

## Council Briefing Agenda

**Date:** Wednesday, 12 February, 2020

**Time:** 1:00 pm

**Location:** Council Chamber  
Forum North, Rust Avenue  
Whangarei

**Elected Members:** Her Worship the Mayor Sheryl Mai  
(Chairperson)  
Cr Gavin Benney  
Cr Vince Cocurullo  
Cr Nicholas Connop  
Cr Ken Couper  
Cr Tricia Cutforth  
Cr Shelley Deeming  
Cr Jayne Golightly  
Cr Phil Halse  
Cr Greg Innes  
Cr Greg Martin  
Cr Anna Murphy  
Cr Carol Peters  
Cr Simon Reid

For any queries regarding this meeting please contact  
the Whangarei District Council on (09) 430-4200.

**1. Apologies**

**2. Reports**

**2.1 Council Appointments to Organisations Policy**

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**3. Closure of Meeting**

## 2.1 Council Appointment to Outside Organisations Policy

**Meeting:** Council Briefing  
**Date of meeting:** 12 February 2020  
**Reporting officer:** Emily Thompson (Senior Assurance Advisor)  
 Joanne Tasker (CCO Project Coordinator)

### 1 Purpose

To update Council on the Council Appointment to Outside Organisations Policy to Elected Members for consideration following the advice provided by the Office of the Controller and Auditor General in their 2015 report and the initial discussions held in the briefing on 5 December 2019.

### 2 Background

Council has a policy which covers appointments to Council Organisations. The policy covers both appointment of Elected Members, and community representatives to Council Organisations. It covers all Council Organisations (CO), including Council Controlled Organisations (CCO) and Council Controlled Trading Organisations (CCTO). The Appointment of Directors to Council Organisations Policy was adopted on 9 August 2003 and is now overdue for review. The current policy is attached.

*Council Organisations are defined under the Local Government Act 2002 (LGA). They are an organisation where one or more local authorities hold or control voting rights or have the right to appoint one or more of the directors to the board of directors. This includes all Council-Controlled Organisations and Council-Controlled Trading Organisations.*

Section 57 of the LGA requires Council to adopt a policy outlining an objective and transparent process for the identification and consideration of the skills, knowledge, and experience required of directors of COs (including CCOs and CCTOs), the appointment of directors, and the remuneration of directors.

In 2015 the Office of the Controller and Auditor-General (OAG) released a report on the governance and accountability of Council Controlled Organisations. The report noted that there is an inherent conflict between an Elected Member's obligations to council and their community, and their obligations to the CCO. As a result, it was recommended that appointing Elected Members to CO's should be an exception to the usual practice.

This differs from the appointment of Elected Members to outside organisations who may request a Council representative for a number of reasons. Council currently has no policy on the appointment of representatives to outside organisations (those that are not covered under the definitions of CO, CCO or CCTO). Feedback from the briefing on 5 December 2019 has

led staff to propose a policy that provides for appointment of council representatives to “organisations”.

The proposed policy includes the appointment of Elected Members to outside organisations, as well as allowing for the appointment of community members or Elected Members onto a Council Organisation (CO).

This proposed policy is a significant rework of the current “Appointment of Directors to Council Organisations Policy” that was adopted by Council on 09 August 2003.

### **3 Discussion**

The proposed policy puts forward a position to align to the recommended best practice model for Council appointments to organisations as detailed in the OAG 2015 report. Staff recognise that this may create a gap between the current arrangements and the policy position. The proposed policy allows for variations should Council wish to move towards best practice over time, as appointments need to be renewed.

#### **Proposed policy changes**

This proposed policy has undergone alteration to include all organisations that may require or request a council representative for a multitude of reasons.

Historically Council appointments to numerous outside organisations has been completed at the start of the triennium. This will continue, although work has been undertaken to clarify which organisations should be appointed to in this way. Council made appointments to some strategically important organisations in their December Council meeting.

This policy includes the specific LGA requirements relating to Council's CO's.

This policy no longer includes details around the operational appointment. There are two processes, one is to appoint a community Council representative to a CO and one is to appoint an Elected Member to an outside organisations. These can be found in the Council Process Portal (Promapp) and are included in the presentation for this briefing.

