

Appointment of Directors to Council Controlled Organisations

Relevant Legislation and References

- 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 of The Controller and Auditor-General on Governance of Local Authority Trading Activities" dated June 1994
- LGNZ Know How Guide, February 2003, Guide to Governance, Appointment of Directors, Appendix G
- New Zealand Institute of Directors Manual

1. Policy Objective

- 1.1 To ensure an objective and transparent selection and appointment process for the:
- Identification and consideration of the skills, knowledge and experience required of directors of a council organisation, and
 - Selection and appointment of directors of a council organisation, and
 - The remuneration of directors of a council controlled organisation.

2. Principles

- 2.1 Council recognises that:
- Appointment of directors should be based on merit
 - Directors must possess the appropriate level of skills, knowledge and experience to objectively and constructively guide the council organisation towards the achievement of its visions, values and objectives.
 - Directors of council controlled 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.

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

4. Background

Section 57 of the Local Government Act (2002) 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.

5. Policy Variation

This policy can be varied to meet the needs of each new Council Controlled Organisation as it is established.

6. Policy Statement

Part 6A – Council-Controlled Organisations (including Council-Controlled Trading Organisations)

6.1 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 Western Bay of Plenty District

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Council Code of Conduct for Directors Appointed by Council to Council Organisations.

6.2 Identification of Skills, Knowledge and Experience Required

The skills, knowledge, experience and any other attributes required of a director of a CCO 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 the minimum requirements that the Western Bay of Plenty District Council will be looking for in the directors it appoints to council controlled organisations:

- Intellectual ability coupled with common sense, and
- Strategic vision and leadership, and
- Thorough understanding of governance issues, and
- Either business experience or other experience that is relevant to the activities of the organisation (or both) and the skills set that is required for each board, and
- Sound judgement, and
- A high standard of personal integrity, and
- The ability to work collaboratively and cooperatively within the team, and
- Understanding of the wider interests of the publicly-accountable shareholder.

The mix of skills and experience on the CCO board will be taken into account, and consideration given to complementing and reinforcing existing skills and reducing known weaknesses where necessary.

It is expected that all appointees to CCO boards will undergo, or already have undergone, formal corporate governance training, or have the requisite experience in this area.

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6.3 Eligible Candidates

Western Bay of Plenty District Council elected members and appropriately qualified external applicants are eligible as candidates for director positions to CCO boards.

Western Bay of Plenty District Council employees are not eligible to be considered as candidates for director positions to CCO boards unless they are appointed in their capacity as an employee of Western Bay of Plenty District Council.

6.3.1 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 Western Bay of Plenty District Council, 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.

6.4 Director Appointment Process

6.4.1 Appointment Panel Composition

An Appointment Panel will be established. The panel will be made up of:

- One elected member appointed by Council resolution; and
- The existing Chair of the CCO (if remaining on the board) or their nominee; and
- One independent person who brings particular knowledge or skills that can add value to the process, approved jointly by the Chief Executive, Mayor and the existing Chair of the CCO (if remaining on the board); and

The Appointment Panel will appoint its own Chair.

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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 members of the CCO may be remunerated for their time and skills.

The Chair does not have a casting vote.

Jointly owned CCOs

On Joint Council Controlled Organisations at least one member of the appointment panel is to be an elected member of the Western Bay of Plenty District Council.

6.4.2 Appointment Panel composition for appointments to Tourism Bay of Plenty

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

- One person appointed by TCC by Council resolution; and
- One person appointed by Western Bay of Plenty District Council; and
- The existing Chair of the CCO (if remaining on the Board) or their nominee.

All other matters relating to the Appointment Panel composition shall be as outlined in section 6.4.1.

6.4.3 Appointment Panel Responsibilities

The appointment panel will be responsible for:

- Approving an independent recruitment consultant to assist the sub-committee with the selection process, if it decides it is warranted, and
- Interviewing the short-listed candidates and evaluating them against the approved criteria, and
- Prior to making a final decision the Appointment Panel will consult with the Chairperson of the CCO requiring a new director to obtain their input as to the suitability of the likely appointee, and
- Reporting on its assessment of each candidate against its criteria and recommending appointments of directors to Council
- Informing unsuccessful candidates.

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6.4.4 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. However, the Appointment Panel 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 Appointment Panel decides not to advertise a particular position, the panel will:

- At the first practical opportunity, publicly notify its intention and reasons for doing so, and
- Identify a shortlist of prospective candidates whom it considers meets its criteria, and
- Ascertain if the prospective candidates are interested in being considered, and
- Apply the same selection process to those who are interested as it would to any other candidate.

