

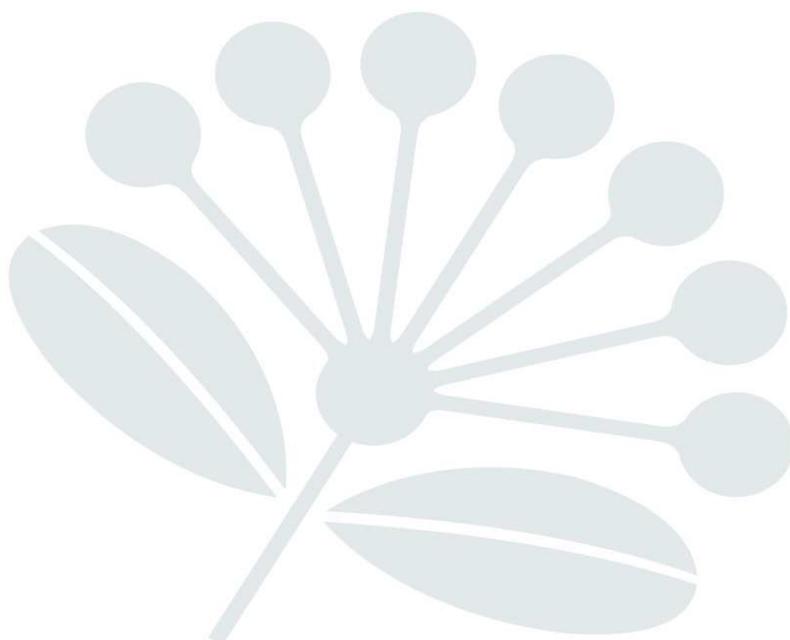
## 10.9 Auckland Council Appointment and Remuneration Policy for Board Members of Council Organisations

The policy sets out the process for the appointment and reappointment of board members to Auckland Council Organisations. It also defines the skills required of board members and their remuneration. This policy is reviewed on an annual basis (with underlined changes indicating agreed updates to the previous version).



# Auckland Council Appointment and Remuneration Policy for Board Members of Council Organisations

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## 1 Purpose

In accordance with section 57(1) of the Local Government Act 2002, the purpose of this policy is to set out the process for the appointment and reappointment of board members to Auckland Council Organisations. It also defines the skills required of board members and their remuneration.

*Section 57 of the LGA 2002:*

*“(1) A local authority must adopt a policy setting 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 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.”*

The policy is also in line with relevant legislation including:

- the Local Government Act 2002 (LGA 2002); and
- the Local Government (Auckland Council) Act 2009.

The LGA 2002 definition of council organisations is very broad (see definitions, section 2). As a result, there are a large number and variety of council entities, which may change over time. For this reason, the policy has four parts:

- Part One applies to the Council’s six substantive council controlled organisations (see section 2 for the definition of substantive council controlled organisation).
- Part Two applies to legacy council controlled organisations.
- Part Three applies to council organisations that are not council controlled organisations.
- Part Four applies to council organisations that are subsidiaries of substantive council controlled organisations.

This policy is subject to periodic review and may be modified by the CCO Governance & Monitoring Committee (Committee) at any time.

There may be circumstances in which adherence to this policy is not appropriate. Should the Committee or any other organisation that is required to follow this policy, decide not to comply with any provision, the decision should be recorded by way of resolution (which should also include the reason for deviation from the policy).

## 2 Definitions

### **Council Organisations**

The definition of “council organisation” (“CO”) is provided in section 6 of the LGA 2002. COs include: council-controlled organisations (CCOs); council-controlled trading organisations (CCTOs); and substantive council-controlled organisations (substantive CCOs). The terms council-controlled organisation and a council-controlled trading organisation are defined in the LGA 2002. The term “substantive council-controlled organisation” is defined in the LGA (Auckland Council) 2009.

#### ***“Council organisation”***

A council organisation (CO) is any organisation in which the council has a voting interest or the right to appoint a director, trustee or manager (however described). This is a wide-ranging definition, covering a large number of bodies.

#### ***“Council-controlled organisation”***

A council-controlled organisation (CCO) is an organisation in which the council controls, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors, trustees or managers.

#### ***“Council-controlled trading organisation”***

A council-controlled trading organisation (CCTO) is a CCO that operates a trading undertaking for the purpose of making a profit.

#### ***“Substantive council-controlled organisation”***

A substantive CCO is an organisation that is wholly-owned or wholly-controlled by the council and either delivers a significant service on behalf of the council, or owns or manages assets worth over \$10 million. Auckland Transport is expressly included in this definition.

## 3 Other Relevant Legislation

In addition to this policy, appointments and reappointments to the boards of council organisations are governed by their respective constitutions, trust deeds or, in some cases, specific legislation. In the event of a conflict, those regulations take precedence over this policy.

Where ownership of council organisations is jointly or severally shared with other entities, governance requirements are established through shareholder agreements or equivalent documentation. Such agreements also take precedence over this policy.

Examples include:

- private sector companies, for which the council has the opportunity to nominate a director (for example Auckland International Airport Limited)
- CCOs which are jointly owned by a number of local authorities and where Auckland Council has a minority shareholding (for example the Local Government Funding Agency).

CCOs that are companies are also subject to the Companies Act 1993.

## Part One: Substantive CCOs

### 4 Board Appointment

#### 4.1 Appointment Responsibilities of Auckland Council

The appointment of directors to the boards of COs is the responsibility of the council. Section 57(2) of the LGA 2002 states:

*(2) A local authority may appoint a person to be a director of a council organisation 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.”*

#### 4.2 The Role of the Committee

The Committee is responsible for the appointment of board members to CCOs.

#### 4.3 Term of Appointment

Directors are to serve a maximum of two three-year terms, with the option of further reappointment possible where appropriate. To reflect current national and international best practice, Auckland Council's policy regarding board tenure is as follows:

**Tenure of three years:** directors shall hold office for a term of up to three years from the date of his or her appointment.

**Expiry of tenure:** upon expiry of that three-year term, the directors retire from the board and, subject to the board members' performance and skills continuing to be relevant to the board may be eligible for reappointment.