Staff have included wording from the OAG report in the proposed policy to highlight the best practice recommendations. Any extracts have been italicised and referenced to enable that the intent of the policy position is understood.

#### **Provision of remuneration to directors**

We have simplified the reference to remuneration within the proposed policy. Council needs to consider if they want to create any formality about when directors, usually of a Charitable Council Controlled Organisation, may be remunerated.

Current Council Controlled Organisations that would not be included in this definition are Whangarei District Airport, Northland Regional Landfill Limited Partnership and Springs Flat Contractors Ltd.

If there is a decision to remunerate directors for any of the current Council Controlled Organisations then the mechanism will have to be confirmed. This will include identification of where the budget will come from, and how it will be distributed to the directors of the organisation. Some options will be presented by staff as part of the briefing.

### **Requirement of knowledge of tikanga Maori**

In line with the updates to the LGA, the policy includes reference to the requirements of knowledge of tikanga Maori. It is now a requirement that, when appointing a director, Council consider whether knowledge of tikanga Maori may be relevant to the governance of the CCO. Good practice recommends this is also a consideration for appointments to any organisation.

## **4 Next steps**

Subject to feedback from Elected Members today, the intention is to bring the proposed policy back to the Council at the February Meeting for adoption.

Organisations that are not CO's will be reviewed following feedback from this briefing to confirm which organisations require Elected Member appointments. Staff will formally advise the resident and ratepayer groups of their ward liaison members and contact details, and where Council does not have a right to appoint, but has historically, we will have a discussion with these organisations to determine the best way for Council to provide support.

## **5 Attachments**

Current Policy: Appointment to Council Organisations Policy (Policy 0018)

Proposed Policy: Council Appointments to Outside Organisations Policy

Extract on appointment to Council Organisations from Office of the Auditor General's report 2015



# Whangarei District Council Policy

## *Appointments to Council Organisations Policy*

*Policy 0018*

Appointments to Council Organisations Policy			
<b>Audience (Primary)</b>	Internal	<b>Business Owner (Dept)</b>	Governance
<b>Policy Author</b>		<b>Review date</b>	June 2016

## Policy

This policy applies to appointments to any new organisation set up by council or for the replacement of council representatives on the organisations listed below except where these rules would be in conflict with the agreements or rules that already exist under specific trust deeds or management arrangements previously signed by council.

### 1.1. Introduction

The Whangarei District Council either owns or has an interest in a number of council organisations (COs).

These include the following:

**Whangarei District Airport** – This is a joint venture between council and the crown to run a strategic company operating passenger and freight services out of our district. Council's interest is largely represented by management of the venture and in buildings with the crown contributing mainly land. This organisation is a Council Controlled Organisation (CCO) in terms of the Act and produces a Statement of Intent annually. The business trades profitably and all profits are retained to service asset replacement and development.

**Springs Flat Contractors Limited** – This Company is 100% owned by council and is now dormant. Council have exempted the company from reporting in terms of the Act. The company is retained as there are tax losses in existence which may be of future benefit to Council.

**Advance Whangarei Limited** – This Company is 100% owned by council and has been established to promote the district for future economic development. A statement of Intent has been developed and the company is a CCO in terms of the Act.

**Whangarei Art Museum Trust** – Council currently appoints two of the 4 Trustees and as such this is a CCO. The trust primarily looks after council's art collection and other significant works in the district and promotes art generally for our region.

**Whangarei Tourism Trust** – This organisation is not controlled by Council and as such is a CO only. The trust looks after Claphams clock museum, the visitor centre at Tarewa Park and promotes tourism in the district. Council appoints one representative to the board of trustees. The organisation relies heavily on funding from council.

**Whangarei Quarry Gardens Trust** – This organisation is a CO, council appoints two trustees and the major function is the management and operation of the quarry gardens as a tourism site within Whangarei. Council supplies some funding to this organisation.

**Whangarei Museum Inc.** – Council appoints one representative to this organisation which is a CO and supplies a significant funding stream for its support. The museum looks after councils William Fraser collection and other significant works for the district and region.

