

Appointment of Directors to Council Organisations Policy

Te Kaupapa Here Poua Kaitohu ki ngā Rōpū Kaunihera

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1.0 Introduction - *Kupu Arataki*

This policy sets out the process for selection, appointment, remuneration and reimbursement of external appointees. This applies to all appointments of directors by Council to Council Organisations, Council-controlled Organisations and Council-controlled Trading Organisations. Except where express provision is made to the contrary, the provisions of this policy will apply equally to all current and future CCTOs, CCOs and COs. This policy does not apply to Council committees including advisory panels/committees, the delegations register establishes their appointment process.

2.0 Background - *He tirohanga whakamuri*

This policy applies to both current and future organisations controlled by the Whakatāne District Council. Some of the CCOs do not require a director appointment policy because they have their own appointment procedures. This policy is a legislated requirement under the Local Government Act 2002 for Councils in relation to their CCOs.

3.0 Objective - *Ngā whāinga*

This policy has been developed to comply with section 57 of the Local Government Act (2002). This requires Council to adopt a policy that sets out an objective and transparent process for:

- the identification and consideration of the skills, knowledge, and experience required of directors of a Council organisation; and
- the appointment of directors to a Council organisation; and
- the remuneration of directors of a Council organisation.

4.0 Definitions – *Ngā tikanga o ngā kupu*

Candidate is a person who has submitted a written application for a director's position or has formally agreed to be considered for such a position.

Council Organisation (CO) is defined in Section 6 of the Local Government Act 2002. In broad terms, a CO is an organisation in which the Council has a voting interest or the right to appoint a director.

Council Controlled Organisation (CCO) is defined in Section 6 of the Local Government Act 2002. It is a CO in which one or more local authorities' control, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors.

Council Controlled Trading Organisation (CCTO) is defined in Section 6 of the Local Government Act 2002. It is a CCO that operates a trading undertaking for the purposes of making a profit. Within this policy, the term CCO covers both a CCO and a CCTO.

Directors include company directors, trustees, managers or office holders (however described in that organisation).

5.0 Policy - *Te kaupapa here*

5.1 The Role of a Council Controlled Organisation Director

The role of a council appointed director is to assist the organisation to meet its objectives and any other requirements in its Statement of Intent.

5.2 Identification of Skills, Knowledge and Experience Required

The skills, knowledge, experience and any other attributes required of a Council Controlled Organisation (CCO) director will be identified and documented, prior to the appointment process commencing.

The ability to guide the organisation, given the nature and scope of its activities, and the ability to contribute to the achievement of the objectives of the organisation will form the basis of the skills, knowledge, or experience required.

In general terms, the following skills and attributes are sought in CCO directors:

- intellectual ability coupled with common sense
- strategic vision
- an understanding of governance issues
- an understanding of Te Ao Māori and tikanga within a local context
- business and/or other experience that is relevant to the activities of the organisation
- sound judgment
- a high standard of personal integrity
- the ability to work collaboratively and cooperatively within the team
- an understanding of the wider interests of the publicly accountable shareholder
- the ability to build and maintain relationships within the Whakatāne community.

The mix of skills and experience on the CCO board, as well as the board's diversity will be considered. Consideration will be given to complementing and reinforcing existing skills, reducing known skill gaps and increasing diversity where necessary.

5.3 Eligible Candidates

Appropriately qualified external applicants are eligible as candidates for director positions on CCO boards.

- Elected Members of Whakatāne District Council are not eligible to be considered as candidates for director positions on CCO boards, other than in exceptional circumstances.
- Employees of Whakatāne District Council are not eligible to be considered as candidates for director positions on CCO boards, unless they are appointed in their capacity as an employee of Whakatāne District Council.

- Employees of a Whakatāne District Council CCO are not eligible to be considered as candidates for director positions on CCO boards, other than in exceptional circumstances.

5.4 Appointment Process

When a vacancy arises, an Appointment Panel will be established and approved by the Chief Executive, subject to consulting with the Mayor.

5.4.1. *Appointment Panel*

The Appointment Panel will be made up of:

- two elected members; and
- the existing Chair of the CCO or their nominee; and
 - If the CCO board is being established then a second independent person will be appointed;
- one independent person who brings particular knowledge or skills that can add value to the process.