**Reappointment:** a director who is retiring from their first three-year tenure, deemed eligible for reappointment and who wishes to stand, may, at the sole discretion of the council (by ordinary resolution), be reappointed for a second term of up to three years. Any board member reappointed for a second term retires upon expiry of the additional three-year term.

Those directors who were appointed for terms of less than three years as at 1 November 2010 are considered eligible for reappointment for two further three-year terms. Whether a director is offered reappointment, however, remains at the sole discretion of the council. Board members hold office at the pleasure of the council and may be removed at any time by council resolution.

**Tenure exceeding six consecutive years:** for circumstances where there are good reason for extension, a board member retiring from a second tenure of three years may be reappointed for a further term but the director's total tenure on the board must not exceed nine years. Each case will be considered on its own merits and is at the sole discretion of the council. Types of circumstances that could require this are:

- the board member has a particular skill that would be hard to replace
- the board has undergone substantial change and stability is needed
- the director has institutional knowledge not held by other directors
- a director is a likely successor as a chair.

The council's policy is to stagger appointments so that approximately one-third of each board is rotated each year. Staggering appointments to the boards ensures there is an appropriate level of institutional knowledge retained on each board, which in turn provides for continuity in the management of the CCOs.

## 4.4 Appointments Process

### 4.4.1 Reappointments

Where a board member's term of appointment has expired and he or she would like to be considered for reappointment, the Committee may offer a further term following consideration of the performance of the director and the needs of the board as a whole. Factors to be considered include:

- the views of the board Chair through an informal 'free and frank' discussion with the Committee
- whether the current board skill composition is appropriate
- whether any aspects of board performance need to be addressed
- whether the process offers an opportunity for increasing board diversity
- whether the retiring director is a potential candidate for future Chair, or alternatively whether there is a need to recruit a director as a future successor to the Chair
- alignment of the CCO board with the Auckland Council's strategic goals, plans and strategies.

Board members should not be given any expectation that they will be offered a subsequent term of office.

### 4.4.2 New Appointments

Once a vacancy has been established, the Committee will identify the skills, knowledge and experience required for the position with the assistance of CCO Governance and External Partnerships. This may involve discussions with the Chair and consideration of the results of board performance reviews and composition on the board.

Applicants may be sought through a combination of the following search methods: advertising of the position, nominations from the mayor, councillors, local board members, Crown agencies such as the Ministry of Women's Affairs and Te Puni Kokiri. In addition, a review of the council's Register of

Directors and an executive recruitment search and checking the availability of candidates, will form part of the appointment process.

A complete list of applicants will be compiled, usually with the assistance of council's executive recruitment consultant. The **Nomination Panel** will comprise of:

- Chief Executive of Auckland Council (ex officio or representative),
- Mayoral Chief of Staff (or representative),
- Chair of the relevant CCO (ex officio)
- Councillors appointed by the CCO Governance & Monitoring Committee (up to two)
- IMSB member (nominated by the IMSB)

This Nomination Panel will screen the list to ensure that the candidates / applicants have the required core competencies (see section 4.5.1) as well as the specific skills and expertise required for the position. Any applicants from the Register of Directors will automatically be included on the long list. The names of all applicants from the complete list will be included in the report to the Committee.

The Nomination Panel, with assistance from a recruitment consultant, will prepare a recommended short list of applicants for consideration by the Committee.

**The short list will normally include 3-4 candidates per position and the précis or CVs will be included in the report to the Committee.**

The Committee will select the candidates for interview from the recommended short-list and interviews will be undertaken by the **Interview Panel** comprised of:

- Chief Executive of Auckland Council (ex officio or representative)
- Councillors appointed by the CCO Governance & Monitoring Committee (up to two)
- Chair of the relevant CCO (ex officio)
- IMSB member (nominated by the IMSB).

The Interview Panel will assess candidates against the required skills, knowledge and experience and may take into account other factors such as:

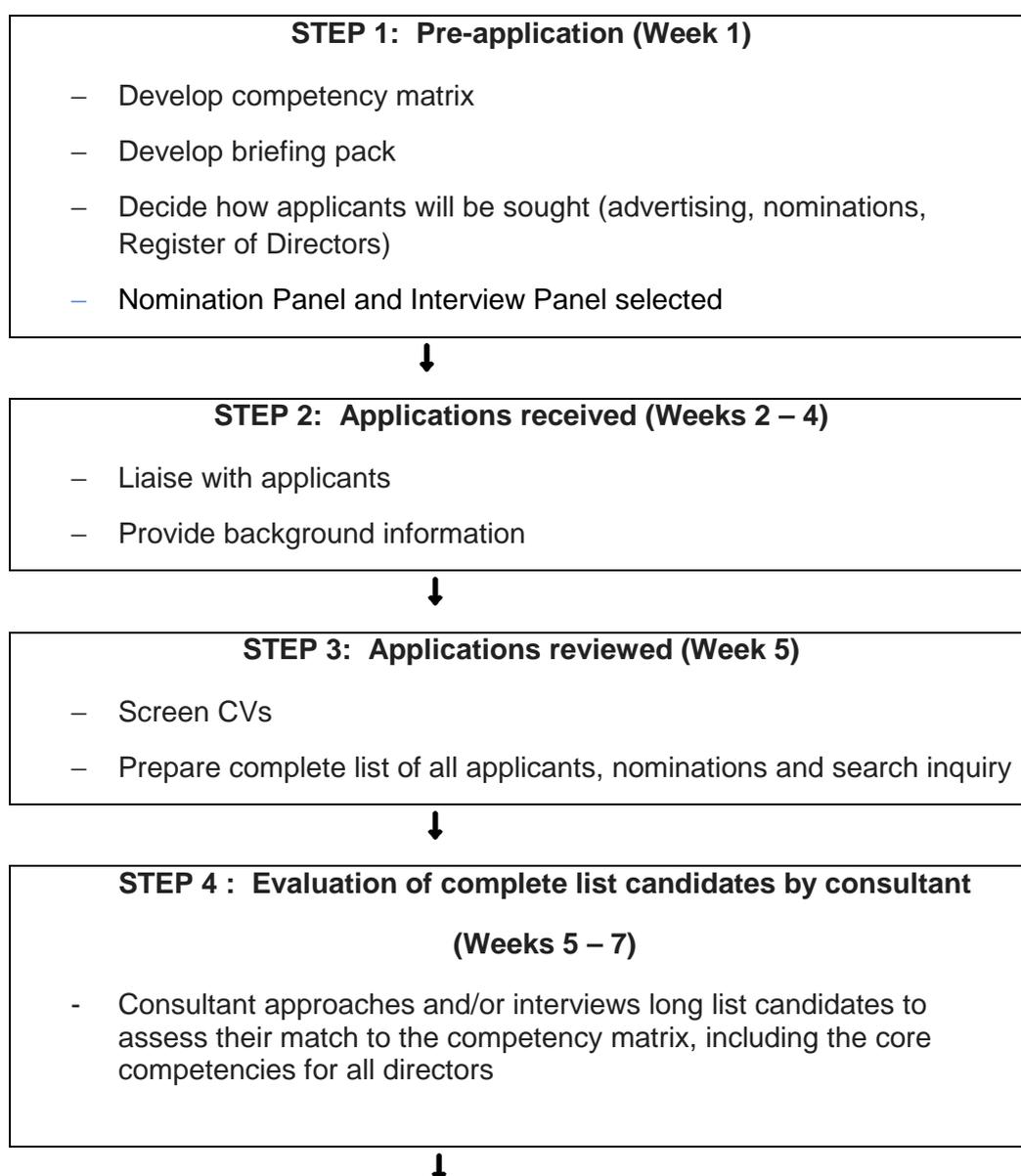
- the council's policy to encourage demographic and geographic diversity, and the appointment of more women to boards
- candidates with knowledge of tikanga Māori and Te Reo, established iwi networks, and ability to engage with mandated iwi organisations on CCO matters
- alignment with the council's objectives for that entity
- board dynamics and stakeholder relationships

