

**AUCKLAND COUNCIL AND COUNCIL CONTROLLED ORGANISATIONS**

**PROTOCOLS RELATING TO LIAISON COUNCILLOR ROLE**

February 2019

**BACKGROUND**

1. Auckland Council has five substantive Council Controlled Organisations (**CCOs**): Auckland Transport, Watercare Services Limited, Panuku Development Auckland Limited, Auckland Tourism, Events and Economic Development, and Regional Facilities Auckland. The CCOs are the Council's partners in the delivery of critical services and play a major role in achieving the Council's strategic outcomes for Auckland and its communities.
2. The relationship between Auckland Council and the CCOs is governed by (among other things) the Governance Manual for substantive council-controlled organisations, each CCO's annual Statement of Intent, the annual letter of expectations, each CCO's constitution, the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009 (together, the **Existing Framework**).
3. In addition to the Existing Framework, Auckland Council and the CCOs have agreed to appoint a member of Auckland Council's governing (each, a **Liaison Councillor**) to act in a liaison capacity between Auckland Council and each CCO's board, with a view to developing the relationship between the parties, and enhancing the flow of information to better ensure that the parties are working in the best interests of Auckland and its communities.
4. These Agreed Protocols describe the role of Liaison Councillors and their rights and obligations, but are intended to be a guide only and do not purport to contain a prescriptive set of rules. For the avoidance of doubt, these Agreed Protocols are not intended to be a legally binding agreement.

**APPOINTMENT OF LIAISON COUNCILLOR**

5. The Mayor of Auckland may from time to time appoint a councillor to act as a Liaison Councillor in respect of each CCO. The Mayor may at any time remove and replace a Liaison Councillor.
6. Where a Liaison Councillor is unable to fulfil the role as agreed with the CCO (such as attending board meetings, where that has been agreed), this should be discussed with the Mayor. The Mayor, in consultation with the relevant board chair, may appoint an alternate.

**PURPOSE OF LIAISON COUNCILLOR ROLES**

7. The purpose (**Purpose**) of the Liaison Councillor appointed to each CCO includes:
  - (a) develop a relationship with the assigned CCO which allows an exchange of information in a trusting environment, while preserving the ability of the councillor to exercise their accountability role;
  - (b) providing the Board with real time access to Governing Body perspectives on the context, issues and opportunities that the Board should take into account in its decision making on the items before it.

- (c) assisting the Board to engage with the Governing Body on emerging strategic and delivery issues and opportunities, particularly those with the potential to be of high public interest or even controversial
- (d) assisting the Board to develop options to break emerging impasses on the delivery of key programmes and projects
- (e) keeping other councillors and the Mayor informed of some of the detail and rationale behind Board decision-making
- (f) helping the chair and deputy of the CCO Oversight Committee to plan workshops with their assigned CCOs.

#### PRINCIPLES UNDERLYING LIAISON COUNCILLORS' ROLE

8. **Ancillary Function of Councillors:** The Liaison Councillor role is an important but ancillary function of each relevant governing body councillor and must be considered within the broader scope of responsibilities and discretions of each Liaison Councillor. In other words, the councillor's key responsibility is to the governing body, not their liaison role.
9. In addition, the Liaison Councillors:
  - (a) are **not** required to attend all CCO board meetings and may determine to participate in part only of any board meeting, or to develop the Liaison Councillor role in a manner which best achieves the purposes of the role for that individual CCO (see additional discussion below);
  - (b) will not be held out as, or considered to be, and must not act in a way to be considered to be, directors of any CCO and bear no responsibility for any decisions made by the board of any CCO;
  - (c) except as set out in these Protocols, do not owe any duties to the CCO including duty of care, or any duty to act in the best interests of the CCO;
  - (d) are not agents of Auckland Council and are not entitled to make decisions or provide authorisations on behalf of Auckland Council; and
  - (e) are expected to only represent the known views of governing body as a whole, and not their personal views or those of governing body colleagues or those of groups who have promoted their views to the Liaison Councillor.
10. Nothing in this part of the Protocols is intended to limit any duties owned by any councillor who is formally appointed as a director of Auckland Transport.

