

## 15. Review of the Council's Policy for the Appointments and Remuneration of directors of Council Organisations

Reference / Te Tohutoro: 22/1642881

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### 1. Nature of Decision or Issue and Report Origin

- 1.1 This report proposes amendments to the Council's governance settings in its Policy for the Appointment and Remuneration of Directors of Council Organisations (the Appointments' Policy).
- 1.2 This report has been written with a view to bringing the Appointments' Policy up to date following its last review in 2017, in recognition that best practice governance as it relates to local government has continued to evolve since that time.
- 1.3 The Appointments' Policy (at Attachment A) largely affects Christchurch City Holdings Ltd (CCHL) and its subsidiaries, ChristchurchNZ Holdings Ltd (CNZHL), Venues Ōtautahi (VŌ), Civic Building Ltd and Te Kaha Project Delivery Ltd.
- 1.4 Other Council-controlled organisations (CCOs) – Local Government Funding Agency (LGFA) and Transwaste Canterbury Ltd are excluded from the Appointments' Policy as they each have their own entity-specific appointments' policies and/or practices as a result of their multiple ownership.
- 1.5 Trusts are also exempted from the Appointments' Policy as their governance needs are quite different to those of commercial or quasi-commercial CCOs.
- 1.6 Council staff have reviewed the Appointments' Policy and recommendations are made taken into account the following:
  - decisions made by the Council on 7 December 2022 on the Northington Partners' strategic review of CCHL (NP CCHL strategic review);
  - legislative governance requirements, including Companies Act 1993, Local Government Act 2002 (LGA) and CCO constitutions;
  - Royal Commission on Auckland Governance, 2009;
  - best practice governance settings recommended by independent governance experts (e.g. Institute of Directors (IoD) and Financial Markets Authority (FMA));
  - Office of the Auditor-General (OAG) advice 'Governance and accountability of CCOs' 2015;
  - the appointments' policies and practices of Auckland, Wellington, Dunedin, Queenstown Lakes, Hamilton and Tauranga councils;
  - independent review of the CCHL parent company board, 2021; and
  - advantages and disadvantages of any proposed changes to the Appointments' Policy's governance settings.

- 1.7 At its meeting on 7 December 2022, the Council resolved to reduce the number of Councillor-directors on the CCHL board, from four to two, based on the NP CCHL strategic review recommendations.
- 1.8 This in turn raises the question as to whether the number of councillor-directors on the CNZHL board should also be reconsidered. There are currently two, but could be reduced to one. Staff assume that the three councillor-directors on the Civic Building Ltd board would be retained given there are no independent directors and the one councillor-director on the VÖ board would also be retained.
- 1.9 In 2020, the Council's Legal Services Unit sought a declaration from the OAG as to the ability of all councillors, whether directors of CCHL or other Council organisations or not, to vote participate in decision-making regarding the Appointments' Policy. The OAG advised that all members of the governing body of the Council could participate on the grounds that it is in the interests of the electors or inhabitants of the area (Christchurch) that they be allowed to do so. The OAG's advice is at Attachment B. The Legal Services Unit has sought the OAG's confirmation that this advice remains valid and will update the Council at the meeting.
- 1.10 The decisions in this report are of low significance in relation to the Christchurch City Council's Significance and Engagement Policy. The level of significance was determined by assessing the extent to which the decisions might impact the community.

## 2. Officer Recommendations Ngā Tūtohu

That the Council:

1. Approves the following governance changes to be reflected in the Council's Policy for the Appointment and Remuneration of Directors of Council Organisations to apply to all Council-controlled organisations' boards:
  - a. Prohibit staff appointments to operational Council-controlled organisation boards, but retain the ability to appoint staff to non-trading shelf Council-controlled organisations;
  - b. Elaborate on diversity guidance to include gender, ethnicity, Māori whakapapa, LGBTI affinity, age, culture, disability, background and experience;
  - c. Require all Chair appointments to be approved by the Council (including where an incumbent director of a board is appointed);
  - d. Require all proposed re-appointments of incumbent directors to be approved by the Council;
  - e. Reduce the number of terms that directors can serve on a Council-controlled organisation's board to two terms of three years with a third if the Council considers it is warranted;
  - f. Include in core skills and capabilities for Council-controlled organisation board members – sector knowledge, understanding and commitment to the Council's obligation to Te Tiriti o Waitangi, reliability and dependability;
  - g. All proposed appointments and re-appointments to Council-controlled organisation boards to be accompanied by a skills and expertise matrix of the board's governance requirements and how the proposed mix of directors meet the requirements.
2. Agrees to the treatment of fees to elected members who are appointed to Council-controlled organisation boards as follows:

EITHER:

- a. Status quo - fees are not received personally by councillor-directors and Christchurch City Holdings Ltd, ChristchurchNZ Holdings Ltd and Transwaste Canterbury continue to make donations to Tahua Taupua Mayor's Welfare Fund in lieu of councillor-director's fees;  
OR
  - b. Councillor-directors of Christchurch City Holdings Ltd only be entitled to receive fees personally as recompense for the workload, liabilities and reputational risk faced as directors;
  - c. OR
  - d. Councillor-directors of all Council-controlled organisations be entitled to receive fees personally as recompense for their governance work on the boards;
3. if recommendation 2a. is agreed - EITHER:
- i. Council-controlled organisations need not donate amounts equal to the fees and can instead retain the value of the fees within the organisation;  
OR
  - ii. Only commercially profitable Council-controlled organisations donate the value of fees not paid to councillor-directors to the Tahua Taupua Mayor's Welfare Fund or other recipient the Council may choose;  
OR
  - iii. All Council-controlled organisations, whether profitable or not make donations in lieu of paying fees to the Tahua Taupua Mayor's Welfare Fund, and bear the costs of doing so;  
OR
  - iv. Councillor-directors who receive fees from Council-controlled organisations as a result of board membership determine and declare the recipients of donations in lieu of fees, but cannot retain the value personally;
4. Consider whether to reduce the number of elected member appointments to the ChristchurchNZ Holdings Ltd board from two to one; and
5. Notes that in 2022, the value of fees donated in lieu of director's fees for Councillor-directors was \$291,600 and if reduced to profitable Council-controlled organisations only would be \$122,000 based on two councillor-directors for Christchurch City Holdings Ltd and one for Transwaste Canterbury Ltd.

### 3. Reason for Report Recommendations Ngā Take mō te Whakatau

- 3.1 To ensure the Council is adhering to best practice governance (in the local government context) principles to the greatest extent possible.

### 4. Alternative Options Considered Ētahi atu Kōwhiringa

- 4.1 The only alternative option is to retain the status quo, which is less reflective of contemporary best practice governance.