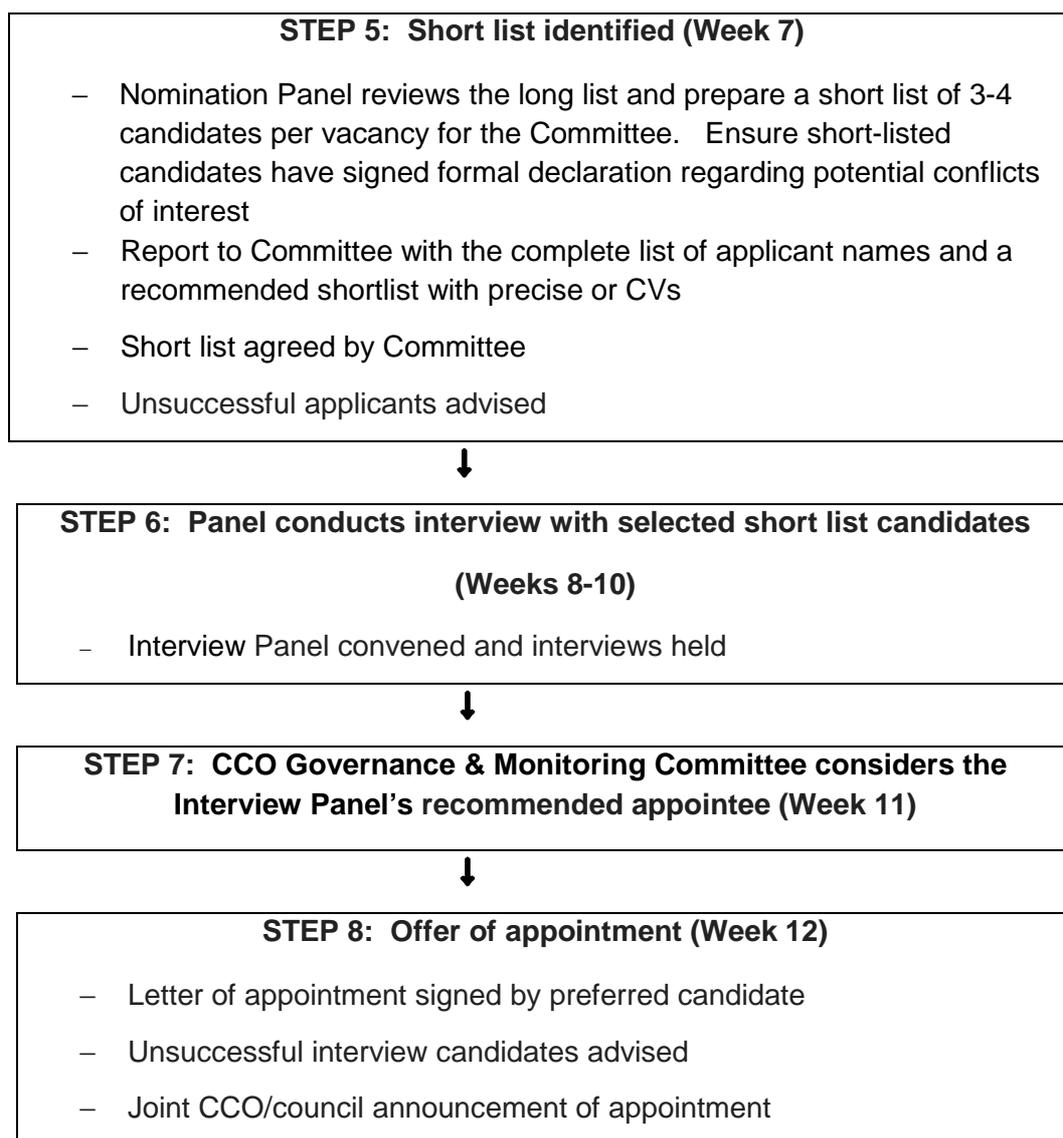
- the capacity of applicants to attend regular board meetings and fulfil the other requirements of the directorship
- Chair and Deputy Chair succession planning.

The Interview Panel will recommend its preferred candidates to the Committee for approval. The panel may wish to signal to the Committee other candidates who on interview, have presented with appropriate skills that match or are of benefit to CCOs for future vacancies within the next twelve-month period.