#### RELATIONSHIP WITH GOVERNING BODY

11. A key element of the liaison councillor role is how information is channelled back to Council, and how issues or requests for assistance are addressed. Once the liaison councillor roles are settled and operating in 2020, some best practice should be established and any formal elements necessary can be included when the roles are reviewed (see below).
12. Liaison councillors should provide regular verbal reports at each CCO Oversight committee about activities undertaken in the role and issues arising since the previous report. This will allow a relatively informal exchange and opportunities for all councillors to ask questions, and would be noted in the proceedings of the CCO Oversight committee.

13. Where a councillor is unable to attend in person at CCO Oversight Committee to report, a short written report should be provided to the Chair and Deputy Chair of the Committee, which can then be passed on as necessary to other councillors.

#### RELATIONSHIP WITH EXISTING FRAMEWORK

14. **Existing Framework unaffected:** For the avoidance of doubt, the existence and appointment of a Liaison Councillor is in addition to, and does not affect, the Existing Framework. In particular, any information disclosed to the Liaison Councillor in his or her role as the Liaison Councillor will not satisfy any disclosure or reporting obligations which exist under the Existing Framework.
15. **Review of Agreed Protocols:** These Protocols may be reviewed and amended from time to time. The first review of these Agreed Protocols will take place within 12 months of the date of these Agreed Protocols.

#### MEANS OF INTERFACE WITH CCOs

16. Auckland Council's CCOs are all very different in their purposes, service delivery responsibilities, sources of funding, complexity, and future challenges. The Liaison Councillors will seek to fulfil the Purpose by developing the relationship with the CCOs in different ways that best suit the council and the individual CCO. There is considerable scope for the individual councillors and the boards to develop what works for them over time, within the general framework of purposes and protocols.
17. This section describes a range of options which may be contemplated when developing the roles, along with potential benefits and downsides of each. These options include, but are not limited to:
  - **Formal attendance at some or all board meetings (and/or appropriate subcommittee).** This option would be the most resource and time intensive, requiring the councillor to read papers and set aside significant time for attending meetings (which are likely to clash with council committees and other council commitments). This approach would probably give the best sense of the way the board and the CCO operate, but also would present the most issues in terms of confidentiality. Engagement at this level would depend on a high level of trust being developed, and a strong confidentiality agreement being in place.
  - **Attendance at some or all board meetings for a specific item dedicated to council engagement and exchange.** This option would likely allow a useful exchange of information with the liaison councillor and board, while allowing the board to conduct confidential and sensitive business without the councillor present. This would be less resource intensive, as the councillor would not need to read all board papers, and not dedicate a day to attending a meeting. It would allow fresh and current information to be exchanged, which could inform board decision-making and allow council to obtain early warning on issues 'top of mind' for boards.
  - **Separate meetings with the board, or board chair, or board nominees** (such as a liaison committee). This option would remove the councillor from the board meeting situation which can be quite formal, and potentially allow for a more free and frank exchange. It would be up to boards how information exchanged in such a forum was then imparted to and used by the board. This option would ensure minimal risk of a

liaison councillor being considered a director by virtue of presence at board discussions.

- **No formal contact**, but liaison councillor maintains an open ‘line’ to the board chair/CE for day to day issue resolution. This would be the least resource hungry approach and keep a distance between independent board decision-making and council accountability. A board chair might test with the councillor whether an issue would be likely to be of wider public interest, which the councillor could advise on (whether immediately or after further discussion with Mayor and council colleagues). On the other hand, this option may not provide sufficient formal engagement, and in its focus on the ‘day-to-day’ may miss the true governance focus and relationship building which is intended to be the key feature of the liaison councillor roles.
18. A related issue to all these options is whether the liaison councillor also has a direct relationship with senior staff at the CCO, particularly the chief executive. This may well be useful for the day-to-day issues, but such contact should be discussed with and approved by the CCO Board before it is initiated by the Liaison Councillor. It may well be more appropriate for the roles to remain at governance level – ie. Liaison Councillor to board chair.

