

COUNCIL LEAD POLICY

POLICY TITLE: APPOINTMENT OF DIRECTORS TO COUNCIL ORGANISATIONS

Minute Ref:

Date of Adoption DATE 22 May 2018

1. POLICY OBJECTIVE

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

- (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. PRINCIPLES

Council recognises that:

- The appointment of directors should be based on merit.
- Directors should possess the appropriate level of skills, knowledge and/or experience to guide the council organisation and contribute to the achievement of its objectives.
- Directors of council organisations should be appointed:
 - on the basis of the contribution they can make to the organisation, and not on the basis of representation;
 - through a formal, objective and transparent process.
- While the over-riding principle is to appoint on merit, Council encourages diversity of gender, skills, thought and culture on its Council Organisation (CO) boards. Council may consider the appointment of a director with strong connections to and the support of local iwi, subject to the required skills and experience.

3. DEFINITIONS

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.

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

4. POLICY STATEMENT

Part 4A – Council-Controlled Organisations (including Council-Controlled Trading Organisations)

4.1. 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, in accordance with the requirements of the Tauranga City Council Code of Conduct for Directors Appointed by Council to Council Organisations.

4.2. 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
- 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 Tauranga community.

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

It is required that all appointees to CCO boards will undergo, or already have undergone, formal corporate governance training, or have the requisite experience in this area. It is the role of the CCO Chair to ensure that their boards undertake ongoing professional development throughout their term as director.

4.3. Eligible Candidates

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

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

4.3.1. Mandatory Disclosures

As part of an application a candidate is required to disclose whether he or she:

- is an immediate family member of an elected member, the chief executive, or a second-tier manager of Tauranga City Council or a Council Controlled Organisation, or
- has 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
- has 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.

4.4. Director Appointment Process

Once a vacancy has been established, the Chief Executive has delegated authority to Council will approve the list of skills, knowledge and experience required for the position.

An Appointment Panel will be established and approved by the Chief Executive, subject to consulting with the Mayor.

4.4.1. Appointment Panel Composition

The Appointment Panel will be made up of:

- two elected members appointed by Council resolution; and
- the existing Chair of the CCO or their nominee; and

- one independent person who brings particular knowledge or skills that can add value to the process, ~~approved jointly by the Tauranga City Council Chief Executive, Mayor and the existing Chair of the CCO.~~

Appointment of the Trustees of Tourism Bay of Plenty will be made jointly with Western Bay of Plenty District Council.

The Appointment Panel will appoint its own Chair.

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.

The Chair does not have a casting vote.

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

4.4.2. Appointment Panel Composition for Appointments to Tauranga Art Gallery Trust

An appointment panel will be established. The panel will be made up of:

- two elected members ~~appointed by Council resolution~~; and
- the existing Chair ~~or and~~ Deputy Chair of the CCO, or their nominee; and
- one independent person who brings particular knowledge or skills that can add value to the process, ~~approved jointly by the Tauranga City Council Chief Executive, Mayor and the existing Chair of the CCO.~~

All other matters relating to the Appointment Panel composition shall be as outlined in section 4.4.1.

4.4.3. Appointment Panel Responsibilities

The appointment panel will be responsible for:

- approving the criteria against which applications will be assessed;
- approving an independent recruitment consultant to assist the Appointment Panel with the selection process, if it decides it is warranted;
- 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.

4.4.4. 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 and nominations from elected members, directors of the CCO or Crown agencies such as the Ministry of Women's Affairs and Te Puni Kokiri.

However, Council may decide not to advertise the position if there is urgency (e.g. a council organisation that is without a quorum and cannot hold board meetings) or any other reason it may consider warrants such a course of action.

Where the Council decides not to advertise a particular position, the Appointment Panel will:

- at the first practical opportunity, publicly notify its intention and reasons for doing so
- prepare a shortlist of prospective candidates whom it considers meets the criteria, subject to Council approval
- ascertain if the prospective candidates are interested in being considered
- apply the same selection process to those who are interested as it would to any other candidate

4.4.5. Appointment

Council will make its final decision in a confidential committee (thus protecting the privacy of natural persons). This will be followed by the resolution being re-stated in open meeting. 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.

4.5. Appointment Term and Reappointment

A director to a CCO will normally be appointed for a period of three years. The appointment period will expire on 30 April. If a director has been in office for more than 2½ years at 30 April, then his/her three-year term will be deemed to have expired. If a director has been in office for more than two years but less than 2½ years at 30 April, then he/she will be deemed to have one further year of the three-year term remaining.

Notwithstanding the above, to enable effective succession planning, Council will seek to balance the expiry dates of directors' terms to ensure that approximately one third of directors retire or are required to seek reappointment in any year. This may require appointments to be made for a mix of one, two and three years.