## 5. Detail Te Whakamahuki

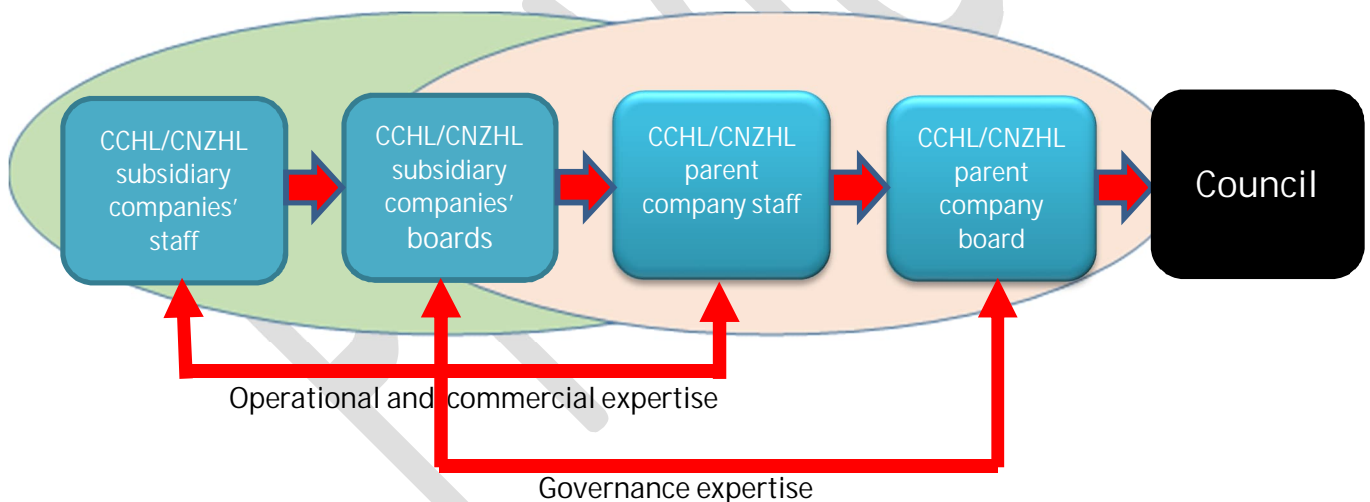
### Background

#### Legal

- 5.1 Section 57(1) of the LGA requires a local authority 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 (CO); and
  - (b) the appointment of directors to a CO; and
  - (c) the remuneration of directors of a CO.
- 5.2 Section 57(2) of the LGA provides that a local authority may appoint a person to be a director of a CO only if the person has, in the opinion of the local authority, the skills, knowledge, or experience to guide the organisation, given the nature and scope of its activities and contribute to the achievement of the objectives of the organisation.
- 5.3 Section 57(3) requires that when identifying the skills, knowledge, and experience required of directors of a CCO, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that CCO. This was a new requirement added in at the time of the 2019 LGA amendments and will be included in the revised Appointments' Policy.

#### Holding companies

- 5.4 The diagram over the page shows the holding company, subsidiaries and Council relationship.



- 5.5 The OAG notes in its 2015 'Governance and accountability of CCOs' report the following relating to holding companies:

*"there is a view that the potential for conflict between a councillor-director's interests and responsibilities as a councillor and as a CCO director is reduced where the councillor is a director of a CCO holding company. The reasoning is that the holding company will be focussed on managing the local authority's investment in its CCOs, rather than on the specific business of each CCO. However, a director of a holding company has a particular need for business acumen and governance experience".*

- 5.6 For the holding company model to be effective, it is important that the parent company has the mandate to act as would an ordinary shareholder (to the greatest extent possible), and that the Council limits its interventions to those that are of the utmost importance.

- 5.7 For CCHL and CNZHL, their governance decision-making without Council involvement relates to their subsidiary boards - re-appointment of directors, appointment of the boards' chairs and remuneration of subsidiary boards' directors. The only subsidiary board-related decisions not made by the parent company boards is the appointment of new directors which is retained by the Council.
- 5.8 In addition, the Council has the decision rights for new appointments, re-appointments, chair appointment and remuneration of directors to the parent company boards.
- 5.9 While on one hand, CCHL has responsibility for a number of the key governance decisions, it also has accountability for the effectiveness of those arrangements across the group. The accountability can be characterised as being for the overall performance of the group in meeting shareholders' expectations, including commercial returns on capital invested and social, environmental and cultural outcomes.
- 5.10 Dunedin City Holdings Ltd (DCHL) is Dunedin City Council's (DCC's) holdings company for its commercial investments. Most of the governance decision-making is the same across the two councils and holding companies but with two key exceptions - DCC prohibits councillors from being appointed to the DCHL and its subsidiaries' boards and DCC approves re-appointments of directors (all independent) to the DCHL board.
- 5.11 DCC's Appointments' Policy also provides two clear differences in the holding company framework - directors of DCHL are also the directors of its subsidiaries and the DCC is more actively involved in the appointments' process.

