

Appendix A – Legislative and other accountability mechanisms for substantive Auckland CCOs

	Purpose and current convention	Ability to amend in the future
Legislative accountability mechanisms for all substantive CCOs		
<p>Statement of Intent (SOI). The purpose of the SOI is:</p> <ul style="list-style-type: none"> • for the CCO to state publicly the activities and intentions for the year and the objectives to which those activities will contribute; • to provide an opportunity for shareholders to influence the direction of the organisation • to provide a basis for the accountability of the directors to the council for the performance of the organisation. 	<p>S 64 of LGA requires that each CCO has an SOI. Clause 9 of Schedule 8 of the LGA sets out the required content of SOIs which includes the requirement for Key Performance Indicators (KPIs). The process and timing for the development of the SOI is set out in the LGA. The CCO board must deliver a draft SOI to council, and the CCO board must consider council comments but is not required to adopt them.</p> <p>Clause 5 provides that council can resolve to modify the statement of intent, but it must ensure that the modifications satisfy the requirements of clause 9 of Schedule 8.</p> <p>A Letter of Expectation (LOE) is sent by council to each CCO every year as input to the draft SOI. The LOE is not required by legislation but rather a convention borrowed from central government in the governance of its State Owned Enterprises.</p> <p>To date, council has modified SOIs four out of six years to align them more closely to council's expectations in terms of targets, level of detail, and the pursuit of council group goals (e.g. shared services and group procurement). The council group has a shared services arrangement for the provision of legal services which ensures an integrated approach to legislative compliance.</p> <p>Section 96 of LGACA provides that CCOs must consider council's comments on its SOI in a public meeting.</p>	<p>Under current legislation, council will always be able to amend the SOIs of its CCOs, including the KPIs.</p> <p>Good KPIs take approximately two years to develop (establish and verify methodology, determine baseline and set target in line with available activity levels and funding).</p> <p>Care should also be taken in establishing KPIs that allow for performance to be monitored over the medium to long term and that track the effectiveness of funding applied.</p> <p>Changes to legislation recently determined that a prescribed set of measures must be included in SOIs in addition to the ones already agreed by council and its CCOs.</p> <p>It would now be prudent to review the full range of SOI KPIs across all substantive CCOs prior to the adoption of the next LTP to ensure that they are consistent, relevant and covering all of the major activities of the CCO.</p>
Regular reporting against SOI	<p>LGA requires that CCOs report against their SOI half yearly and also supply an audited annual report. Auckland Council is able to require more frequent reporting and currently requires a first, third and fourth quarter report. This is primarily so that a view of performance can be gained at a group wide level with a frequency that meets the council financial analysis and reporting needs.</p> <p>First and third quarter reports are circulated to councillors by memo, and are not discussed in a public meeting.</p>	Other than the legislatively required half year and annual reporting requirements, council is able to change the other financial and non-financial reporting requirements of its CCOs at any time.
Long Term Plan	<p>CCOs 'must give effect to' relevant aspects of the LTP (s 92 LGACA).</p> <p>The activities of CCOs are outlined in the LTP and the objectives council has for these activities.</p>	<p>The content and process for the development of the LTP is defined by legislation and must be adopted using a special consultative procedure. Although the minimum requirements of the LTP are defined, council has scope to include additional material in the LTP.</p> <p>Council could alter the activities, the levels of service and the funding levels relating to CCO activities through the LTP.</p>
Accountability Policy	<p>Section 90 of LGACA requires that council has an Accountability Policy for its substantive CCOs. The Accountability Policy must—</p> <ul style="list-style-type: none"> • include a statement of the Council's expectations in respect of each substantive council-controlled organisation's contributions to, and alignment with, the council's objectives and priorities; • include a statement of the council's expectations in respect of each substantive council-controlled organisation's contributions to, and alignment with, any relevant objectives and priorities of central government; • specify any reporting requirements that each substantive council-controlled organisation must undertake in addition to those required under Part 5 of the 	<p>The accountability policy may only be amended as an amendment to the LTP following a special consultative procedure (LGA). The next LTP will be adopted in 2018 but it can be amended at any time using this process.</p> <p>The accountability policy could be amended to be more specific as to the council priorities that each CCO is to contribute to. Council could also name other strategic assets managed by CCOs in relation to major transactions in accordance with legislation and its own 'significance policy'..</p>