**SAORSA Retirement Village Trust** – This is a council organisation (CO) with council appointing one representative. The trust looks after a small development of pensioner housing based in the Waipu Township with council essentially owning the assets and the trust managing the development.

**Stonehaven Village Trust** – This is a council organisation (CO) with council appointing one representative. The trust looks after a small development of pensioner housing based in the Maungakarama Township with council advancing equity in the form of loans via the Sinking Fund Commissioners.

**Ngunguru Retirement Village Trust** - This is a council organisation (CO) with council appointing one representative. The trust looks after a small development of pensioner housing based in the Ngunguru Township with council advancing loans and the trust managing the development.

**Whangarei Harbour Marina Trust** - This is a council organisation (CO) with council appointing two representatives. The trust leases the marina assets from council and administers the operations of the marina on behalf of council.

**Tutukaka Marina Management Trust** - This is a council organisation (CO) with council appointing one representative. The trust leases the marina assets from council and administers the operations of the marina on behalf of council.



Appointments to Council Organisations Policy			
<b>Audience (Primary)</b>	Internal	<b>Business Owner (Dept)</b>	Governance
<b>Policy Author</b>		<b>Review date</b>	June 2016

**Sport Northland Trust** - This is a council organisation (CO) with council appointing two representatives. The organisation looks after the promotion and management of sports activity in a variety of codes to foster health and wellbeing in Northland as a whole. Council supplies some funding and facilities to the trust.

Each of these organisations delivers services, provides advice, or in some way supports the achievement of the objectives in the council's long-term council community plan.

The Local Government Act 2002 requires that the council may appoint a person to a directorship of council organisations only if the council considers the person has the skills, knowledge and experience to:

- Guide the organisation given the nature and scope of its activities
- Contribute to the achievement of the objectives of the organisation.

The council is required to adopt a policy setting out an objective and transparent process for identifying and considering the skills required of a CCO director, and appointing the directors of CCOs.

## 1.2. Skills

The council considers that any person that it appoints to be a director of a CCO should, as a minimum, have the following skills:

- Intellectual ability
- An understanding of governance issues
- Either business experience or other experience that is relevant to the activities of the organisation (or both)
- Sound judgment
- A high standard of personal integrity
- The ability to work as a member of a team.

## 1.3. Appointment Process

When vacancies arise in any CCO the council will follow the following process for appointing directors.

The council will decide in open council whether to advertise a particular vacancy or make an appointment without advertisement. When making this decision the council will consider:

The costs of any advertisement and process

The availability of qualified candidates

The urgency of the appointment (e.g. a CCO that is without a quorum cannot hold board meetings).

### Appointment By Advertisement

Where the council decides to advertise a vacancy, it will form an ad hoc committee to consider applications and make a recommendation to the council. The Mayor, or a councillor nominated by the Mayor, will chair the committee.

A shortlist of candidates will be prepared by the Mayor, the chairperson of the committee charged with responsibility for monitoring the CCO and the Chief Executive.

The short listed candidates will be interviewed by the relevant committee and the committee will report to council on each of the candidates. The committee may make a recommendation if it wishes to do so.

### Appointment Without Advertisement

Where the council decides not to advertise a particular vacancy it will refer the matter to the council committee that is responsible for monitoring the CCO.

The council committee will consider the appointment at its next scheduled meeting. The committee will identify a shortlist of candidates whom it considers meet the above criteria and will forward those to council

Appointments to Council Organisations Policy			
<b>Audience (Primary)</b>	Internal	<b>Business Owner (Dept)</b>	Governance
<b>Policy Author</b>		<b>Review date</b>	June 2016

together with a report explaining why these candidates meet the criteria. The committee may make a recommendation.

### Final Appointment

The council will make a decision in committee (thus protecting the privacy of natural persons). Public announcement of the appointment will be made as soon as practicable after the council has made its decision.

An elected member who is under consideration to fill a particular vacancy may not take part in the discussion or vote on that appointment.

