

PROCUREMENT POLICY



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

Adopted by	Napier City Council on 05 August 2021
Relevant Legislation	Not Applicable
NCC Documents Referenced	Refer section: Related Council Policies and Documents

Background

Napier City Council (Council) spends approximately \$100 million annually on a wide range of works, goods and services. The scale of Council's procurement programme not only has a budgetary impact, but can also have a significant impact on our local communities, our quality of life, and our economy.

The Council is accountable to rate payers and must demonstrate that our procurement and contract management processes from source and selection through to payment, are fair, transparent, compliant and auditable, and that staff and suppliers are able to deliver services in a safe and efficient commercial environment.

To deliver the best public value, the Council recognises the potential to deliver broader outcomes, which are the secondary benefits that can be generated from procurement activities and include environmental, social, economic or cultural benefits.

Purpose

The purpose of this Policy is to provide a framework within which a consistent procurement practice is applied across all Council procurement activities ensuring alignment with the Council's long term plan, strategic priorities and community outcomes.

The Policy articulates how the Council seeks to maximise the overall benefits that can be delivered through its procurement activity, enabling the Council to deliver value for money as well as advancing the social, environmental, economic and cultural wellbeing of Napier residents. The purpose of this policy is to:

- Define 'procurement' in the context of Council;
- Provide a framework to ensure consistent procurement practices across Council;
- Align procurement with Council's vision and outcomes as set out in the Long Term Plan.
- Define the concepts of Public Value and Broader Outcomes, and how Council aims to maximise these through its procurement.
- Highlight key legislation and policies that procurement activities must align with.

Scope

This Procurement Policy covers all activities associated with purchasing by, or on behalf of, Napier City Council. It applies to all employees, management, and consultants engaged to assist with procurement, elected Council members and Community Board members.

For Council Controlled Organisations (CCOs) this policy shall only apply where Napier City Council (as the majority shareholder) is the controlling entity.

This policy applies to all procurement activity undertaken by Council, with the exception of:

- Acquisition of art and similar unique items of interest.
- Employment.
- Grants and sponsorship.
- Land acquisition.
- Leasing of Council-owned property and the leasing of property to the Council.

- Payments to government and regulatory bodies.
- Procurement undertaken by Council Controlled Organisations that is not on behalf of the Council.
- Tax.
- Treasury and financial instruments.
- Unsolicited proposals.

Interpretation

To assist with interpretation of this policy the following general guidance is provided.

<p>Public Value</p>	<p>Public value means achieving the best possible result from a procurement activity. For instance:</p> <ul style="list-style-type: none"> • Good outcomes - broader outcomes that include social, cultural, economic and environmental • Good quality – solutions that match Council’s requirements and needs • Good price – accounting for total costs of ownership • Trust – fair opportunities and ethical dealings
<p>Broader Outcomes</p>	<p>The concept that procurement can and should be used to support wider social, economic, cultural and environmental outcomes that go beyond the immediate purchase of goods and services.</p>
<p>Probity</p>	<p>The quality of having strong moral principles; honesty and decency.</p>

Policy

The term ‘procurement’ covers all aspects of acquiring works, goods and services, including every aspect of the procurement lifecycle (plan, source, manage), and ends with the completion of the service contract or the disposal or repurposing of an asset at the end of its useful life. This includes the contract and relationship management of our chosen suppliers.

The procurement lifecycle diagram shows outlines the different stages of the end to end process.



Figure 1 Procurement Lifecycle Model - (Recoloured from MBIE).

All procurement should:

- Meet a justifiable and approved business purpose.
- Be fully accountable and conducted within the requirements of funding agencies.
- Appropriately manage risk.
- Provide the best public value over the whole of life of the goods, service or asset.
- Be conducted with integrity and in a fair and transparent manner.
- Support effective competition, while minimising relationship costs, ongoing operation costs and consequential costs.
- Allow for full and fair opportunity for local suppliers.
- Deliver broader outcomes through the consideration of economic, environmental, social and cultural impacts.
- Be within the law and in accordance with Councils legal responsibilities.

All procurement activity within Council must be undertaken in accordance with this policy, and performed according to the relevant processes documented in the Council Procurement Procedures Manual and adhere to Council’s Procurement Strategy.