Where a director's term of appointment has expired and that director is offering him/herself for reappointment, Council will consult with the Chair and Deputy Chair. Council will then make a decision on reappointment or replacement based on:

- 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 issues

4.5.1. Maximum Terms

Subject to a review of the director's performance after the first three-year period, the normal tenure for a director will be six years.

Following six years of service, a director may be appointed for a further three years, if the benefit of such an extension is considered to outweigh the potential advantages of seeking and appointing a new candidate.

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

4.6. Termination of Appointment

Directors appointed to CCOs by Council are in the role at the pleasure of Council. A director's appointment may be terminated at any time by Council or by the director/trustee by way of written notice. There will be no compensation payable to directors for early termination.

4.7. Appointment of a Chairperson

Council will appoint the Chair and Deputy Chair of each CCO board, taking into account the experience and skills of the existing board. Council will seek input from the current board members, as appropriate.

Appointment of the Chair and Deputy Chair of Tourism Bay of Plenty will be made jointly with Western Bay of Plenty District Council.

~~If a suitable Chair cannot be appointed from the current board for any reason, or if there is more than one suitable candidate on the current board, an appointment process and panel will be established as per the Director Appointment Process in section 4.4. The Appointment Panel will be made up of:~~

- ~~• two elected members appointed by Council resolution;~~
- ~~• the existing Chair of the CCO, or their nominee; and~~
- ~~• one independent person who brings particular knowledge or skills that can add value to the process, approved jointly by the Tauranga City Council Chief Executive, Mayor and the existing Chair of the CCO.~~

~~The Appointment Panel will appoint its own Chair.~~

~~All other matters relating to the Appointment Panel Responsibilities shall be as outlined in section 4.4.3.~~

4.7.1. Appointment of a Chairperson to Tauranga Art Gallery Trust

The Trustees of the Tauranga Art Gallery Trust will elect their own Chair and Deputy Chair, as per their Trust Deed.

All other matters relating to the specific skills and attributes sought in the Appointment of a Chair shall be as outlined in section 4.7.2.

4.7.2. Specific skills and attributes sought

In general terms, the skills and attributes sought for CCO Chairs are the same as those sought for CCO Directors (see 4.2), 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.

4.8. Conflict of Interest

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

4.9. Directors' Professional Standards

Directors appointed by Council will be required to follow the provisions of the New Zealand Institute of Directors' Code of Ethics and of Council's Code of Conduct for Directors Appointed by Council to Council Organisations.

Breach of either code may result in dismissal of a Council-appointed director.

4.10. Remuneration of Council Appointed Directors

4.10.1. Remuneration and Indemnification of Directors

Tauranga City Council will decide whether directors on CCO boards are to be remunerated. The level of remuneration for directors will be set by Council in accordance with the factors outlined in section 4.10.2 below.

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.

4.10.2. Level of Remuneration

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

- the need to attract and retain appropriately qualified directors
- the levels of remuneration paid by comparable organisations in New Zealand
- any changes in the nature of the CCO's business
- 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.

4.11. CCOs and CCTOs in which Council has a minority interest

Where Council has a minority interest in a CCO or CCTO (i.e. where a CCO or CCTO is controlled by a number of councils and Tauranga City 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 or CCTO.

As far as practicable, Council's involvement in the process will be consistent with this policy as it applies to CCOs or COs, whichever is the more relevant to the circumstances.

Part 4B – Council Organisations that are not CCOs or CCTOs

4.12. 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 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.

Part 4C – CCO Subsidiaries

4.13. CCO Subsidiaries

This part of the policy applies to any current or future subsidiaries of Tauranga City Council's CCOs.

CCOs are generally responsible for making appointments to boards of their subsidiaries but are expected to keep the council fully informed prior to confirming appointments.

CCOs are required to apply the provisions of this policy to the extent practicable and must use objective and transparent processes. Any reference to the Council in this policy means the CCO board in the case of subsidiary appointments.

CCOs may appoint members of their own board to the board of a subsidiary, if this is in the best interests of both organisations, and the board member has the required knowledge and experience. Prior to making such appointments, CCOs should consider whether this would conflict with their responsibility to monitor subsidiary performance.

Additional fees should not be paid to CCO board members or managers appointed to CCO subsidiary boards.

Part 4D – General

4.14. Policy Review

Council will periodically review this policy, in consultation with the CCOs, with a view to continuous improvement.

5. RELEVANT DELEGATIONS

The Appointment Panel has delegated authority to:

- decide whether the position needs to be advertised or not
- conduct the selection process
- recommend suitable people to Council to be appointed as directors to council organisations.