### 1.4. Conflicts of Interest

Whangarei District Council expects that directors of council organisations will avoid situations where their actions could give rise to a conflict of interest. To minimise these situations the council requires directors to follow the provisions of the New Zealand Institute of Directors' Code of Ethics. All directors are appointed 'at the pleasure of the council' and may be dismissed for breaches of this code.

### 1.5. Remuneration

Remuneration of directors of controlled council organisations is a matter of public interest.

Where the council is the sole shareholder in a particular organisation the council will set director's remuneration either by resolution at the annual general meeting or will review salaries on an annual basis (for those organisations that do not have such a meeting). In reaching a view on the appropriate level of remuneration for directors of council organisations the council will consider the following factors:

The need to attract and retain appropriately qualified people to be directors of the CCO

The levels and movement of salaries in comparable organisations (the council will retain professional advice on salary levels and movements)

The objectives of the CCO (in particular whether or not the CCO operates on a charitable basis)

The past performance of the CCO

Whether the CCO is operating as a trading undertaking

The financial situation of the CCO.

In cases where the council cannot exercise direct control, such as in an organisation where it is one shareholder among many, it will conduct its own monitoring of salaries against the above factors and will publicly disclose the name of any CCO which it considers is not complying with the above factors.

<i>Policy title</i>			
Audience (Primary)	Internal/external*	Business Owner (Dept)	Democracy
Policy Author	Joanne Tasker	Review Date	

## ***Whangarei District Council***

### ***Council Appointment to Outside Organisations***

***Policy  
#tbc***

## Purpose

The purpose of this policy is to comply with section 57 of the Local Government Act 2002 (LGA) and outline an objective and transparent process for the appointment and remuneration of directors to council organisations, council-controlled organisations, and council-controlled trading organisations.

The policy is further intended to provide guidance on the appointment of Whangarei District Council (Council) representatives to all outside organisations, of which council organisations, council-controlled organisations, and council-controlled trading organisations are a subset. At times, Council is asked to appoint an Elected Member to an organisation. This requires appropriate consideration in line with this policy.

## Definitions

The following terms are utilised by Council throughout this Policy but are not defined in legislation.

- Rules document – the organisation's founding document that outlines the rules of the organisation. This includes, but is not limited to, trust deeds, constitutions, agreements, and terms of reference. It includes any subsequent amendments.
- Outside organisation – is any organisation where Council has the ability to appoint a representative or is asked to appoint a representative. This includes formal Council advisory groups and cross-sector working group and parties.

The following terms are defined in further detail under section 6 of the LGA.

- Council organisation (CO) – is an organisation where one or more local authorities hold or control voting rights, or have the right to appoint one or more of the directors to the board. This includes all council-controlled organisations and council-controlled trading organisations.
- Council-controlled organisation (CCO) – is a type of council organisation where one or more local authorities hold or control 50 per cent of the voting rights, or have the right to appoint 50 per cent of the directors to the board.
- Council-controlled trading organisation (CCTO) – is a type of council-controlled organisation that operates a trading undertaking for the purpose of making a profit.
- Director – is a member of the organisation's board or governing body. This includes trustees, directors, managers, or office holders (however described in the organisation).

For the sake of clarity, the term organisation is used throughout this policy when referring to all of the following; outside organisations, CO's, CCO's, and CCTO's.

## Legislative Requirement

The LGA requires Council to adopt a policy on the appointment of directors to COs (including CCOs and CCTOs). The policy must outline an objective and transparent process for:

- the identification and consideration of the skills, knowledge, and experience required of directors of COs,
- the appointment of directors to a CO, and
- the remuneration of directors of a CO.

## Policy

This policy is intended for all organisations as defined above. The process to appoint a community representative to a CO is different to the process to appoint Elected Members to outside organisations, and these are detailed in the staff process portal Promapp.

This policy may not be applicable where the Rules document requires Council to appoint a director or provide remuneration in a way that differs from this policy.

## When to Appoint

Council appointments to organisations should only be made where there is a very clearly established reason, and the role, functions, and expectations for the appointee have been clearly defined.