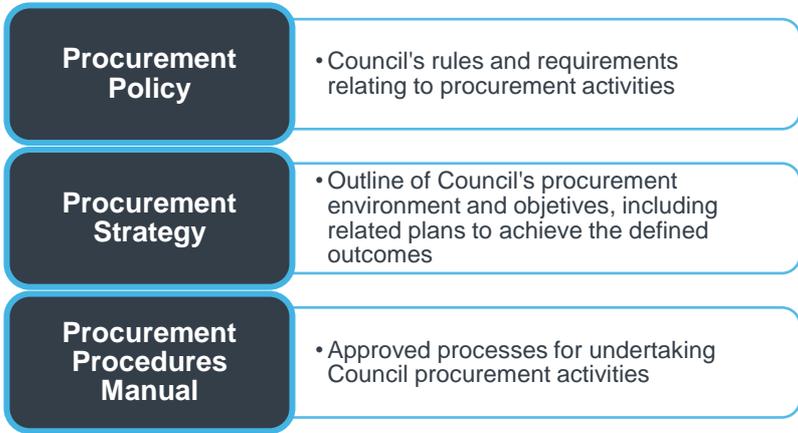


Figure 2 Procurement Framework

Mandate and Commitment

The Procurement and Contracts Management Team [Finance] are responsible for the development and oversight of the procurement strategy, policy and procedures for Council. The team will provide expertise, guidance, advice and support to employees undertaking procurement in the achievement of Council objectives.

Principles

Council applies the ‘The Five Principles of Government Procurement’ and takes into consideration the Government procurement charter and rules, as set out in the Government Procurement Rules (4th Edition) 2019, published by the Ministry of Business, Innovation and Employment (MBIE). Council recognises this publication as providing a best practice framework to guide Council in the delivery of the best ‘public value’ through its procurement, and to drive innovation and performance. Council is also guided by the Government Procurement Rules for sustainable and inclusive procurement.



Figure 3 MBIE Procurement Principles, adopted by NCC

Strategic Alignment

In undertaking procurement, Council must operate within a policy framework which includes wider Council strategic objectives and outcomes, Government (for transport) Waka Kotahi (formerly known as the NZ Transport Agency (NZTA), procurement rules and a legislative and regulatory framework as outlined in the framework below.

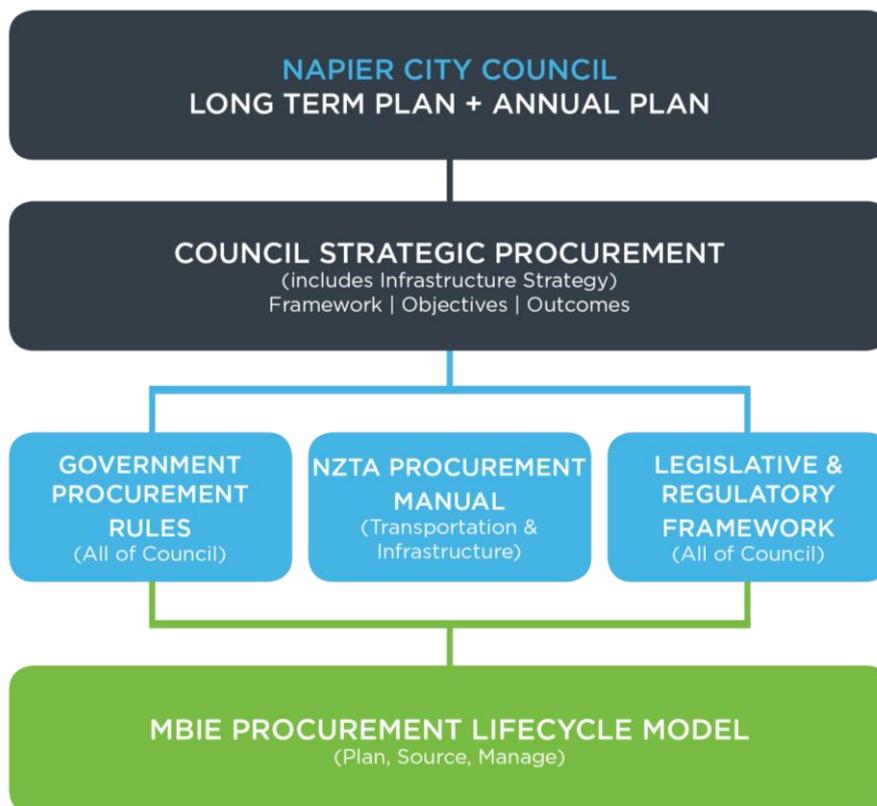


Figure 4 Procurement Policy Framework

Procurement Objectives

This policy sits alongside the procurement strategy, which sets out the objectives of Council's procurement programme.