The Chief Executive may delegate authority to assist Council and the Appointment Panel in the process of selection / appointment of directors.

6. REFERENCES AND RELEVANT LEGISLATION

Local Government Act 2002:

- Section 6 : Meaning of council-controlled organisation and council organisation
- Section 57: Appointment of directors

Auditor-General's guidelines as set out in the report "Governance and accountability of council-controlled organisations" dated 2015 and any subsequent reports on a similar theme.

LGNZ Elected Members' Governance Handbook, 2016 – section 10.

New Zealand Institute of Directors Manual.

TAURANGA CITY COUNCIL CODE OF CONDUCT FOR DIRECTORS APPOINTED BY COUNCIL TO COUNCIL ORGANISATIONS

INTRODUCTION AND PRINCIPLES

- The purpose of the Code is to provide guidance to persons appointed by Tauranga City Council as Directors to Council Organisations and to assist them to carry out their duties and responsibilities effectively and in accordance with the highest professional standards. Since Council Organisations include a diverse range of legal structures, the word “Director” where used in this code, refers not only to company Directors, but also to trustees, managers or office holders (however described) in the particular Council Organisation.
- The Code is not intended to be an exhaustive statement of a Director’s obligations. It should be read in conjunction with the law applying to Directors, the provisions contained in the constitution or trust deed of the Council Organisation and in the Local Government Act 2002.
- The office of Director carries with it both legal and moral responsibilities. The Code offers guidance more on moral and ethical responsibilities than on those imposed by law. It applies equally to non-executive and executive directors.
- The principles upon which the Code is based include integrity and accountability. These qualities are prerequisites to maintaining confidence and trust in directors.
- The reasons for adhering to the Code are twofold:
 - *First, a clear understanding of moral and ethical responsibilities, and strict observance of obligations will assist Directors in forming and winning support for their strategies. It will also assist to increase public confidence in how public entities are governed and managed.*
 - *Second, if high standards of business conduct are not maintained, a greater degree of imposed regulation may result.*
- The Code has been approved and adopted by the Tauranga City Council.
- It is the intention of Council to regularly review the applicability of the Code and as necessary, to amend or add to it to reflect changes to practice and law.
- In accordance with the provisions of the Tauranga City Council’s Appointment of Directors to Council Organisations policy, the Code is binding on all Directors of Council Organisations appointed by the Tauranga City Council. Directors must make themselves familiar with the content of the Code and observe not only its letter, but also its spirit.
- Directors must also make themselves familiar with the content of the Enduring Statement of Expectations and Letter of Expectations for their particular Council Organisation (if applicable).

DEFINITIONS

Accountability means having a duty to answer to another for what is done or not done within an area of responsibility.

Director includes all Directors whether executive directors or non-executive directors, however so named, as defined in Section 6 of the Local Government Act 2002.

Enduring Statement of Expectations refers to a document agreed between the Council as shareholder and the organisation (in the case of Bay Venues Limited, Tauranga Art Gallery Trust and Tourism Bay of Plenty). It is an enduring document that outlines general operating principles and ongoing expectations of the organisation's board.

Executive Director means a Director who is also an employee of the organisation and includes a Managing Director.

Independent is used in the sense of being self-reliant and with objectivity unimpaired by outside interests.

Integrity means consistent honesty, sincerity and uprightness in all dealings.

Letter of Expectations refers to a document agreed on an annual basis between the Council as shareholder and the organisation (in the case of Bay Venues Limited, Tauranga Art Gallery Trust and Tourism Bay of Plenty). It is intended to provide direction on issues that are important to Tauranga City Council, with the expectation that the focus areas and deliverables contained in the Letter of Expectation are reflected and incorporated into the Statement of Intent.

Non-executive Director means a Director who is not an executive director.

Organisation refers to Council Organisations, including Council Controlled Organisations and Council Controlled Trading Organisations, as defined in Section 6 of the Local Government Act 2002.

FUNDAMENTAL OBLIGATIONS

- Directors must act honestly and in good faith in what the Director believes to be in the best interest of the Organisation.
- Directors must ensure that all shareholders, stakeholders or classes of shareholder or stakeholder are treated fairly according to their different rights.
- Directors must carry out their duties in a lawful manner and use all reasonable endeavours to ensure that the Organisation conducts its business in accordance with the law and with a high standard of commercial morality. Directors should refer to the Institute of Directors' statements of best practice as part of their decision-making process.
- Directors must avoid conflicts of interest. Where a conflict or potential conflict arises, as a minimum, they must adhere scrupulously to the procedures provided by law and/or the constitution / trust deed of the Organisation for dealing with conflicts and with the position of Directors having an interest in a particular contract or issue. A Director who has a continuing conflict of interest of a material nature should consider resigning as a Director of the Organisation and should also consider the effects of that resignation on the remaining Directors and on shareholders or other stakeholders.