A clearly established reason may include:

- Council is required to make an appointment (i.e. it is required by a Rules document or legislation)
- there is a close funding or functional relationship with Council, or
- there is a significant benefit to Council or the community in making the appointment.

Appointments of Council representatives are made by Council in line with Council process.

## Skills, Knowledge, and Experience

To ensure legislative compliance when appointing a director, Council must:

- ensure that any director they appoint to a CO, CCO, or CCTO has the skills, knowledge, or experience to guide the organisation, given the nature and scope of its activities,
- ensure that any director they appoint to a CO, CCO, or CCTO has the skills, knowledge, or experience to contribute to the effectiveness of the objectives of the organisation, and
- consider whether knowledge of tikanga Maori may be relevant to the governance of a CCO.

These principles may apply when Council appoints a person to an outside organisation.

## Appointment of Elected Members

The Office of the Auditor General (OAG) best practice is that appointing Elected Members to CCO or CCTO boards

*“should be the exception.”\**

If local authorities wish to appoint Elected Members to their CCO or CCTO board, then

*“the appointment should be open and transparent, and subject to the same criteria as for independent directors.”\**

The OAG note that the risks in appointing Elected Members as directors to CCOs and CCTO's include that:

- *“there is an inherent conflict between a councillor-director's obligations to the Council and their community and their obligation to the subsidiary (CCO or CCTO), “*
- *Elected Members are “more likely to be subject to, and swayed by, pressure from community groups, so that it may be more difficult for a councillor-director to maintain confidentiality of commercial and other information about the CCO's business”, and*
- *Elected Member directors “often lack the skills to perform well as a director.”\**

It may be appropriate to appoint an Elected Member to a CO or outside organisation. These organisations do not have a legislative requirement for reporting to Council. The appointment of an Elected Member may help provide oversight.

Where an Elected Member is appointed to an organisation, the same statutory provisions apply, and the elected member should have the requisite skills, knowledge, or experience to contribute as a director.

The Mayor will determine any appointment of Elected Members to outside organisations at the beginning of the triennium, in line with Council process.

### **Appointment of Council Employees**

The OAG notes that there is

*“real potential for a manager’s role as adviser to the Council to conflict with his or her obligations to the CCO (or CCTO) as director.”\**

In appointing a Council employee to an organisation, the appointment of Council representatives to CO process should be followed. The Council employee should have the skills, knowledge, and experience to contribute effectively to the organisation.

In making the appointment, Council will consider the potential for the candidate’s role within Council to conflict with any obligations to the organisation, and the extent to which the appointment might impact on the organisation’s independence.

### **Removal of Directors**

Where Council appoints a director, they can be removed by Council at any time by way of a resolution of Council.

Where removal of directors is addressed in the Rules document of the organisation, that document will hold precedence over this Policy.

### **Term of Appointment**

Appointments to outside organisations will align with the local government elections. An Elected Member will cease to be member of the organisation at the end of the triennium or when they cease to be an Elected Member of Council, unless detailed otherwise in the Rules document.

For appointment of Council representatives to organisations, Council should consider the Rules document of the organisation when determining the length of a director’s term.

Council may also consider the length of other director’s terms.

### **Conflict of Interest**

Directors will, as far as possible, avoid situations where their actions may give rise to a conflict of interest. Where a conflict of interest arises, the director must declare the interest and manage the risks appropriately.

### **Code of Practice**

Council appointed directors are expected to follow the New Zealand Institute of Directors’ Code of Practice for Directors. This is to ensure they understand and observe high standards of ethical behaviour. This includes, but is not limited to:

- acting in good faith and in the best interests of the organisation
- guiding the organisation toward achievement of its purpose
- complying with the law
- recognising and managing risk

- fostering constructive relationships.

Directors will undertake due diligence to ensure that they understand the purpose of the organisation, their mandate as director, Council's expectations, and any reporting requirements.

### **Remuneration**

Council has the discretion to provide funding for remuneration of directors on CCOs, CCTOs, and COs. Elected Members or Council employees that are appointed as directors will not receive remuneration.

CCOs are more likely to receive funding for remuneration of directors than COs. Charitable CCOs are more likely to receive funding for remuneration of directors than CCTOs or for profit CCOs.