	<p>LGA or LGACA:</p> <ul style="list-style-type: none"> • specify any planning requirements that each substantive council-controlled organisation must undertake in addition to those required under Part 5 of the LGA or LGACA: • identify or define any strategic assets in relation to each substantive council-controlled organisation and set out any requirements in relation to the organisation's management of those assets, including the process by which the organisation may approve major transactions in relation to them 	
Additional accountability requirements may be imposed	<p>Section 91 of LGACA provides that council may impose additional accountability requirements on its substantive CCOS including:</p> <ul style="list-style-type: none"> • the provision of first and third quarter reporting against the SOI (in addition to half year and annual reporting), • the provision of a 10 year plan (but not from AT) • a description of how the CCO will comply with council's requirements for the management of the assets identified by council as strategic assets and processes for the approval of major transactions in relation to those assets <p>Council currently requires first and third quarter reports of its substantive CCOs. First and third quarter reports and annual reports are circulated to councillors by memo, and are not discussed in a public meeting.</p>	Council could add further accountability mechanisms to address particular matters not provided for specifically elsewhere.
Council Plans and Strategies	<p>Section 92 of LGACA provides that council can specify plans and strategies that CCOs must 'act consistently with'. The current Governance Manual has a small list of policies that fall under this category. In the first few years of council, these policies and strategies were still being developed.</p>	Work is currently underway to provide more detailed specification for CCOs. This work will be completed in the 2016/17 financial year.
Constitutional amendment	<p>Each of the CCOs except AT has a company constitution because they are companies. AT does not have a constitution because it is a statutory entity.</p> <p>Council last reviewed and amended CCO constitutions in 2012 to make them more suitable for public sector companies adding clauses which allowed the board to 'act in the best interests of council' in addition to 'acting in the best interests of the CCO', and which allowed council to issue a binding 'management directive' if necessary. Such a measure would only be used in extreme circumstances.</p>	As the sole shareholder, council can amend the constitution of substantive CCOs at any time.
Service Delivery Review (delivery in-house, through a CCO, through a jointly owned CCO or other party)	<p>Section 17A of the LGA requires that council, initially by August 2017, and then at least every six years must undertake a review of service delivery for each of its activities, including those delivered by CCOs. Council completed a service delivery review in relation to activities delivered by CCOs in 2015 as part of the broader substantive CCO review and is currently working to complete all necessary reviews by August 2017.</p>	Although legislation requires Service Delivery Reviews at least every six years, council can undertake a review at any time. This mechanism holds council to account for ensuring that the governance structures that deliver services to the public is the most cost effective arrangement.
Appointment of the Board of Directors (including the appointment of the Chair and Deputy Chair)	<p>Section 57 of LGA requires that councils have a robust and transparent director appointment policy for CCOs. Council appoints all directors, Chairs and Deputy Chairs of its CCOs in line with that policy. The number of directors on CCOs is determined by council for all CCOs except AT. The composition of the AT board is determined by legislation.</p>	Council can amend its Board Appointment and Remuneration Policy at any time and can amend the composition of CCO boards accordingly.
OAG service delivery audit	<p>Section 104 of LGACA provides that the OAG can audit the service performance of Council and its CCOs from time to time</p>	The OAG decides which services provided by council or its CCOs it wishes to audit in line with its business plan. The OAG seeks advice from council on areas of interest in relation to CCOs – but makes its own decision on what CCO