It is envisaged that the appointment process for board members of substantive CCOs may take around 12 weeks from the time a vacancy is advertised to the finalisation of the appointment.

The chart below provides an overview of the appointment process





## 4.5 Board Member Skills

All board members are expected to meet a number of core competencies as well as relevant industry or other technical / specialist skills required for that board.

### 4.5.1 Core Competencies

The core competencies expected of all substantive CCO board members are:

- sound judgement and decision-making
- commercial acumen
- public service ethos and awareness of a public media profile
- an understanding and commitment to council's obligation to Te Tiriti o Waitangi
- a high standard of personal integrity
- clear communication and an ability to debate in a reasoned manner

- effective teamwork and collaboration
- the ability to think strategically
- risk assessment and contingency management
- commitment to the principles of good corporate citizenship
- understanding of the wider interests of the publicly accountable shareholder.

Council also seeks to increase the number of CCO board members with knowledge of tikanga Māori and Te Reo, established iwi networks, and ability to engage with mandated iwi organisations on CCO matters.

Board members of substantive CCOs are also expected to have experience in governance, and preferably in corporate governance and an understanding of the public service ethos. However, the council may waive the corporate governance requirement in order to attract a wider range of board members and to further its diversity policy if these skills and experience are already well represented on the board. Boards are expected to provide director training for directors with limited corporate governance experience.

#### **4.5.2 Chairs and Deputy Chairs**

The following are the skill-sets required for the Chair and will be sought in the succession planning process:

- ability to maintain the trust of the council
- ability to maintain a close, but independent, working relationship with the CEO
- ability to provide effective leadership and demonstrate strong interpersonal skills
- ability to harness the collective skills of the board and executive team to achieve the business objectives and maintain the confidence of the shareholders
- ability to maximise the contribution of board members in board meetings
- ability to lead the board review process
- ability to lead the director induction process
- ensures there is a succession planning in place for the board
- ability to be the spokesperson for the organisation
- demonstrates sophisticated analytically based decision-making skills
- integrity and credibility within the business community and relevant sectors
- ability to work productively and openly with colleagues to achieve results and resolve problems

- ability to retain the confidence of the region and able to build relationships within the region's networks (see attached public meeting guidelines)

The following skills are required for the Deputy Chair (including the ability to take on the Chairs role, as and when required):

- the ability to provide effective leadership and strong interpersonal skills
- demonstrates sophisticated analytically based decision-making skills
- integrity and credibility within the business community and relevant sectors
- demonstrated ability to work productively and openly with colleagues to achieve results and resolve problems
- demonstrated ability to retain the confidence of the region and ability to build relationships within the region's networks (see attached public meeting guidelines)

#### **4.5.3 Elected Members**

Elected members appointed to the board of Auckland Transport must have the necessary skills, knowledge and experience to contribute to the board.

Any decisions regarding whether elected members should be appointed to the Board of Directors for Auckland Transport (and if so, how many and who) are most appropriately made following each triennial election.

The process for appointment and remuneration of elected members to Auckland Transport will be determined following each triennial election.

Any decisions made by the current council regarding the appointment of elected members to the Board of Directors of Auckland Transport may be amended by any further decisions of this or any future council.

## **4.6 Register of Directors**

The council has established a Register of Directors CV's from candidates who have applied for a position on a substantive CCO.

The council may add interested candidates to the register based on the following:

- recommendations from elected members, senior staff, and the IMSB.
- nominations from other sources including the Ministry of Women's Affairs and the Commercial Operations (Treasury)
- directors retiring from a substantive CCO may be considered by the Committee for future appointment to another substantive CCO.

Register of Director candidates may be offered a term of appointment on a Legacy CCO.

Special consideration will be given to attracting registration from women and others who are able to add demographic and geographic diversity to CCO boards.

Inclusion on the register does not guarantee appointment to a substantive CCO, however a search of the Register candidates will be undertaken for each new appointment.

## **4.7 Eligibility for Appointment**

### **4.7.1 Appointment of Councillors and local board members**

Under section 93 of the Local Government Auckland Council Act 2009, no councillors or local board members may be appointed to the boards of any Auckland Council substantive CCOs, with the exception of Auckland Transport. Section 23 of the Local Government (Auckland Transitional Provisions) Act 2010 stipulates the same restriction for Watercare.

### **4.7.2 Appointment of Council Officers**

Under this policy, council officers are ineligible to serve as a director on a substantive CCO.

Any board member applying for employment with the council should resign from the board immediately following an offer of appointment.

### **4.7.3 Appointment of CCO Executives**

Board members should be independent from management and should not hold executive positions in the CCO.

In the event that that a board decides that one of its members should fill a vacancy in the executive team, the board member must first resign from their position on the board.

### **4.7.4 Appointment and Remuneration of the CCO Chief Executive**

The appointment and remuneration of a CCO Chief Executive by the CCO board requires prior discussion with the Nomination Panel (refer section 4.4.2).

### **4.7.5 Other Exclusions**

Immediate family members, of elected members, of the chief executive, and of second tier managers of the Auckland Council are also prohibited from serving as board members of substantive CCOs. Board members should not serve on the board of more than one substantive CCO but may be eligible for appointment to another substantive CCO board following retirement.

## **4.8 Auckland Transport**

Section 43(2) (a) of the Local Government Auckland Council Act 2009 allows up to two councillors to be appointed to the board of Auckland Transport. The board must have between six and eight board members in total, plus a non-voting member who

is nominated by the New Zealand Transport Agency (NZTA). Section 43(3) of that Act provides that Auckland Council is to appoint the board members, including the Chair and the Deputy Chair (although these two positions may not be held by the Auckland Council members).

Any decisions regarding whether elected members should be appointed to the Board of Directors for Auckland Transport (and if so, how many and who) are most appropriately made following each triennial election.

The process for appointment and remuneration of elected members to Auckland Transport will be determined following each triennial election.

Any decisions made by the current council regarding the appointment of elected members to the Board of Directors of Auckland Transport may be amended by any further decisions of this or any future council.