Where funding for remuneration is not provided by Council, the organisation may choose to remunerate directors from its available funds, so long as this is consistent with any Rules document.

OAG best practice, from the report *Governance and Accountability of Council-controlled Organisations*, holds that

*"a CCO director is responsible for the governance of the CCO. The position, if discharged properly, involves work, so remuneration is appropriate."\**

The report further identified some examples of matters that the OAG considered might help local authorities who have CCOs and CCTOs, this included considerations in setting the amount of remuneration.

### **Promapp Processes**

Appoint an Elected Member to an Outside Organisation

Appoint a Council Representative to Organisations

### **Relevant Legislation**

Local Government Act 2002.

### **Related Policies and Documents**

New Zealand Institute of Director's Code of Practice for Directors.

Controller and Auditor-General *Governance and Accountability of Council-controlled Organisations* (Office of the Auditor-General, September 2015).

\*Where text is *italicised* it reflects a direct quote from the *Governance and Accountability of Council-controlled Organisations* report.

## Adopted

**Delete once complete** – Only use this section if your policy is **NEW** and **adopted or approved by Council or a Council committee**:

**Date of meeting:** DD-MM-YYYY

**By:** Whangarei District Council **OR** name of committee

**NOTE:** Consider whether your policy should be adopted only by your committee or whether it should go to full Council – your committee can only adopt policies on matters that are clearly covered by their Terms of Reference.

**Delete once complete** – Only use this section if your policy **has been reviewed** by Council/ a Committee:

## Policy Review

This Policy was reviewed in YYYY and this revised Policy was updated as follows:

**Date of meeting:** DD-MM-YYYY

**By:** Whangarei District Council **OR** name of committee

## Approval

**Delete once complete** - Only use this section if the policy **does not** require approval through a Committee or Council.

This Policy has been approved by (remove or add as required):

<b>Error! Reference source not found. - XXXXX</b>	Name	Date
Group Manager - <b>Error! Reference source not found.</b>	Name	Date
CE on behalf of Senior Leadership Team	Name	Date
Chief Executive	Name	Date

## Policy Review

This Policy was reviewed in YYYY and this revised Policy was approved as follows:

Copy approval table as above as required.



## 5

## Appointing directors

- 5.1 In this and the following three Parts, we discuss the role of a local authority, and its elected members, in relation to its CCO(s). The local authority's primary responsibilities under the Act are:
- to appoint the directors of a CCO (see Part 5);
  - to set the direction of the CCO through the statement of intent (see Parts 6 and 7);
  - to monitor the CCO's performance (see Parts 6 and 7); and
  - accountability for the CCO's performance (see Part 6).
- 5.2 In this Part, we consider:
- the legal requirements for appointing directors of CCOs;<sup>29</sup>
  - appointing the chair and independent directors;
  - councillors and local authority managers as directors; and
  - the process for appointing directors.

### Legal requirements for appointing directors of a council-controlled organisation

- 5.3 The Act requires a local authority to have an objective and transparent process for appointing directors to a CCO.<sup>30</sup> The Act provides that a local authority can appoint only a person with the appropriate skills, knowledge, or experience to contribute effectively to the entity's achievement of its objectives:

#### 57 Appointment of directors

*(1) A local authority must adopt a policy that sets out an objective and transparent process for—*

- (a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and*
- (b) the appointment of directors to a council organisation; and*
- (c) the remuneration of directors of a council organisation.*

*(2) A local authority may appoint a person to be a director of a council organisation only if the person has, in the opinion of the local authority, the skills, knowledge, or experience to—*

- (a) guide the organisation, given the nature and scope of its activities; and*
- (b) contribute to the achievement of the objectives of the organisation.*

- 5.4 A CCO's governing document (such as a trust deed) might also contain provisions about who may be appointed to a CCO's board or the method of appointment.

<sup>29</sup> We use the terms "director" and "board" in the same way that the Act does (see section 6(3)(b)) to include trustees or other office holders responsible for the governance of a CCO.

<sup>30</sup> This requirement applies to all appointments to council organisations, which include CCOs.

