |

1. The approach established by the Remuneration Authority provides a discretionary amount that can be used to reward positions, such as committee chairs or portfolio holders [↑](#footnote-ref-1)
2. The Act also provides for a local authority to appoint other subordinate decision-making bodies and make delegations to other subordinate decision-making bodies. The reference to other subordinate decision-making bodies is new. A subordinate decision-making body must be something other than a committee, subcommittee or joint committee. It must also be a "body" which is subordinate to the Council and has a specific decision-making function. In this paper we do not focus on other subordinate decision-making bodies as the more appropriate structures are committees or subcommittees. [↑](#footnote-ref-2)