		matters it will audit.
Public Audit Act 2001	Section 70 of the LGA provides that CCOs are subject to the Public Audit Act 2001 and as such the Office of the Auditor General is their auditor	This legislative requirement cannot be altered by council
Local Government Official Information Act 1987	CCOs are subject to the information requirements of the Local Government Official Information Act 1987	
Other mechanisms for achieving accountability for all CCOs		
Auckland Council Governance Manual for Substantive CCOS	The document outlines council's enduring expectations for CCOs including such things as the requirement for Local Board engagement plans and the 'No surprises protocols'. CCOs are required through the SOI process to give a commitment to acting consistently with the Governance Manual.	Council can amend the Governance Manual for Substantive CCOs at any time.
Board Performance Review	Board led performance reviews are undertaken once every triennium and council is informed when these are completed.	Council could give direction to CCOs on when and how it would like these board-led performance reviews to be undertaken in this triennium. It could also undertake an independent board performance review at any time.
Councillor to Board workshops	These workshops have been a successful addition to relationship building and understanding of the future opportunities and challenges for service delivery for CCO activities. They focus on the long term horizons, and are an opportunity for free and frank discussion on risks. These director-to-councillor workshops were piloted in 2015/16 and were acknowledged as useful.	Feedback from councillors and some CCOs indicates that these workshops should continue as they resulted in conversations which built understanding about key challenges for both the council parent and the CCO.
Strategic direction setting	Council's role is to set the high level strategic direction upon which CCOs should build delivery programmes and service delivery strategies. Early engagement from both sides on these matters has proven benefits. Current practice about where the policy function sits (council or CCO) is different for each activity and for each CCO – but in general AT has been given greater policy responsibility. The 2013 changes to the Land Transport Management Act made AT the Regional Land Transport Committee for Auckland. It has responsibility for preparing and adopting the Regional Land Transport Strategy, which must give effect to the Government Policy Statement on Land Transport.	Council could strengthen its policy leadership role and capacity at any time.
Legislative accountability mechanisms specific to Auckland Transport		
Operating Rules	Section 49 of LGACA provides that Council may make operating rules for AT, including rules in relation to <ul style="list-style-type: none"> • how the governing body of Auckland Transport must operate: • how Auckland Transport must appoint and employ staff (including its chief executive): • how Auckland Transport must acquire and dispose of significant assets. This provision has not been used to date - there are currently no operating rules for AT.	These provisions are broadly worded and the first two bullet points are not mirrored in any other legislative provisions.
Appointment of councillor as directors on the board	Section 43 (2)(a) of the LGACA provides that two out of the eight directors of AT can be councillors. Councillors have been appointed as directors to AT for previous two terms. The process for appointment of councillor directors is provided in council's board appointment and remuneration policy (developed under s 57 LGA).	Council can decide to exercise the option to appoint councillor-directors (either two or one) or not at all. It may also decide to appoint independent directors in their place.
Delegation of decision-making	Section 54 LGACA provides that AT can delegate some responsibilities back to Auckland Council (which includes Local Boards). AT have delegated to Council some	AT could, but is not required to, delegate some of its decision-making to local boards on local matters – thus increasing political accountability. There may be

	powers in relation to the administration and enforcement of specific bylaws (for example Trading in Public Places and Signage). To date there have been no such delegations to local boards.	additional costs associated with delegations which allow for non-standard activities and a decision would be needed about the most appropriate way to fund any additional costs.
Legislative accountability mechanisms specific to Watercare Services		
Obligation of Auckland Water Organisation (Watercare)	<p>Section 57 LGACA provides that Watercare must manage its operations efficiently with a view to keeping the overall costs of water supply and waste-water services to its customers (collectively) at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets; and must not pay any dividend or distribute any surplus in any way, directly or indirectly, to any owner or shareholder.</p> <p>This legislative requirement is the foundation to drive more integrated decision-making on matters such as council group debt and aligned asset management planning (wastewater/stormwater).</p> <p>Watercare currently uses council's borrowing capacity and has given an undertaking to take part in joint procurement processes.</p> <p>Watercare currently charges the customer directly for water and wastewater services and approves its own Asset Management Plan.</p> <p>Council monitors Watercare's cost effectiveness through its SOI.</p>	Further analysis could be undertaken to give council greater visibility on whether Watercare is meeting this legislative test.