The Appointment Panel will appoint its own Chair. The Chair does not have a casting vote.

An employee of Council or of the CCO may not be appointed as a member of the Appointment Panel. A Council employee may be appointed as an advisor to the Appointment Panel as and when necessary.

Members of an Appointment Panel who are not elected members or directors of the CCO may be remunerated for their time and skills.

Members of the Appointment Panel will not have a conflict of interest relating to their role on the Appointment Panel.

The Appointment Panel will be responsible for:

- approving the criteria against which applications will be assessed;
- an independent recruitment consultant or advisor may be engaged to help if the Appointment panel so determines.
- preparing a recommended short-list of candidates to interview;
- interviewing the short-listed candidates and evaluating them against the approved criteria; and
- reporting on its assessment of each candidate against its criteria and recommending appointments of directors to Council.

5.4.2. *Advertisement of a Council Appointed Director's Position*

In most instances, Council will seek expressions of interest in the position by way of a public advertisement via the appropriate advertisement sites.

Where a suitable candidate has been identified and advertising is not expected to add significant value to the selection process (for example where specialist knowledge or experience exists), the Appointment Panel may choose not to advertise but must provide its reasoning for not doing so.

As part of an application a candidate is required to disclose whether they:

- are an immediate family member of an elected member, the chief executive, or a second-tier manager of Whakatāne District Council or a Council Controlled Organisation, or
- have been convicted of an offence for which the maximum available sentence is imprisonment of two years or more (noting that required disclosures are subject to the provisions of the Criminal Records (Clean Slate) Act 2004), or
- have been declared bankrupt at any point in time or been the director of a company at the time it was placed in receivership or involuntary liquidation.

Any disclosures under the above clause will be taken into consideration by the Appointment Panel and Council but will not automatically preclude the candidate's appointment as a director. Candidates are also required to disclose any actual or potential conflicts of interest that may arise if they are appointed as a CCO director. Council expects that applicants would not be considered for a director's position if it is likely that the applicant would, if successfully appointed, have a significant conflict of interest.

5.4.3. *Appointment*

Council will make its final decision in a confidential committee (thus protecting the privacy of natural persons). A public announcement of the appointment will be made as soon as practicable after Council has made its decision and received confirmation of acceptance from the candidate/s.

Directors will normally be appointed for a term of two or three years, with an option to renew their appointment, but total tenure shall not be more than nine years. Staggering the terms of directors is preferred to avoid director vacancies falling at the same time.

A director cannot be reappointed to the same board after nine years in service.

5.4.4 *Reappointment*

Where a director's term of appointment has expired, and they are offering themselves for re-appointment a representative of the Appointment Panel will consult on a confidential basis with the Chairperson regarding;

- the director's length of tenure;
- the director's demonstrated ability to work collaboratively and to participate within the team;
- whether the skills of the incumbent add value to the broader skills mix and work of the board;
- whether there are other skills which the board needs, bearing in mind the changing dynamics of the CCO;
- whether there is an opportunity to increase board diversity;
- succession planning matters.

If it is the Chairperson seeking reappointment consideration will be made by the appointment panel. The Panel will consult on a confidential basis with the Board around reappointing a Chairperson.

Where reappointment is considered appropriate, the Appointment Panel is authorised to approve the reappointment without further decision of Council. Any reappointments made by

the Panel will be reported to Full Council for noting via the Chief Executive. Where it is not intended to reappoint the existing incumbent, the appointment process outlined above will apply.

5.5. Chair

Council will appoint the Chair of each CCO board, considering the experience and skills of the existing board. Council will consult the Board on the person to be appointed, and where appropriate, will seek its view on who it considers to be the appropriate person to fill the Chair's position.

A Chair succession plan is required to provide for smooth transition of leadership in the event of a planned or unexpected retirement of an incumbent Chairperson. It is expected that the Chair will identify and develop potential successors and notify the appointment panel. The appointment panel can decide whether to recommend the identified successor to Council for appointment. In cases where no candidates are suitable for the role of Chair, the current Chair will notify the appointment panel. Where no candidates exist within the board, the Appointment Panel will follow the appointment process outlined in this policy.