The tenure for the appointment of all directors, including elected members to Auckland Transport is as outlined under section 4.3 of this policy (Terms of Appointment).

#### **4.9 Consent and Conflicts of Interest**

All applicants are required to complete a consent form as part of the board appointment process. A copy of the Director Consent Form is appended to the Board Appointment & Remuneration Policy. Incorporated into this document is the requirement to agree to performance reviews.

Prior to being interviewed for a position on a board, a candidate will be required to declare formally any potential conflicts of interest. In making appointments to boards, the Committee will take into consideration a candidate's existing directorships, and any other sources of potential conflicts of interest.

In considering any appointment or reappointment where a potential conflict of interest has been identified, the Committee needs to be confident that:

- the candidate will be able to make an effective contribution, even if their interest means they cannot participate in an activity of the organisation that relates to a particular matter; and/or
- measures can be put in place to manage the conflict.

Further guidance for individual board members as it relates to conflicts of interest can be found in the relevant CCOs constitution and sections 139 to 149 of the Companies Act 1993.

#### **4.10 Finalisation of Appointments**

The successful candidate(s) will then be offered a letter of appointment.

Public announcement of the appointment will be made as soon as practicable after the council has made its decision and the letter of appointment signed by the candidate.

#### **4.11 Appointments of Chairs and Deputy Chairs**

The Committee will appoint the Chair and Deputy Chair of each CCO board, taking into account the experience and skills of the existing board. The appointments will be made in accordance with section 4.12 of this policy regarding Chair succession.

#### **4.12 Chair Succession Planning**

The aim of a succession plan is to provide for smooth transition of leadership in the event of a planned or unexpected retirement of an incumbent Chair. A person appointed as Chair in their second term may be appointed for a further three-year term as Chair, however their tenure as Chair must not exceed six years. The Committee will generally consider the need for a potential successor as they make each board member appointment.

Although it is the role of the Governing Body to appoint the Chair and Deputy Chair, it is expected that the board Chair will identify potential successors or signal to the council if there are no candidates for future Chair.

#### **4.13 Removal of Board Members**

The office of a board member is vacated through retirement, resignation, disqualification<sup>8</sup>, or removal. Board members hold office at the pleasure of the council and may be removed at any time by council resolution.

Without limiting the right of the council, the following are likely reasons for council to remove a board member, where that board member:

- is regularly absent from board meetings without good justification
- no longer has the confidence of the board or the council
- has breached ethical standards and this reflects badly on the board and/or Council
- does not act in the best interests of the organisation
- breaches the confidence of the board in any way, including speaking publicly on board issues without the authority of the board or
- does not act in accordance with the principles of collective responsibility.

Where the board has concerns regarding the behaviour of one of its members it should be considered by the board in the first instance and, where necessary, the board may recommend the removal of the board member to the council.

Auckland Council will not make any payment by way of compensation to board members who have been removed from boards.

#### **4.14 Board Members Standing for Political Office**

Board members who have been selected to stand as a candidate in a local body or general election should advise the Chair of their board immediately. Chairs need to

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<sup>8</sup> The Companies Act provides a list of those persons who are disqualified from being appointed or holding office as a director of a company (e.g. a person who is an undischarged bankrupt). See section 151(2) for further information.

advise the council, through CCO Governance and External Partnerships, as soon as any members of their boards have been identified as candidates.

Any board member who is formally selected to stand as a candidate for election at a local body or general election, or placed on any political party's list, must stand down from his/her board position from nomination day until the election results are notified or such earlier day as may be determined. This measure aims to ensure that governance of the organisation is not distracted by the board member's election activity, and to prevent the possibility of any conflicts of interest – real or perceived.

Section 94 of the Local Government (Auckland Council) Act 2009 provides that directors of substantive CCOs who are elected to the governing body of the council or a local board must resign from their position as a director of the CCO before taking up their position as a member of the governing body of the council or local board.

#### **4.15 Elected Members on the Board of Auckland Transport**

Councillors who are board members, and who are re-elected, are not guaranteed a future place on the board of Auckland Transport. Tenure guidelines referred to in this policy are expected to apply to council representatives who hold a seat on the board of Auckland Transport. The council will reassess the councillor appointments to Auckland Transport following each triennial election and based on required skills, experience and current board composition.

Auckland Transport board members who are outgoing elected representatives must retire no later than one month from Election Day or upon the appointment of their successor – whichever is earlier.

Should a board member who is an elected representative not continue to hold political office part way through an electoral term, the council may choose to make a replacement appointment. The term of that appointment will terminate at the end of the forthcoming electoral cycle.

#### **4.16 Director Consent Forms**

All applicants are required to complete a consent form as part of the board appointment process. Consent forms for substantive CCOs are attached at Appendix A and legacy CCOs and COs at Appendix B.

### **5.0 Remuneration**

Board members' fees will compensate board members fully for their normal contribution to the board, including attending board and Committee meetings, meeting preparation, stakeholder management and any other agreed tasks<sup>9</sup>.

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<sup>9</sup> However, the director nominated by the New Zealand Transport Agency to sit on the board of Auckland Transport (under section 43 Local Government (Auckland Council) Act 2009), will not be remunerated for their service on the board, where the director is an office holder of the New Zealand Transport Agency. Where the director is not an office holder of the New Zealand Transport Agency, remuneration will be determined following discussion with the Agency.

Board members' fees will reflect the element of public service in serving on the board of a CCO and will accordingly be set at or below the average for comparable private sector entities.

To ensure transparency, fees will be set by the council for the board members and Chairs, rather than allocating a pool to be distributed by the board. Fees are to be met from the council organisation's own resources.

In the case of appointment of elected members to Auckland Transport, the decision to remunerate elected members (and if so how much) will be determined following each triennial election.

## 5.1 Fee Setting

Board members' remuneration will be reviewed once per triennium following council elections. A full review will be conducted and will include benchmarking against comparative entities. The review will consider market movement and the final decision on board members' remuneration will be made by a resolution of the Committee. Fees will be set taking into consideration the following:

- the size and scale of the CCO (e.g. turnover, value of assets, number of employees)
- complexity and scope of operations (e.g. complexity of issues, level of guidance for decision-making, relationship management responsibilities)
- accountability (e.g. scale of market risk, public interest and profile, potential risk to director reputation, and other key risks)
- skills - the type of expertise and specialisation needed.