1. Optimise public value – maximising the benefits and outcomes generated by Council's procurement activities, through ensuring broader outcomes are considered as part of the procurement evaluation.
2. Support delivery of Council objectives through efficient and effective procurement – ensure all procurement activities are conducted in line with Council's Procurement Principles, including the development and maintenance of competitive supply markets.
3. Build Procurement Capacity and Capability – develop Council's procurement knowledge, systems, processes, and resources to support efficient and effective procurement to meet and exceed industry best practice.

Public Value

When assessing procurement options, employees should use 'public value' as a means of determining the best outcome from funds spent.

The value factors not directly linked to price include environmental, social, economic and cultural outcomes. These are considered 'broader outcomes' and can have a profound effect on the local economy and the wellbeing of the community. Council does not place an obligation on employees to use a process that only accepts the lowest quote or tender from a supplier; however, reasons for not doing so should be transparent and justified on a 'whole of life' public value basis.

Progressive Procurement Toolkit

Progressive Procurement is the pathway to achieving positive sustainable outcomes, through council's procurement activities, these being economic, social, environmental and cultural, while ensuring competitive pricing and maintaining quality standards. The Progressive Procurement Toolkit will include:

- Opportunity map for Council staff.
- Tool kit for internal staff.
- Suppliers guide.

Environmental Wellbeing

As the provider of waste management services to the District, Council has both a moral and operational role in considering the impacts of procurement on the environment.

Employees should factor the following environment considerations when assessing procurement options:

- Preventing and reversing environmental degradation.
- Adoption of the principles of the Joint Waste Management and Minimisation Plan (JWMMP) with a focus on reducing waste to landfill.
- Reducing reliance on non-renewable resources through use of environmentally sustainable materials.
- Minimising destruction of natural environments.
- Reducing waste throughout the product lifecycle (from sourcing to disposal) including water and energy saving measures and minimisation of emissions by taking a whole life approach to design, procurement and installation/build/construction and maintenance.
- Fair use of resources to ensure no disadvantage is created within the community.
- Encouraging sustainability innovation.

Social Wellbeing

Employees should consider ways that procurement activities could provide equal opportunities so that prosperity is shared across our community. This may include providing employment opportunities and pathways that move those from low paid to skilled employment.

Cultural Wellbeing

Napier City Council is committed to lifting Māori economic and social well-being and recognising Māori cultural values and perspectives. Procurement can make a material difference for positive Māori outcomes through considering broader outcomes which include:

- Provide employment opportunities and career pathways for Māori.
- Support partnering or sub-contracting with iwi and hapū organisations, Māori businesses and social enterprises.
- Encourage the engagement of Māori in the design and/or delivery of goods, services and works.

Economic Wellbeing

Economic wellbeing may be supported through creating opportunities for new business start-ups and non-primary sector jobs and encouraging or supporting the evolution of a more diverse and innovative economy.

Locally-based Suppliers

The overarching requirement for Council procurement activities is to optimise public value, which includes promoting the economic growth and wellbeing of Hawke's Bay and Napier. This broader outcome can be achieved through sourcing goods and services through local suppliers where practicable.

A 'local supplier' is defined as a supplier of goods and services operating or based in Hawke's Bay, and employing and developing local people.

Council will foster and encourage a viable and competitive supply market that is able to provide goods and services now and into the future, ensuring the optimisation of public value for ratepayers and service users.

Employees undertaking procurement should choose to procure goods and services from locally-based suppliers where:

- The public value offered by the locally-based supplier is as good as suppliers based outside the District, and/or
- There is a need to ensure market capacity and capability in the long-term; and/or
- The community will benefit from selection of a local provider, through stronger commitment and/or local accountability, employment growth or other social benefit.