## Appointments' Policy

- 5.12 Recognising that in general elected members and Council staff are very unlikely to have the in-depth knowledge and understanding of the subsidiaries' businesses, and likely other core governance skills and capability, the following clauses are in the Appointments' Policy:
- clause 8.3 – CCHL has responsibility for the appointment of directors to its subsidiaries, Civic Building Ltd, Venues Ōtautahi and CNZHL; and
  - clause 8.14 - elected members are not eligible for appointment to CCOs other than the CCHL parent company unless there are compelling reasons for the Council deciding otherwise, or it is provided for in an entity's constitution, rules or specific legislation.
- 5.13 In effect, the Appointments' Policy is, or should be an articulation of the Council's views of good governance practices in the local government context. To the extent possible, it should seek to mimic governance outcomes in the private sector. The OAG, in its 2015 report entitled "Governance and accountability of CCOs" advises that a local authority's Appointments' Policy should cover those matters shown in the following table:

Policy inclusion	CCC Policy
Who is eligible for appointment (or who is not eligible)	✓
Process for identifying which skills appointees should have	✓
How candidates will be identified	✓
How candidates' skills will be assessed	✓
Composition of the appointments' panel	✓
Role of the board chair	✓
Remuneration of directors	✓

#### Governance fundamentals

- 5.14 Governance commentators generally note that a company's compliance with strong governance practices can lead to a lower cost of capital, higher company value as well as better performance in meeting other corporate objectives, for example sustainability and community outcomes.
- 5.15 Key characteristics of good boards include:
- it is an optimal size for the company's size, nature, diversity and complexity;
  - its members have an appropriate mix of skills and expertise between them to govern the business including navigating the challenges that are emerging for the future;
  - remuneration is fair and equitable;
  - conflicts of interest, if any are minimal; and
  - the roles of shareholders, the board and management are clear and relationships between them are respectful.
- 5.16 The extent to which value could be adversely impacted by sub-optimal board arrangements should not be under-estimated, given the total value of CCHL's assets of circa \$5 billion and issued debt securities of around \$2 billion.
- 5.17 For the most part, the settings the Council has reflect good governance practice. Each of the issues that have been explored as part of the review of the Appointments' Policy follow.

#### Appointment of elected members to CCO boards

- 5.18 In the local authority context, it is likely the most common reasons for appointing councillors to CCO boards are to allow them to influence the strategic direction of the CCO and/or to provide the Council with an inside view of what the CCO is doing. Neither of these objectives require board membership. There are ex-ante accountability processes that allow shareholders to influence the strategic direction of the CCO (Letter of Expectations, Statement of Intent (SOI)) and ex-post statutory reporting obligations which, coupled with a robust council monitoring function should provide these opportunities in a more transparent way.
- 5.19 At its meeting on 7 December 2022, the Council resolved to reduce the number of Councillor-directors on the CCHL board, from four to two, based on the NP CCHL strategic review recommendations. Among a number of reasons that NP notes in favour of reducing councillor-director representation on the CCHL board is that they potentially have less time to commit to CCHL leading to unequal workloads among directors and that not all councillor-directors have the skills and experience for the CCHL governance role.
- 5.20 This in turn raises the question as to whether the number of councillor-directors on the CNZHL board should also be reconsidered. There are currently two, but could be reduced to one. Staff assume that the three councillor-directors on the Civic Building Ltd board would be retained given there are no independent directors and the one councillor-director on the VÖ board would also be retained.

#### Independent advice

- 5.21 From a variety of research, the following summarises various positions on the matter of councillors being appointed to boards:

OAG, 'Governance and accountability of CCOs' 2015 – appointing elected members to CCO boards should be the exception and any appointments should be open and transparent, and subject to the same selection criteria as for independent directors. As part of its work culminating in the report, the OAG engaged with independent directors of CCO boards.

The OAG's report notes the following:

- most independent directors and CCO board chairs believed that the disadvantages of councillor appointments outweigh the benefits;
- acknowledgement of the argument that elected members can make a contribution to CCO governance and that councillor-directors may add value to a board by being a Council voice, by ensuring the CCO's objectives are aligned to those of the local authority and by providing community perspective;
- however a councillor-director must have the necessary skills and experience to contribute fully to the governance of the CCO;
- effective monitoring and oversight, including setting clear expectations about the CCO's purpose and strategic alignment should obviate any need for councillor-directors to provide an additional layer of oversight; and
- many of the advantages and disadvantages will apply also to staff being appointed as directors, exacerbated by the real potential for a manager's role as adviser to the council to conflict with his or her obligations to the CCO as a director.