Special considerations may also be included in setting fees, such as a temporary increase in workload for the board, or difficulties in recruiting particular skills.

*The next review will follow the 2016 triennial elections.*

## 5.2 Ordinary Fees

Ordinary fees are calculated based on:

- the designated base fee per board member
- board Chairs will be remunerated at twice the designated base fee
- 1.25 times the designated board member base fee for the Deputy Chair, to reflect either an actual appointment, or to provide the capacity for the council committee to later make such an appointment
- 1.15 times the designated board member base fee for those members with duties as Chair of committees.

There are no additional fees for board committee meetings.

### 5.3 Remuneration for Consultancy Services

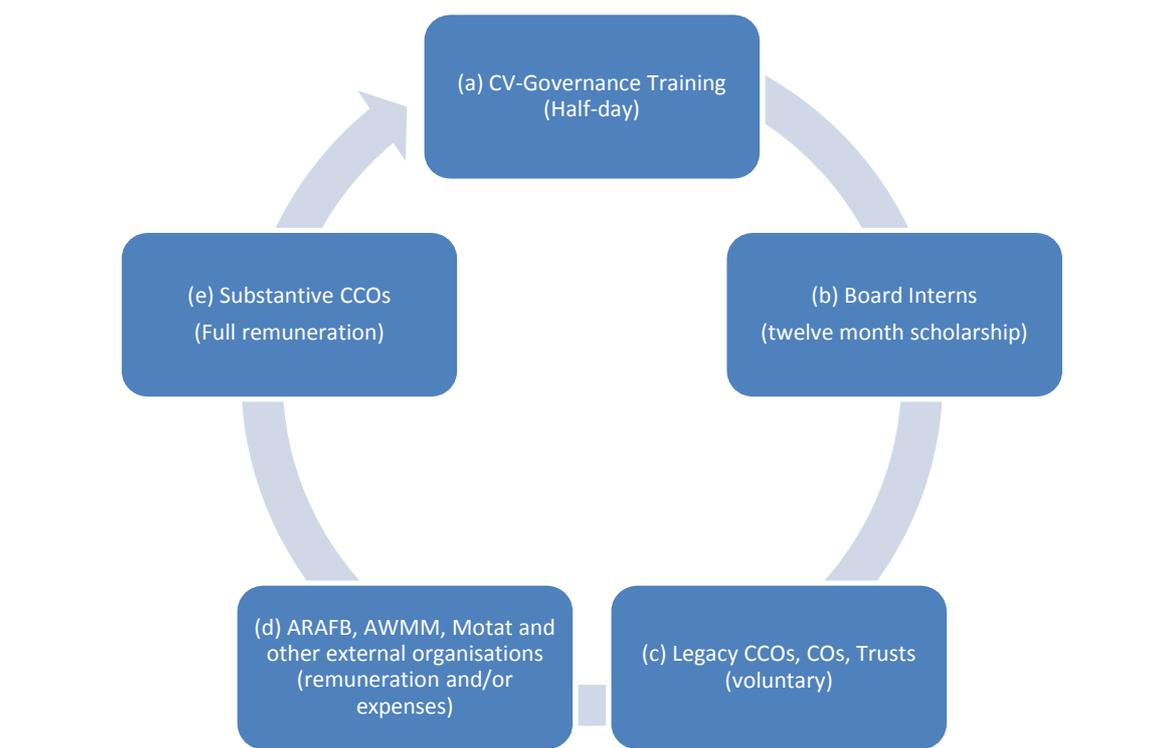
The council expects that no director on the board of a CCO will undertake consulting work for the organisation. In the event that an exception to this rule appears appropriate, the Chair should seek the Committee's approval in advance

## 6 Pathways Programme

Auckland Council's approach to diversity is to widen the pool of candidates so that women, young people and people from a range of ethnic backgrounds, who have the right skills but perhaps have not come through the normal company director channels, have an opportunity to be considered as possible directors.

The programme provides a potential pathway for board governance roles within the Auckland Council family, including for Board Interns (BIs).

The programme has been developed to ensure opportunities are available, with appropriate training to enable candidates to develop a pathway for their governance aspirations.



The programme covers:

- a) CV-Governance training for potential Board Interns
- b) Board Interns : potential for drawing candidates from CV-Governance training programmes

- c) Legacy CCOs: BIs can apply for a voluntary governance role to get an opportunity to put the scholarship training into practice and to fully understand the public service ethos
- d) ARAFB, AWMM, MOTAT and other external organisations: mid-level governance roles
- e) Substantive CCOs: high level governance roles

The early stages (a - b) may potentially feed candidates into the wider pool requirements (c - e), although candidates are encouraged to apply across several types of organisations and institutions.

This programme will also feed into a wider pool of potential candidates available to external entities (public and private) across NZ.

## 7 Board Intern Programme (BIP)

The BIP forms part two of the Pathways programme and will achieve long-term benefits for the Auckland Council group, as well as assisting with the future governance of external entities and organisations across the region.

Potential benefits may include the following:

- securing a bigger pool of potential directors to choose from for future appointments to both substantive and legacy CCO boards
- council family initiative will reduce costs
- opportunity for aspiring directors to make a contribution to the community
- Board Interns will attain a better understanding of the council group, its processes and public service ethos
- Board Interns can develop relationships and networks with the Chair and other directors (and across other CCOs and external entities).

### 7.1 Core competencies

Individuals who might be considered suitable candidates for the BIP, who are not current directors, may:

- be at a stage in their career where they are looking to develop into director roles in the next few years
- have a range of skills and sector experience which includes community and public service
- be those who are able to commit the time and who have the support of their employer, if applicable
- have the motivation and desire to pursue directorship opportunities.

Candidates must be eligible to be a company director and be able to contribute approximately 8-10 hours per month for board meetings, mentoring from the Chair, Deputy Chair and other board members, possible training opportunities and networking. It is preferred that candidates are located in the Auckland region.

These roles are not remunerated but a scholarship programme is available (ref 7.3).