When it is practical Council will also bundle its procurement activities in such a way that ensures opportunities for locally-based (smaller) suppliers, i.e. where it is cost effective and does not compromise efficient management systems.

Significant Expenditure

The Napier City Council Significance and Engagement Policy outlines the policy of Council to determining the significance of issues, proposals, decisions, and other matters, and includes thresholds, criteria and procedures that the Council will use in assessing which issues, proposals, decisions and other matters are deemed to be significant as required by section 90 of the Local Government Act 2002. It also provides a list of assets which Council considers to be strategic assets.

Delegated Financial Authorities

A financial (expenditure) delegation is the authority to approve expenditure or enter into financial commitments on behalf of the Council. Financial commitments include awarding contracts, making contract payments, issuing purchase orders etc.

Everyone needs to know what types of financial approvals they can make and the financial limits that apply to these. The Financial Delegations Policy provides more information about financial delegations and the activities, financial limits associated with Council roles are recorded in the Financial Delegations Register.

Employees at all levels of Delegated Financial Authority must comply with the procurement and tender award financial procedures set out in the Procurement Procedures Manual.

Emergency Expenditure

The delegated financial authorities identify which employees can exceed their level of financial authority for:

- Declared emergencies.
- Rural fire, Civil Defence and hazardous substances emergencies.
- Emergency work to prevent immediate risk to public health, or public safety, or to prevent damage to public property or Council assets.

Expenditure in these circumstances must be in accordance with the appropriate emergency expenditure procedures rather than the strict requirements of the policy and the related strategy and procedures.

Competency and Capability

Every employee, or agent, involved in a procurement process must have the required skills for the type and level of procurement they are engaging in.

For contracts with an estimated total value exceeding \$200,000 (excluding GST) which receive Waka Kotahi funding at least one member of the Tender Evaluation Team (TET) must have an Waka Kotahi-approved qualification.

Councils Financial Delegations Register highlights the procurement and contract approval activities and financial thresholds that employees can operate within.

Using Consultants to Procure on Councils Behalf

If a consultant is engaged to assist Council in a procurement process, the consultant must observe the same ethical standards, principles and behaviours set out within this document. An employee with the appropriate delegated financial authority must brief and work with the consultant.

Risk Management

Risk is inherent in all procurement activities and has been identified as one of Council's key risk areas within the strategic risk register. Effective risk management is required to ensure that Council and its ratepayers are not exposed to significant unmitigated risk and future liability.

Employees must proactively identify, evaluate and manage any risks, opportunities and issues at all stages of the procurement process in accordance with Councils' Risk Management Policy and Framework and Risk Management Strategy. The Risk Management Strategy provides practical guidance to employees on risk management, including a Risk Matrix for determining the level of risk, and a risk evaluation template to ensure all areas of risk are considered.

Business units should consider Operational Procurement Risks and the Strategic Procurement Risks that may be mitigating controls for Operational Risks

Internal risk assurance audits of business practice will be performed to internal audit standard to provide reasonable assurance that risk is adequately managed.

Health and Safety

A risk based health and safety approach allows the Council to realise opportunities to improve health and safety practice and address challenges through the procurement activity.

In considering how healthy and safety practices can impact outcomes at all stages of procurement, (particularly early stages such as design performance), helps the Council improve health and safety outcomes and deliver benefits such as harm reduction, cost savings and the improved safety of Council staff, Contractors and members of the public.

Legal and Ethical Considerations

Council must act ethically and with integrity when procuring goods and services. Employees must:

- Act, and be seen to be acting, in a fair, open and unbiased manner; and
- Observe ethical standards, principles, and behaviour throughout the procurement process.

Compliance with Legislation

In addition to policy and rules, anyone involved in procurement must be aware of relevant statutes that relate to Local Government, contracting, and the common law of contracts. Employees must ensure they comply with all applicable legislation throughout the procurement process. Legislation that may apply to Council procurement activities includes, but is not limited to:

- [Commerce Act 1986](#)
- [Construction Contracts Act 2002](#)
- [Contracts and Commercial Law Act 2017](#)
- [Health and safety at Work Act 2015](#)
- [Fair Trading Act 1986](#)
- [Land Transport Management Act 2003](#)
- [Local Authorities \(Members' Interests\) Act 1968](#)
- [Local Government Act 2002](#)
- [Local Government Official Information & Meetings Act 1987](#)
- [Official Information Act 1982](#)
- [Public Audit Act 2001](#)
- [Public Bodies Contracts Act 1959](#)
- [Public Finance Act 1989](#)
- [Public Records Act 2005](#)
- [Trade \(Anti-dumping and Countervailing Duties\) Act 1988](#)