Royal Commission on Auckland Governance, 2009 - the size of the CCOs - Watercare, Auckland Transport, Panuku Development, Regional Facilities - requires the very highest standards of governance practice and commercial directors of the highest quality; and councillors or council staff should not be able to be appointed to the CCO boards.

Section 93 of the Local Government (Auckland Council) Act 2009 prohibits councillors and local board members from appointment as directors of substantive CCOs, other than to Auckland Transport which Auckland Council can appoint two members to. It is unclear why this exception was made. However, the Review of Auckland Council's CCOs in July 2020 noted that Auckland Council has not made any appointments to Auckland Transport since 2016 (p.30).

FMA's 'Corporate Governance Handbook' 2018 provides guidelines that include directors should be selected and appointed using rigorous, formal processes designed to give the board a range of relevant skills and experience; and all directors should, except as permitted by law and disclosed to shareholders, act in the entity's best interests.

IoD, in its publication 'Four pillars of Governance Best Practice' 2021 the IoD notes that:

- board composition is a major consideration for the effectiveness and performance of the board (p.82);
- the composition of the board is the deciding factor in its success (p.82); and
- directors are required to act in the best interests of the company by law, fiduciary duty and best practice in corporate governance (p.100).

5.22 The following is extracted from the NP CCHL strategic review, presenting the advantages and disadvantages/risks of having councillor-directors on the CCHL board:

Advantages of having Councillor Directors at CCHL	Disadvantages / Risks of having Councillor Directors at CCHL
Provides a direct link between Council and CCHL, supporting a consistent, clear local authority view at CCHL.	No guarantee that skills and experience of Councillors is suited to CCHL governance role.
Ensures Council perspective at CCHL regarding council processes that might be relevant to a decision at CCHL.	Councillor directors may face potential difficulties reconciling their roles as both a Councillor and a CCHL Director.
Potential to improve CCHL's responsiveness to community views.	Councillor directors are considered conflicted and excluded from Council discussions and decisions regarding CCHL.
	Councillor directors potentially have less time to commit to CCHL - unequal workloads among directors.

- 5.23 NP notes that "on balance, we believe that the benefits of having councillor-directors on the CCHL board can be achieved through having a smaller number of councillor appointees".
- 5.24 Staff recommend that the Council considers whether councillor-directors on the CNZHL board be reduced from two, to one. In part this reflects the need the company has for a suite of strong financial, economic, commercial, place making and urban development skills and expertise at the board level as its functions have grown as an expanded economic development agency.

#### Benchmarking with other councils

- 5.25 A selection of other councils' appointments' policies and practices were reviewed (from information on their websites) including Auckland, Wellington, Hamilton, Tauranga and Dunedin and Queenstown Lakes.
- 5.26 Their respective policies and practices are shown in the following table:

Council	Appointments' Policy – councillors on CCO boards	Practice – councillors on CCO boards
Auckland	Auckland Transport only.	None, including Auckland Transport. Liaison councillors have been appointed for each substantive CCO.
Dunedin City	No.	None.
Hamilton City	No, unless exceptional circumstances.	None.
Queenstown Lakes District	Yes.	None.
Tauranga City	No, unless exceptional circumstances.	None - the council is run by a commissioner and so there are no elected members. The CE is appointed to a JV CCO for shared services between nine Bay of Plenty councils.
Wellington City	Yes*.	Yes (excl WellingtonNZ).

\*Wellington City Council provides for two councillors on boards that have more than four directors, and one councillor for boards with four or less.

#### Appointment of Council staff to CCO boards

- 5.27 The Appointments' Policy provides for a staff member of a local authority to be appointed to a CO board and to the CCHL parent board. It is silent with respect to CCOs but as it prohibits councillors from being appointed to CCO boards, it is assumed this applies to staff also.