## **7.2 Terms of Appointment**

The Terms of Appointment would consider the following criteria:

- a) the Board Intern is appointed only for learning and professional development purposes, is not an employee or director and has no authority to act on behalf of the CCO or Auckland Council or otherwise participate in decision making
- b) the Board Intern will need to ensure it is clear (both through terminology and conduct) that they are participating as an intern only, so as not to be viewed as a deemed director and therefore be subject to the liabilities that would arise from that
- c) the Board Intern will be required to safeguard and keep confidential all board papers and other information about the CCO and Auckland Council in their possession (the CCO Board to address how electronic documents could be secured)
- d) any conflicts of interest (any relationships or matters that give rise to an actual or potential conflict of interest) must be disclosed and dealt with as a matter of protocol
- e) the Board Intern will be required to observe and comply with any requests or directions of the Chair, such as in relation to when they may speak or participate in discussions, and when they should remove themselves from discussions
- f) any public or private statement the Board Intern wishes to make about involvement with the CCO must be pre-approved by the Chair
- g) a statement that the CCO Board, via the Chair should have the right to terminate the arrangement at any time if they consider it is not progressing well or at the request of the Auckland Council.

The BIP is not an automatic fast-track route to a CCO board directorship. The primary consideration for all CCO director appointments is that candidates display the necessary skills and experience to function as directors.

## **7.3 Remuneration**

The Board Intern will not be a director and therefore cannot be paid director fees. A contractor or employee model is not appropriate as there is no delivery of service. The CCO Board Intern will be awarded a scholarship in lieu of expenses to cover associated costs of time, travel, car parking and also provide a formal governance course.

## **7.4 Appointment Process**

An appointment process similar to that required for substantive CCOs will be implemented for the Board Intern programme which includes

- Advertising and Expression of Interest Programme;
- Short-listing and interview of appropriately qualified candidates by the Board Intern Appointment Panel;
- Approval of candidates by the appropriate Committee.

## Part Two: Legacy CCOs

Part Two of this policy applies to other council controlled organisations. These include CCOs which were previously CCOs of local authorities in the Auckland Region, as well as any new CCOs established by the Auckland Council, or in which the council is a shareholder<sup>10</sup>.

The policy in relation to these CCOs is less prescriptive because it is important to consider the particular needs of the organisation when making appointments. Many of these positions are unpaid, and recruitment of suitable trustees or directors can be challenging. In addition, the trust deeds (or constitutions in the case of companies) often include provisions regarding appointments, which take precedence over this policy.

Note that the term 'board member' includes trustees or directors as appropriate.

## 8 Board Appointments

### 8.1 Role of the Committee

The Committee is responsible for the appointment of board members to CCOs. This also applies to trust deeds that identify the mayor as making appointments, because the mayor is acting on behalf of the council. Most Legacy CCOs deliver significant services within their local communities and are required to have regular liaison with their relevant local board. The role of the local board is significant in Legacy CCO board member appointments.

### 8.2 Term of Appointment

Board members normally serve a maximum of two three-year terms, however given the challenges of recruiting unpaid members it is appropriate to consider reappointment for a further three-year term. To reflect current national and international best practice, Auckland Council's policy regarding board tenure is as follows:

**Tenure of three years:** board members shall hold office for a term of up to three years from the date of his or her appointment.

**Expiry of tenure:** upon expiry of that three-year term, the board member retires from the board and may be eligible for reappointment.

**Reappointment:** a board member who is retiring from their first three-year tenure, deemed eligible for reappointment and who wishes to stand, may, at the sole discretion of the council (by ordinary resolution), be reappointed for a further term of up to three years.

**Tenure exceeding six consecutive years:** regular board member rotation is encouraged, but terms exceeding six years will be considered on a case-by-case

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<sup>10</sup> As at December 2011 the only CCO in this category is the newly established Local Government Funding Agency (LGFA). Auckland Council has a minor shareholding in this CCO, which is jointly owned by the Crown and by a number of other local authorities. The LGFA is a special case. Although it fits the definition of a CCO under the Local Government Act, it is not controlled by the Auckland Council. The appointment process is specified in its constitution, and the Committee's powers in relation to director appointments, have been delegated to Auckland Council's CFO.

basis. The council recognises that trustees often have valuable institutional knowledge that organisations need to retain, and a limited pool of suitable candidates for some trusts.

## **8.3 Appointment Process**

### **8.3.1 Reappointments**

Where a board member's term of appointment has expired and he or she would like to be considered for reappointment, the Committee may offer a further term on recommendation of the board Chair. An updated CV is required.

Board members should not be given any expectation that they will be offered a subsequent term of office.

### **8.3.2 New Appointments**

The Committee will identify the skills, knowledge and experience required for the position with the assistance of CCO Governance and External Partnerships and the board Chair.

Applicants may be sought through advertising of the position, and/or from nominations from elected members, the IMSB, the Chair of the CCO and input from the Local Board Chair.

Where there is more than one applicant per position, a short-list and interview process will be undertaken. This will generally be undertaken by the Board Chair and other members of the trust board. At times it may include a member of the Committee and/or independent industry expert (e.g. representative from Counties Manukau Sport).

The panel will assess candidates against the required skills, knowledge and experience and may take into account other factors such as:

- the council's policy to encourage demographic diversity and the appointment of more women to boards
- alignment with the council's objectives for that entity
- board dynamics and stakeholder relationships
- the capacity of applicants to attend regular board meetings and fulfil other requirements
- Chair and Deputy Chair succession planning
- the views of local boards for CCOs that offer services within a localised geographic area.

The panel will recommend its preferred candidate to the Committee for approval.

If no panel is required, officers will assess these factors and take into account the Chair's advice when making their recommendation to the Committee.

Legacy CCO Chairs will ensure newly appointed board members have signed a Board Member Consent form.

## **8.4 Board member skills**

All board members are expected to meet a number of core competencies as well as specialist skills or experience required for that board.