#### SPECIFIC ISSUES RELATING TO BOARD MEETINGS

19. **Board documents:** The Liaison Councillor is entitled to receive notices of CCO board meetings, together with copies of board papers and any other documents provided to the CCO board. **[this to be confirmed following further discussion with CCO boards before Protocols finalised]**
20. **Board meeting Attendance:** The Liaison Councillor is entitled to attend the two statutory public meetings referred to in section 96 of the Local Government (Auckland Council) Act 2009 and any other public sections of CCO board meetings and participate in the discussions of the board. In addition, the Liaison Councillor should agree with the Board Chair what other attendance at board meetings will occur (as discussed above in the “Means of Interface” section).
21. The CCO board chair will retain the authority and discretion to control proceedings of the CCO board, unaffected by the presence of a Liaison Councillor at any board meeting. The chair will determine suitable procedures for accommodating the presence and purpose of the Liaison Councillor at any CCO board meeting (including meetings of board subcommittees, and parts of meetings which are confidential). As discussed above, such procedures may, by way of example, include a separate agenda item or items designed to provide a forum for the CCO board and the Liaison Councillor to communicate on matters to which the purpose relates.
22. **No Voting Rights:** The Liaison Councillor has no voting rights in respect of any matter before the board.

#### LIMITATIONS

23. **“Need to Know” Principle:** The parties acknowledge that, in some circumstances, a Liaison Councillor may not be entitled to receive information or participate in Board discussions on the basis that access to such information or participation in such discussions is not reasonably necessary to carry out his or her functions and duties as Liaison Councillor.
24. **Withholding of information:** The CCO may, at the discretion of the CCO board chair, withhold information from the Liaison Councillor where, in the reasonable opinion of the [CCO board

chair], the “Need to Know” principle is not satisfied. The Chair will consult with the Liaison Councillor in relation to any matter to which this clause relates.

## CONFLICTS

25. **Conflicts:** Each Liaison Councillor will keep Auckland Council and the relevant CCO informed of any actual, potential or perceived conflicts of interest which arise during his or her appointment. Any such conflicts should be recorded in writing and signed by the liaison councillor and CCO Board chair noting the effect of the conflict (or potential conflict) and how it is being managed.
26. **Participation:** Except at the discretion of the chair of the CCO board and having made full disclosure of the relevant conflict, the Liaison Councillor may not participate in, or be present (in the case of a confidential meeting) during, any discussions to which any such conflict arises.

## CONFIDENTIALITY

27. **Liaison Councillor may obtain confidential information in fulfilling the Purpose:** Certain information the Liaison Councillor may obtain in his or her role as Liaison Councillor may be commercially sensitive for the CCO. It is in the interests of Auckland Council and the CCOs that the CCOs operate as successful businesses acknowledging that to do so, certain commercially sensitive information should be kept confidential. The Liaison Councillor may also obtain information which is required by law to be kept confidential (such as personal information, whether relating to personal employment contracts or otherwise).
28. **Information provided to Auckland Council:** Subject to the following paragraphs, Liaison Councillors may, in the context of fulfilling the Purpose, provide information, and copies of any documents, obtained in his or her role as a Liaison Councillor to Auckland Council and the CCO Oversight Committee.
29. **Public disclosures:** Auckland Council [is / and the CCOs are] subject to the provisions of the Local Government Official Information and Meetings Act 1987. The Liaison Councillor and Auckland Council will be entitled to make public disclosures of any information obtained by Liaison Councillor in his or her role as Liaison Councillor, except for any information which could properly be withheld under a request for information under the Local Government Official Information and Meetings Act 1987.