- 5.28 The OAG's report (2015) notes that many of the same advantages and disadvantages of councillor-directors apply also to local authority managers as directors. The conflict of interest between being on one hand the monitor and on the other, the monitored is a real risk. In a 2001 report, the OAG said that to ensure the local authority's chief executive is able to discharge his/her advisory responsibilities he/she should take no part in the internal governance of subsidiary entities so that he/she remains independent when assessing entity performance against expectations and in providing strategic advice to the council. This applies also to local authority employees, and therefore they "should not, as a rule sit on the governing bodies of such organisations" (p. 18/19 of OAG report Local Authority Governance of Subsidiary Entities, 2001).
- 5.29 The Royal Commission on Auckland Governance advised that to avoid conflict of interest concerns, the Commission considers that Auckland Council employees and those of its COs and CCOs and councillors should be prohibited from appointment to Auckland Council COs and CCO boards (p.469).
- 5.30 The Council has seldom appointed staff to CO and CCO boards. A key exception is the Chief Executive who has been appointed as a director of the Council's shelf CCOs – CCC One Ltd, CCC Five Ltd, CCC Seven Ltd and Eilerslie International Flower Show Limited. These CCOs are not operational, and as soon as they become so, new directors are appointed.
- 5.31 Staff consider that the shelf company arrangement is practical and should continue, but that staff should not be appointed to any CCOs. As with the elected member appointment clause 8.14 in the Appointments' Policy, the condition "unless the Council decides otherwise" would be included for flexibility.

#### Auckland council's 'liaison councillor' roles

- 5.32 The 2020 review of Auckland Council's CCOs notes that Council has appointed 'liaison councillors' for each of its substantive CCOs in an effort to improve the relationship between CCOs and the council and also improve the flow of timely information between the two. The five liaison councillors have a range of options available to them to carry out their role, including attending some or all board meetings, attending committee meetings (such as audit and risk) and meeting the chair and/or chief executive from time to time (page 50).
- 5.33 The review advised "we are not convinced about the usefulness of the role of liaison councillor because, like the Auditor-General, we think the role of observer is "unlikely to add anything" if effective monitoring and good council-CCO relationships are in place" (p.64).

#### Remuneration of councillor-directors

- 5.34 The Council's current policy is that councillor-directors do not benefit personally from their roles on CCO boards to ensure even-handed treatment with other councillors who participate on the Council's committees, panels, and non-CCO organisations, all of which do not pay fees.
- 5.35 The Council has required some CCOs with councillor-directors to donate an amount equal to the fees to the Tahua Taupua Mayor's Welfare Fund Charitable Trust. This was considered to be a fairer way of making the fees available to priority council spending requirements, as opposed to having the few councillor-directors getting personal benefit or donating to their individual specific causes.
- 5.36 The only CCOs that donate under the Appointments' Policy are CCHL and Transwaste Canterbury both of which are commercially profitable, and CNZHL which, in effect donates from the Council's annual funding. Other CCOs do not pay fees to their councillor-directors (VÖ, CBL, trusts). For the year ending 30 June 2022, the donations in lieu of fees totalled \$291,600. With the reduction of two councillor-directors on the CCHL board, the donations

will reduce to \$194,700. If the CNZHL board was to have one fewer councillor-directors, the donations would reduce further to \$158,700.