### **8.4.1 Core competencies**

The core competencies expected of all Legacy CCO board members are:

- sound judgement and decision-making
- public service ethos
- an understanding and commitment to council's obligation to Te Tiriti o Waitangi
- a high standard of personal integrity
- clear communication and an ability to debate in a reasoned manner
- effective teamwork and collaboration
- ability to think strategically
- risk assessment and contingency management
- commitment to the principles of good corporate citizenship
- understanding of the wider interests of the publicly accountable shareholder.

## **8.5 Eligibility for Appointment**

### **8.5.1 Appointment of Elected Members of the Auckland Council**

The Council has a responsibility for monitoring performance of CCOs and so elected members of the Auckland Council should not serve on the boards of CCOs, unless there is a compelling reason to do so.

### **8.5.2 Appointment of Auckland Council Officers**

Officers of the Auckland Council are not normally eligible for appointment unless the nature of the appointment requires this. For example, the Local Government Funding Agency has board positions which are required to be filled by officers of a local authority.

### **8.5.3 Appointment of CCO Managers and Staff**

Board members should be independent from management and should not be employed by the entity.

In the event that a board decides that one of its members should fill a staff vacancy the board member must stand down from their position on the board while filling the vacancy.

## **8.6 Conflicts of Interest**

Prior to being interviewed for a position on a board, a candidate will be required to declare formally any potential conflicts of interest and the Committee needs to ensure that any such conflict can be managed.

## **8.7 Finalisation of Appointments**

The successful candidate(s) will be offered a letter of appointment.

## **8.8 Appointments of Chair and Deputy Chair**

Depending on the provisions of the trust deed or constitution, boards will normally appoint the Chair and Deputy. The Chair will be expected to identify future successors, to provide for smooth transition in the event of a planned or unexpected retirement of an incumbent Chair.

## **8.9 Removal of Board Members**

The office of a board member is vacated through retirement, resignation, disqualification<sup>11</sup>, or removal. Council appointed board members hold office at the pleasure of the council and may be removed at any time by council resolution.

Without limiting the rights of the council, the likely reasons, which would justify removal of a board member, would be where that board member:

- is regularly absent from board meetings without good justification
- no longer has the confidence of the board or the council
- has breached ethical standards and this reflects badly on the board and/or council
- does not act in the best interests of the organisation
- breaches the confidence of the board in any way, including speaking publicly on board issues without the authority of the board
- does not act in accordance with the principles of collective responsibility.

Where the board has concerns regarding the behaviour of one of its members it should be considered by the board in the first instance and, where necessary, the board may recommend the removal of the board member to the council.

Auckland Council will not make any payment by way of compensation to board members who have been removed from boards.

## **8.10 Board Members Standing for Political Office**

Council appointed board members who have been selected to stand as a candidate in a local body or general election should advise the Chair of their board immediately.

Any board member who is formally selected to stand as a candidate for election at a local body or general election, or placed on any political party's list, must stand down from his/her board position from nomination day until the election results are notified or such earlier day as may be determined. This measure aims to ensure that governance of the organisation is not distracted by the board member's election activity, and to prevent the possibility of any conflicts of interest – real or perceived.

Any board member who is subsequently elected to Auckland Council (as a councillor or local board member) should resign from the board of the CCO.

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<sup>11</sup> For companies, the Companies Act provides a list of those persons who are disqualified from being appointed or holding office as a director of a company (e.g. a person who is an undischarged bankrupt). See section 151(2) for further information.

## 9 Remuneration

Board members of trusts are not normally remunerated for their services to the board, but may be reimbursed for expenses. Auckland Council is not currently responsible for setting remuneration for any entities other than for substantive CCOs. If it is required to do so, it will develop a methodology consistent with that for substantive CCOs.

### 9.4 Remuneration for Consultancy Services

Board members are discouraged from undertaking continuous consulting work for their organisation; however, the council recognises that some board members are best placed to undertake consulting work because of their knowledge about the organisation. The board should formally approve this and stipulate any requirements in relation to such an arrangement.

## Part Three: Council Organisations

### 10 Overview

Part Three of this policy applies to a wide range of COs where Auckland Council is responsible for the appointment of fewer than half of the trustees or directors. Most of these are trusts with trust deeds that provide for one or two council appointments.

Depending on specific provisions of the trust deed, appointments of independent trustees to COs are the delegation of the CO Appointment Approvals Panel (COAAP). This comprises the Chair and Deputy Chair of the Committee, the Chief Executive (or his representative), the relevant Local Board Chair(s), if applicable, and a member of the Independent Māori Statutory Board. If the trust deed specifies an elected member is to be appointed then it is the responsibility of either the governing body or relevant local board(s).

In some cases, where organisations such as the Tamaki Redevelopment Company Limited require a significant investment, the Auckland Council may consider the CO as a CCO and apply Part One of the policy.

In addition a report will be provided to the Committee of any appointments made by COAAP to COs.

Appointments to COs will be made by the responsible party in a manner that is consistent with the trust deed or constitution of the entity. Where the deed or constitution does not provide guidance on the skills, knowledge and experience required for the position, or the appointment process, the responsible party will refer to Part Two of this policy for guidance. The relevant provisions are 8.5 Appointment Process, and 8.6 Board Member Skills. Section 8.10 Removal of Board Members also applies. There are no specific exclusions (see 8.7 Eligibility for Appointment) for appointments to COs; however, actual or perceived conflicts of interest must be taken into account.

## Part Four: CCO Subsidiaries

### 11 Overview

Part Four of this policy applies to substantive CCOs and their subsidiaries<sup>12</sup>. 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.

Substantive 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 Committee in this policy means the CCO board in the case of subsidiary appointments.

For commercial subsidiaries such as Ports of Auckland Limited and Auckland Films Studios Limited, CCOs should follow the relevant provisions in Part One of this policy. For other subsidiaries including trusts, CCOs should follow the relevant provisions in Part Two of this policy (if the subsidiary is a CCO) or Part Three of this policy (if the subsidiary is a CO).

CCOs may appoint members of their own board or management 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 for CCO board members or managers appointed to CCO boards should not be paid.

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<sup>12</sup> Part Four of this policy does not apply to RFA and the appointments that they recommend to the council under their Management and Advisory Agreement; however, Part Three of the policy applies to the Auckland Council in relation to these appointments.