6.4.5 Appointment

Council is to make its final decision in 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).

6.4.6 Conflict of Interest

Council will not consider any applicant that it believes is likely to have a significant conflict of interest.

Members of the Appointment Panel will not have a conflict of interest.

6.5 Appointment Term and Reappointment

A director to a CCO will normally be appointed for a period of 3 years. The appointment period will expire on 30 April. If a director has been in office for more than 2 ½ years at 30 April, then their 3-year term will be deemed to have expired. If a director has been in office for more than 2 years but less than 2 ½ years at 30 April, then they will be deemed to have one further year of the 3-year term remaining.

Notwithstanding the above, Council will seek to balance the expiry dates of directors' terms to ensure that approximately one third of directors retire or

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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 themselves for reappointment, the Western Bay of Plenty District Council Chief Executive will together with a board member of either that board or board of the parent CCO where one exists (as determined by the Council CEO), consult on reappointment issues with members of the relevant board.

The consultation will have regard to:

- Whether the skills of the incumbent add value to the work of the board
- Whether there are other skills which the board needs
- Succession issues.

The Western Bay of Plenty District Council Chief Executive will report to Council to enable a decision on reappointment or replacement appointment to be made based on the:

- Information arising from the consultation, and
- Director's length of tenure.

Where a Council employee is appointed as a director, the appointment is deemed to be part of the staff member's normal duties and will lapse upon the completion of the individual's tenure of employment with the Council or earlier if specified by Council.

6.5.1 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 re-appointed to the same board after nine years in service.

6.6 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

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by way of written notice. There will be no compensation payable to directors for early termination.

6.7 Appointment of a Chairperson

It is the responsibility of the board of each Council Organisation to appoint its own Chairperson. However, normally the board will consult with the Western Bay of Plenty District's Mayor and Chief Executive on the person to be so appointed.

6.8 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.

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6.9 Directors' professional standards

To minimise these situations 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.

6.10 Remuneration of Council Appointed Directors

6.10.1 Remuneration and Indemnification of Directors

Western Bay of Plenty District Council will decide whether directors on boards of Council Controlled Organisations are to be remunerated. The level of remuneration for directors will be established by the Chief Executive and Mayor and will be subject to approval by Council.

Elected members and Council employees appointed as directors of a CCO 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.

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6.10.2 Level of Remuneration

Where 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
- The performance of the Council Controlled Organisation and any changes in the nature of its business
- Any other relevant factors.

6.11 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 this 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 6B – Council Organisations that are not CCOs or CCTOs

6.12 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 who have the required skills set

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may be appointed to a CO where Council does not have a controlling interest.

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

Part 6C – General

6.13 Policy Review

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

7. Relevant Delegations

The Appointment Panel has delegated authority to:

- Decide whether the position needs to be advertised or not, and
- Conduct the selection process, and
- Recommend suitable people to Council to be appointed as directors to council organisations.

Group	Financial Services	Contact (3rd Tier Manager)	CFO
Supersedes	N/A		
Creation Date	3 November 2011	Resolution Reference	[STP12.2]
Last Review Date	8 February 2018	Resolution Reference	[PP10.4]
Review Cycle	Three yearly/legislative revisions, not later than	Date	February 2021
Authorised by	Policy Committee	Date	8 February 2018

Western Bay of Plenty District 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 Western Bay of Plenty District Council as Directors to Council Organisations, and
- 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" is used in the widest sense.

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 and the provisions contained in the constitution of the Council Organisation and in the Local Government Act 2002.

The office of Director carries with it fiduciary, 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 Western Bay of Plenty District 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 Western Bay of Plenty District Council's policy in appointment and remuneration of Directors of Council Organisations, the Code is binding on all Directors of Council Organisations appointed by the Western Bay of Plenty District Council. Directors must make themselves familiar with the content of the Code and observe not only its letter, but also its spirit.

Definitions

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

Chairman is used in a gender-neutral sense.

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.

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.

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 and in the best interests 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 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 resign as a Director of the Organisation.

Directors must be diligent, attend Directors' meetings fully prepared 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 of the Organisation.

Directors must act in accordance with their fiduciary duties at all times. 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.

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 sufficient 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 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. The Executive Director must attend a committee meeting when requested to do so by the committee.