- 5.5 Appointing directors is an important role, because it is one of the local authority's principal means for influencing the performance of a CCO. In large part, good governance depends on the performance of the directors. A transparent process is important so that the public can have confidence that directors are appointed on merit and drawn from a wide range of possible appointees.
- 5.6 If a local authority complies with section 57 of the Act, the board of a CCO should be made up of a diverse range of people who are able to bring relevant expertise to the organisation. For the board to be fully effective, it should comprise directors with a range of complementary skills and experience to ensure that ideas are challenged and tested and that decision-making is robust.
- 5.7 The local authority's purpose for a CCO will determine its choice of directors. A CCO is likely to need directors experienced in working in a commercial environment, at least some of whom will be skilled professional directors. A CCO operating a community facility might benefit from drawing a director or two from the community.

### Chair of the board

- 5.8 The local authority usually appoints the chair unless the CCO's constitution states otherwise. An effective chair will influence the success of the board. The chair will be the spokesperson for the entity and will be the primary point of contact between the local authority and the entity. The chair will manage board meetings and play a leadership role in guiding the direction of the CCO.
- 5.9 The local authority should aim to appoint a chair who is experienced in governance and who understands the context in which local government subsidiaries operate.

### Independent directors

- 5.10 The Financial Markets Authority has noted that:
- Independence of mind is a basic requirement for directors ... Directors with an independent perspective are more likely to constructively challenge each other and executives – and thereby increase the board's effectiveness.*<sup>31</sup>
- 5.11 To meet the statutory requirement for directors with appropriate skills, knowledge, and experience, the local authority is likely to need to appoint directors who are independent of the local authority. The desirability of engaging commercial expertise in a council business is often a reason for setting it up as an arm's-length entity.
- 5.12 The general view is that independent directors can be appointed to provide:

<sup>31</sup> Financial Markets Authority (2014), *Corporate Governance in New Zealand, Principles and Guidelines, A Handbook for directors, executives and advisers*, page 13.

- commercial and governance expertise;
- diversity on the board; and
- an insulating layer between the political activities of the Council and its operational arms.

- 5.13 Conversely, it is argued that independent board members do not always appreciate the legislative obligations of the parent local authority or that the expectations of a CCO differ from those of a private organisation. Commercial directors may know little about local government and may not understand the political context and expectations for increased transparency.
- 5.14 Local authorities should recognise that new directors from the private sector might not have experience of the challenges of the local government environment. A CCO's induction for new directors should be designed to address that need.

### Councillors as directors of CCOs

- 5.15 Local authorities may want to appoint councillors to the boards of their CCOs.<sup>32</sup> Reasons may include a desire to prioritise the parent local authority's objectives and expectations and to provide a way for information to flow between the subsidiary and the local authority.
- 5.16 The same statutory provisions apply to appointing an elected member as a director: the appointment process should be objective and transparent, and the elected member should have the requisite skills, knowledge, or experience to contribute as a director.
- 5.17 Our review identified a range of opinions about appointing elected members. Each of the following arguments, for and against, was made to us several times during interviews.
- 5.18 Elected members say that councillor-directors:
- are likely to have a good knowledge and understanding of local government and of the local community;
  - contribute valuable "political nous" to a CCO board;
  - provide an extra layer of assurance that the subsidiary will be kept in touch with the "mood" of the Council;
  - add value by managing matters about the CCO that are before the Council;
  - contribute to the diversity of the board; and
  - can act as a representative for their community's interests.

<sup>32</sup> However, the Auckland model for substantive CCOs has a statutory prohibition on appointing councillors or local board members to the governing body of a substantive CCO (apart from Auckland Transport, where two councillors can be appointed).