- 5.37 The OAG in its 2015 report 'Governance and accountability of CCOs' commented that "the usual practice is that councillor-directors receive directors' remuneration in addition to their remuneration as councillors. A CCO director is responsible for the governance of the CCO. The position, if discharged properly, involves work, so remuneration is appropriate".
- 5.38 In its strategic review, NP noted that "all directors should receive fees for their services, obligations and liabilities" (page 55).
- 5.39 Of the other councils surveyed, none provided for councillor-directors to receive fees, noting however that most do not permit the appointment of councillors to director positions in any event. Wellington City Council (which does allow for councillors to be appointed to boards all of which are relatively minor) requires fees to be remitted back to the Council.
- 5.40 Several key points for noting include:
- Directors attract liabilities and obligations, as well as potential reputational damage that members of panels, committees and other non-corporate organisations do not. Some of the financial risk can be managed by directors' and officer's liability insurance but not all (e.g. improper activity and unjustified decision-making). There is therefore an argument of there being some legitimate call for remuneration to be awarded.
  - Transwaste does not donate councillor-director fees itself, preferring to treat all of its directors the same. The councillor-director donates the fees received to the Tahua Taupua Mayor's Welfare Fund Charitable Trust, in accordance with Council policy.
  - If councillor-directors are to be paid fees for their directorships (and retain them personally), donations of \$194,700 (plus \$96,000 already forgone as a result of the 7 December Council resolutions on the NP CCHL strategic review) would no longer be made to the Tahua Taupua Mayor's Welfare Fund Charitable Trust.
  - If councillor-directors in principle are to be able to retain fees for director positions, the Council is likely to come under pressure to both:
    - fund fees for councillor-directors of unprofitable CCOs (or allow them to reduce other organisational expenditure to fund the fees); and
    - fund fees for councillors participating on other council external bodies (e.g. panels and committees).
- 5.41 This matter is one for Councillors' discretion. However, in the event the donation of fees continues, it is proposed that it apply only to CCHL on the basis that it is governing \$5 billion of assets and \$2 billion of debt, and is highly visible to the public and the potential governance risks that go with that. If this is accepted, the other CCOs with councillor-directors would neither pay fees nor make donations in lieu of payment since these donations are not made from commercial profits.

## Appointments

### Diversity

- 5.42 The Appointments' Policy provides that the assessment of candidates as directors of its CCOs must take into account encouraging diversity, the CCO's objectives, the CCO's relationship with the Council and succession planning.
- 5.43 The Council has in recent years sought an increase in the diversity of its CCO boards. To date the focus of most boards has been on gender diversity. The IOD, in its 2021 edition of its Four

Pillars publication notes that boards are at their best when they are distinguished by diversity of thought and capability. Diversity goes beyond gender to include ethnicity, Māori whakapapa, LGBTI affinity, age, culture, disability, background and experience (refer page 83). This said, the IOD is very clear that demonstrated competency is above all else when considering board appointments.

- 5.44 The Council may wish to provide more specification of its expectations regarding diversity on boards that is consistent with the IOD's advice.

#### New directors

- 5.45 CCHL is charged with running appointment processes for its group of companies, CNZHL and VÖ and any other of the Council's CCOs that the Council may request it to from time to time.
- 5.46 The Appointments' Policy requires a specialist panel/committee to be established (with Council approval as to membership) to undertake the work necessary to make recommendations for director appointments, including identifying the membership requirements of the boards and assessing the skills, knowledge and experience of director candidates (the core skills, knowledge and experience for director appointees to CCOs are identified in the Appointments' Policy).
- 5.47 The Council is the final decision-maker on the appointment of new directors to all CCOs, including CCHL's subsidiaries.
- 5.48 The Council might wish to consider whether CCHL should be asked to provide a short list of suitable candidates for Council selection. However, the disadvantages of this may outweigh the benefits by bringing political considerations into what is mostly a commercial decision.
- 5.49 Staff consider that what is important is that there is a robust process conducted to identify preferred director candidates. Councillors and staff are in no better position than the CCHL board to determine the most appropriate candidate for a director role.

#### Chair

- 5.50 The following examples underpin decisions of who should appoint the board chair:
- schedule 3 of the Companies Act 1993 provides that directors may elect one of their number as chair of the board;
  - the Crown appoints the chair and deputy to State-owned Enterprise (SOE) boards;
  - the parent board of a SOI appoints directors to its subsidiaries;
  - of the councils surveyed, two did not include any provisions in their appointments' policies for chairs of CCO boards, Auckland Council's substantive CCO boards appoint chairs, and the other councils in the survey approve chair appointments; and
  - the IoD's constitution provides for the board to appoint the chair and deputy.
- 5.51 The Council appoints the chair of the boards of its directly-owned CCOs including the CCHL parent. The CCHL board appoints the chairs of its subsidiaries' boards). Any change in these settings will require a shareholders' resolution to amend the constitution.
- 5.52 In practice, CCHL notifies the Council when it is proposing an external appointment to the role of chair or chair-elect.
- 5.53 Currently there is a requirement for an external appointee to the position of chair to serve at least one year on the board before taking on the chair role. This requirement does not recognise that directors bring different experience with them and some may be more ready and able than others to take up the chair role immediately.