Consultation Obligations

Council's governing legislation, the Local Government Act 2002, includes obligations to consult with the community, or key stakeholders, on 'significant issues'. If a tender or other procurement process might result in significant changes to the original contracted outcome(s) being delivered to the community by Council, the obligations defined through community consultation will need to be considered.

Contractual Considerations

Council must comply with all relevant law on the formation and performance of contracts. Legal risks may exist when procuring through a competitive tender or proposal process. Employees must follow the evaluation process that was set out in the invitation or request for tender.

Council provides a suite of approved procurement contracts, however it is accepted that in some instances a supplier contract may be more suitable.

Where a supplier contract is used, the agreement should be reviewed by Council's General Counsel where any one of the following risk factors were identified as part of the Procurement Plan:

- High value (total financial commitment over the duration of the contract),
- Long term (duration of contract and right of renewals), or
- Reputational risk (sensitive expenditure, limited references for supplier, new/innovative technology).

Public Law Considerations

Council is a public body and as such its tendering processes can be scrutinised by judicial review. Employees should always take into account the risk that its procurement actions and decisions could be subject to judicial review, or a complaint to the Ombudsman or to the Office of the Auditor General.

Intellectual Property Risks

Where procurement involves the purchase of intellectual property rights, such as designs, computer software development, employees need to determine whether the intellectual property rights should belong to Council or to the supplier. Relevant factors may include the effect on the price of the contract and the ongoing ability of the parties to develop innovations.

Employees should refer to the Government Procurement Rules - Rule 63: Intellectual Property for guidance in preparing a Request for Proposal or Request for Tender where intellectual property is likely to be developed or created during the delivery of outcomes.

Liability

When contracting for goods or services suppliers may look to limit their liability under a contract. Employees should take a risk-based approach when considering an exclusion or limitation on a supplier's liability.

All procurement contracts should state:

- The scope and limit of liability,
- Events that might cause liability to be incurred; and
- Number of events to be covered.

Without a limit defined in the contract, the supplier's liability will be determined by general law. In circumstances where there is a limit on a supplier's liability, associated costs to Council should be taken into account when considering that supplier's goods or services.

Conflicts of Interest

As part of Council's obligation to act fairly and openly, employees must take care that decision-making cannot be challenged on the basis of actual or potential bias and/or conflicts of interests. Conflicts of Interest may relate to Council Officers who make decisions relating to procurement, including governance, management, operational employees and the person approving the procurement.

Any conflicts of interest identified through the risk management process shall be handled in accordance with the Conflict of Interest Policy.

Confidentiality

Confidentiality is a common characteristic of competitive procurement processes and employees should take particular care when handling commercially sensitive information; confidentiality obligations can apply throughout the entire procurement process including after the contract has terminated or expired. . In accordance with the [Local Government Official Information and Meetings Act 1987](#), employees must not use or disclose confidential information for any purpose other than what may be necessary to enable them to fulfil their duties.

Napier City Council Staff must:

- Respect the confidentiality and sensitivity of information received in the course of their work,
- Not use this information for personal gain,
- Not use confidential information to influence, disadvantage, or advantage other participants; and
- Always communicate information accurately, impartially, and in a manner not designed to misled, to all interested participants.

Disclosure under Law

There are times when Council's obligations to ratepayers, under either the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, might override the interests of confidentiality. These Acts mean that Council is not able to give suppliers comprehensive assurances about the protection of sensitive information. Note that there are relevant grounds for withholding information under those Acts, such as unreasonable prejudice to the commercial position of a potential supplier, but these can be overridden if there is greater public interest in disclosing the information.

Fraud and Corruption

The Council and executive management regards fraud and corruption as totally unacceptable and will apply a 'Zero Tolerance' approach to fraudulent behaviour, misuse of funds, or corruption.