- 5.19 Councillor-directors can also add to the Council's understanding of the affairs of the CCO. Around the Council table, they are able to provide clarity to their colleagues about matters affecting the CCO. They can ensure that the Council has an informed debate that focuses on the main issues for decision. That said, councillor-directors may be unable to participate in decisions on matters about the CCO because of their interest as a director.
- 5.20 However, those we interviewed also identified disadvantages in having councillors on boards. The principal arguments made against councillor-directors were:
- councillor-directors often lack the skills to perform well as a director;
  - there is an inherent conflict between a councillor-director's obligations to the Council and their community and their obligations to the subsidiary; and
  - councillor-directors are more likely to be subjected to, and swayed by, pressure from community groups, so that it may be more difficult for a councillor-director to maintain confidentiality of commercial or other information about the CCO's business.
- 5.21 There is a view that the potential for conflict between a councillor-director's interests and responsibilities as a councillor and as a CCO director is reduced where the councillor is a director of a CCO holding company. The reasoning is that the holding company will be focused on managing the local authority's investment in its CCOs, rather than on the specific business of each CCO. However, a director of a holding company has a particular need for business acumen and governance experience.
- 5.22 Most independent directors and CCO board chairs we spoke to believed that the disadvantages of councillor appointments outweigh the benefits. The unanimous view was that CCO directors should be competent to carry out the governance function effectively, and some noted that some councillor-directors lack that competence.
- 5.23 We consider that appointing elected members to CCO boards should be the exception. If local authorities wish to appoint elected members to their subsidiary boards, then the appointment should be open and transparent, and subject to the same selection criteria as for independent directors.
- 5.24 We acknowledge the argument that elected members can make a contribution to CCO governance. We also recognise that councillor-directors may add value to a board by being a Council voice, by ensuring that the CCO's objectives are aligned to those of the local authority, and by providing a community perspective. However, a councillor-director must have the necessary skills and experience to contribute fully to the governance of the CCO.

- 5.25 If a local authority appoints councillors to the boards of its subsidiaries to ensure that the CCO remains mindful of its shareholder's expectations, the councillor's presence on the board should not be a substitute for a formal system for monitoring and accountability. There are other, more transparent methods for the parent local authority to influence a CCO, such as the statement of intent process, a letter of expectations, the dividend policy, and approval of major transactions.
- 5.26 In our view, effective monitoring and oversight, including setting clear expectations about the CCO's purpose and strategic alignment, should obviate any need for councillor-directors to provide an additional layer of oversight.

### **Local authority managers as directors of CCOs**

- 5.27 A local authority may want to appoint its chief executive or another senior officer to the board of a CCO.
- 5.28 Many of the advantages and disadvantages with councillor-directors will apply also to managers as directors. There is also real potential for a manager's role as adviser to the Council to conflict with his or her obligations to the CCO as director.

### **Appointments process**

- 5.29 A local authority must adopt a policy that sets out a "transparent and objective" process for appointing members of a governing body with the skills and competencies to carry out their duties effectively (see paragraph 5.3).
- 5.30 The policy should cover such matters as:
- who is eligible (or not eligible) for appointment – for example, elected members, staff, residents of the district;
  - the process for identifying which skills appointees should have;
  - how candidates will be identified;
  - how candidates' skills will be assessed;
  - the composition of the appointment panel (for example, does it include external members?);
  - the role of the board chair (for example, will the chair be consulted or be a member of the appointment panel?); and
  - the remuneration of directors.
- 5.31 Each local authority we spoke to had appropriate appointments policies for independent directors. However, the processes for appointing councillor-directors were less clear. An exception was Christchurch City Council.

- 5.32 Many local authorities do not include the CCO chair in the process of appointing directors. Some chairs said it would be useful for them to take part. This was because they have greater knowledge and experience of current board members and are better able to determine the “fit” of a preferred candidate. Although it is the right of the local authority to appoint directors to its boards, we recognise that there may be value in including the chair in the appointments process.

### **Remuneration of CCO directors**

- 5.33 The usual practice is that councillor-directors receive directors’ remuneration in addition to their remuneration as councillors. A CCO director is responsible for the governance of the CCO. The position, if discharged properly, involves work, so remuneration is appropriate.
- 5.34 Wellington City Council adopted a policy in 2011 that councillors appointed to subsidiary boards are not remunerated. One councillor-director told us that this policy was intended to take the politics out of appointments. However, he thought that councillor-directors are now “second class citizens” because they are treated differently from remunerated independent directors.