In general terms, the skills and attributes sought for Chairs are the same as those sought for Directors (see 5.2), but in addition would include the following:

- strong leadership skills, with the ability to work collaboratively with the Board and General Manager to create a sustainable enterprise;
- ability to think in a visionary and strategic manner;
- have a strong understanding of and experience in governance; and
- ability to ensure that the organisation is accountable and delivers high quality products, facilities and services.

5.6. Termination of Appointment

Directors hold office at the pleasure of the Council and may be removed at any time by Council resolution. Without limiting the right of the Council, the following are likely reasons for Council to remove a director, where that director:

- is regularly absent from board meetings without good justification;
- no longer has the confidence of the board or the Council;
- has breached ethical standards and this reflects badly on the board and/or Council;
- does not act in the best interests of the organisation;
- breaches the confidence of the board in any way, including speaking publicly on board issues without the authority of the board; or
- does not act in accordance with the principles of collective responsibility;
- is now disqualified from being appointed or holding office as a director of a company under section 151(2) of the Companies Act 1993.

Where the board has concerns regarding the behaviour of one of its directors it should be considered by the board in the first instance and, where necessary, the board may recommend the removal of the director to the Council. The Council will not make any payment by way of compensation to directors who have been removed from a board.

5.7. Conflict of Interest

The Council expects that directors appointed under this policy will avoid situations where their actions could give rise to a conflict of interest.

A Conflict-of-interest register will be kept by each board.

5.8. Remuneration

The Council will decide whether directors on CCO boards are to be remunerated. The level of remuneration for directors will be set by resolution of the Council in accordance with the factors outlined in this section.

In exceptional circumstances, where elected members and Council employees may have been appointed as directors of a CCO, they will not be remunerated for that role unless provided for by specific Council resolution.

The Council supports the payments by CCOs of directors' liability insurance and the indemnification of directors.

Travel costs for meetings are generally not reimbursed, other than in exceptional circumstances approved by the Chair.

Where CCO directors are remunerated, the level of remuneration will be set considering the following factors:

- The need to attract and retain appropriately qualified directors;
- The levels of remuneration paid to comparable companies in New Zealand;
- The performance of the CCO and any changes in the nature of its business;
- The size and scale of the CCO (e.g. turnover, value of assets, number of employees);
- Complexity and scope of operations (e.g. complexity of issues, level of guidance for decision making, relationship management responsibilities);
- Accountability (e.g. scale of market risk, public interest and risk to director reputation, and other key risks);
- Skills, specifically the type of expertise and specialisation needed; and
- Any other relevant factors.

Remuneration of directors of all CCOs will be reviewed at least once per triennium, or whenever the performance of the CCO or the role of the CCO and its board changes significantly.

5.9. CCOs and CCTOs in which the Council has a minority interest

Where Council has a minority interest in a CCO (i.e. where a CCO is controlled by several councils and Whakatāne District Council does not have a majority stake) then the process for the appointment and remuneration of directors will be agreed with the other shareholders (by whatever name) in the CCO. The governance requirements of such organisations are established through shareholder agreements or equivalent documentation. Such agreements take precedence over this policy, however to the extent possible, it is expected that all appointment processes will be made in a manner consistent with the objectives of this policy.

5.10. Council Organisations – Non-Controlling Interest

Council may have non-controlling interests in Council Organisations. Generally, these are not-for-profit bodies. Appointments to Council Organisations where Council does not have a controlling interest may occur to:

- provide a means of monitoring where the Council has made a grant to that body to enable Council involvement where the CO's activity is relevant to Council;
- satisfy a request from the CO that the Council appoint a representative.

Appointments to a CO are generally for a three-year term and made after the triennial elections. Elected members may be appointed to a CO where Council does not have a controlling interest.

Remuneration of CO directors is at the discretion of that organisation, but Council would ordinarily expect no remuneration to be paid to Council-appointed directors.

6.0 Accountability - *Ngā haepapa*

The Whakatāne District Council and the CCO's are responsible for the application of this policy.

7.0 Review - *Te arotake*

Council will review this policy every five years with a view for continuous improvement.