In accordance with Council's Fraud and Corruption Policy, employees should make themselves familiar with Council's procurement policies, procedures and rules, particularly those which govern and guide processes and functions in relation to their specific role. Ignorance of the Council's procurement policies and processes is not an acceptable excuse if a breach occurs.

Supplier Complaints

Supplier may make a complaint regarding Council's procurement activities as per the Council's Complaints Policy.

Government Collaborative Contracts

There are three types of collaborative contracts commonly used by Government which Council may choose to join.

- All of Government (AoG) Contracts, which are developed, negotiated and managed by MBIE or the DIA.
- Syndicated Contracts where agencies work together to collectively go to market and one agency acts as the contract lead.
- Common Capability Contracts which are similar to AoG contracts but are not managed by MBIE.

Local Government Arrangements

Napier City Council is one of five Local Territorial Authorities (LTAs) within the Hawke's Bay region. The Councils' recognise the strengths and benefits of collaboration, to improve the service and value to ratepayers, residents and councils of Hawke's Bay.

In achieving these objectives, for some procurement-related activities the five Hawke's Bay Councils (HB5C) may enter into collaborative procurement or contracting arrangements to:

- Access particular expertise within another LTA, for the supply of goods or services.
- Realise greater public value through a combined approach to market (for example attract higher-quality suppliers, or gain cost efficiencies through bundling).
- Any such arrangement would be on a preferred supplier basis and must:
- Be in accordance with the Local Government Act 2002,

- Comply with the obligations imposed by the funding policies from external agencies such as where relevant Waka Kotahi,
- Not be anti-competitive; and
- Provide the best public value.

Documentation and Publication Requirements

Adequate records must be kept of procurement decisions in accordance with The Public Records Act 2005 and in accordance with normal prudent business practice. Information to be retained should include decisions, actions, minutes, reports and correspondence relating to the procurement lifecycle stages of plan, source and manage.

All documentation relating to procurement should be saved to the appropriate location in Council's record management system for a minimum of seven years.

Council will ensure its Procurement Policies, Strategy and Procedures are publically available and current at all times.

Waka Kotahi Documentation and Publication Requirements

Council receives funding from Waka Kotahi to undertake some transportation projects. The Waka Kotahi Procurement Manual Amendment 5 outlines Council's requirements under Rule 10.6: Documentation and Publication Requirements, which may also include compliance with the [Government Procurement Rules](#).

Council employees will comply with the relevant rules of the Waka Kotahi Procurement Manual and the Government Procurement Rules.

Roles and Responsibilities

Role	Responsibility
All Employees	Undertake all procurement activities in line with the Procurement Strategy, Policy and Procedures.
Procurement Lead	<p>Work to continuously improve Council's procurement and contract management processes, ensuring compliance with all relevant policy and legislative requirements.</p> <p>Maintain the Procurement Strategy to reflect Council's objectives and budgets, and any changes to relevant policy.</p> <p>Ensure robust policies, procedures, and templates are available to employees to undertake procurement within Council principles.</p> <p>Provide guidance and support to staff to ensure compliance with Council's procurement processes.</p>
Managers	<p>Ensure employees are aware of their procurement requirements as relevant to their role.</p> <p>Support employee development to ensure their capability aligns with the requirements of their role.</p>
Director: Corporate Services	<p>Provide oversight of the Procurement function.</p> <p>Review and approval of the Procurement Policy, Strategy and Procedures.</p>

References

In addition to the legislation listed in the section on Compliance with Legislation, Council's procurement and contract management function is required to meet the obligations stated in the following Council and Government policy and funding frameworks:

- Government Procurement Rules

- Waka Kotahi Procurement Manual
- Office of the Auditor General

Related Council Policies and Documentation

This policy should be read alongside the following Council policies and documents:

- Napier City Council Long Term Plan
- Infrastructure Strategy
- Significance and Engagement Policy
- Corporate Risk Management Framework Policy
- Confidentiality Policy
- Protected Disclosures Policy
- Conflict of Interest Policy
- Credit Card Policy
- Fraud Policy
- Financial Delegations Policy
- Financial Delegations Register
- Gift and Gratuities Policy
- Motor Vehicle Policy
- Records Retention and Disposal Policy
- Procurement Strategy (draft)
- Procurement Procedures Manual (draft)

Policy Review

The review timeframe of this policy will be no longer than every three years.



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