- Directors must be diligent, attend Directors' meetings and devote sufficient time to make and keep themselves familiar with the nature of the Organisation's business and environments (including political, legal and social environments) in which it operates. Directors should be aware of all statutory and regulatory requirements affecting their organisation including the content of its constitution and see that such requirements are observed.
- Directors must observe the confidentiality of non-public information acquired by them as Directors and not disclose it to any other person without the authority of the Organisation.
- A Director who is nominated by, or has a special allegiance to, a particular shareholder or group of shareholders or other stakeholder, may only disclose confidential information to the nominated shareholder or other stakeholder with the authority of the Organisation and in strict compliance with any procedures prescribed by law of the constitution / trust deed of the Organisation.
- Directors must act in accordance with their fiduciary duties. They must comply with the spirit as well as the letter of the law and remember that in addition to purely legal requirements, the proper discharge of the duties of a Director requires high ethical and moral standards of behaviour.
- Directors must be mindful that Council is accountable to a wider audience and that the affairs of Council Organisations, positive and negative, can impact on Council.
- Directors should ensure the Organisation acts consistently with the "no surprises" approach outlined in the Enduring Statement of Expectations.
- Directors considering retirement outside their term expiry date should discuss it with the Board Chair as soon as possible. A resignation date suitable for both the retiring Director and the Board should be agreed with the Chair and approved by Council. Consideration to the number of remaining Directors (in case of quorum issues) and the time required to recruit a replacement Director.
- The Chair is expected to advise Council of the impending resignation of a Director as soon as possible. This will allow the process for appointing a replacement Director to be undertaken in a timeframe that minimises disruption to the Board.

MEETINGS OF DIRECTORS

- The Directors must meet regularly to monitor and control the performance of management, to measure achievement of budget, policy and strategic objectives. Appropriate reporting systems must be put in place, and maintained, to provide adequate and timely information to the Directors.
- There must be clearly accepted divisions of responsibility to ensure a balance of power and authority so that no one individual has unfettered powers of decision.
- The Directors must ensure that the views of independent Directors are given full and proper consideration and weight.
- The Directors must have a formal schedule of matters and authorities reserved to them for decision making to ensure that the direction and control of the Organisation is in their hands and in alignment with the Organisation's Statement of Intent or equivalent document.

REPORTING

- The Directors must present to shareholders or other stakeholders, a balanced and understandable assessment of the Organisation's performance and position. Often this will involve the provision of information in addition to the minimum required by law. In case of doubt, substance and content should prevail over legal form. The need for reports and accounts to be understood readily means that a coherent narrative is necessary as well as figures.

CHAIRPERSON

- The Chairperson is responsible for the efficient functioning of the Directors as a Board. The Chairperson must ensure that all Directors are able, and encouraged, to play their full part at meetings of Directors and have adequate opportunities to express their views.
- The Chairperson has primary responsibility for ensuring that all Directors receive enough timely information to enable them to discharge their duties effectively.
- The Chairperson is the link between the Directors and the management of the Organisation. The Chairperson must, however, maintain a proper balance between any executive and independent views among the Directors.

NON-EXECUTIVE DIRECTORS

- Non-executive Directors must provide independent judgement and outside experience and objectivity, not subordinated to operational considerations, on all issues which come before them.
- Non-executive Directors must acquire and maintain a sufficiently detailed knowledge of the Organisation's activities and ongoing performance to enable them to make informed decisions on the issues before them. At the same time, they should recognise the division between the Directors and management and ordinarily not become involved in management issues or in managing the implementation of policy.

EXECUTIVE DIRECTORS (WHERE APPOINTED)

Executive Directors have a dual role as employees of the organisation and as Directors. As Directors they have responsibilities additional to, and must retain a degree of independence from, their executive position to enable them to carry out those responsibilities effectively. Executive Directors should be appointed as individuals and not because of any position they hold. They must always be alert to the potential for conflicts between their management interests and the fiduciary duties of a Director.

COMMITTEES

- In appropriate circumstances, Council Organisations may have an Audit Committee, or other committees of Directors to assist with such issues as remuneration. When a committee is established by the Directors of that Organisation, its terms of reference and its powers, duties, reporting procedures, membership and duration of office must be clearly recorded. Committee service must be rotational.
- Any non-executive Director may attend meetings of any committee of Directors provided the Director is not specifically excluded for reasons of conflicts of interest, even if the Director is not an appointed member of the committee. An Executive Director must attend a committee meeting when requested to do so by the committee.