- 5.54 Staff propose that the Appointments' Policy is amended to reflect the status quo with respect to chair appointments, for the purposes of clarity and that the requirement for a one year lead time to take on a board's chair role is removed.

#### Re-appointments

- 5.55 CCHL has the right to re-appoint directors to the organisations it has appointments' responsibility for. The Appointments' Policy provides that matters to be considered when deciding about a re-appointment are whether the skills of the incumbent add value to the work of the governing body or other skills are needed, the director's length of tenure to date and succession planning.
- 5.56 Of the other councils surveyed, only Queenstown Lakes does not require Council approval to re-appointments (possibly as the committee making the recommendation includes the Mayor and a councillor). Two of the councils did not address re-appointments in their policies.
- 5.57 The Crown approves re-appointments to State-owned Enterprise (SOE) boards.
- 5.58 Staff consider it appropriate that the Council, as shareholder has the right to consider re-appointments to its CCOs and to CCHL's subsidiary companies in the same way it has the right to approve new appointments.

#### Terms of appointment

- 5.59 The Appointments' Policy provides that CCO directors can serve up to three terms of three years each, with a fourth at the Council's discretion. It also provides that a director who is appointed as chair in his/her third term may serve two further terms in that role.
- 5.60 There is no definitive guidance as to how many terms constitute good practice. Many commentators instead advise the importance of striking a balance between institutional knowledge and fresh thinking, as well as ensuring the board has the right mix of skills.
- 5.61 Of the councils surveyed, most provide for two terms of three years with a third if advisable. Dunedin City and Queenstown Lakes' councils provide for three terms of three years. The Crown's policy is two terms of three years each for SOEs and further terms where there is a strong business need.
- 5.62 The IoD's constitution provides a maximum of nine years continuous tenure for its directors.
- 5.63 Staff consider that two terms of three years each facilitates the board being refreshed more regularly, which may help with goals such as achieving diversity of membership, creating flexibility for the board to bring on new skills and competencies in line with emerging issues, trends or demands. It may also over time deepen the pool of capable directors in general.
- 5.64 The downside of reducing the number of terms could be the early loss of experience and knowledge that is highly valued by a board, and potential directors preferring to seek the certainty of longer tenure from other boards. There would also be higher administration costs incurred in running appointments' processes more frequently.
- 5.65 Staff recommend that on balance, two terms of three years with a third if the Council consider it appropriate is preferable.

## Core skills and expertise sought

Staff have reviewed the core skills and expertise sought by the Council in all appointments to its CCO boards, as well as those sets that other councils seek. This leads to a recommendation for three additional competencies, as shown in the shaded rows:

Core skills and competencies for directors	CCC	NZ Treasury	Auckland Council – substantive CCOs	Dunedin City Holdings Ltd	IOD
Sound judgement and decision-making including common sense and strong sense of ethics	✓	✓	✓	✓	✓
Public sector ethos including adapting to the political context of the day	✓		✓	✓	✓
High standard of personal integrity	✓	✓	✓	✓	✓
Commercial and governance experience, including commercial acumen and financial literacy	✓	✓	✓	✓	✓
Clear communications skills and ability to debate in reasoned manner	✓	✓	✓	✓	✓
Effective teamwork and collaboration	✓	✓	✓	✓	✓
Ability to think strategically including organisational and strategic awareness	✓	✓	✓		✓
Risk assessment and contingency management	✓		✓	✓	✓
Commitment to principles of good corporate citizenship (fairness, accountability, responsibility, transparency)	✓		✓	✓	
Understanding of wider interests of the Council/ Crown as a publicly accountable shareholder	✓	✓	✓	✓	
Sector knowledge relevant to the specific board opportunity		✓			✓
Confidence to ask questions		✓			✓
Awareness of a public media profile			✓	✓	
Understanding and commitment to the Council's obligation to Te Tiriti o Waitangi			✓	✓	
Intellectual ability				✓	
Commitment to knowledge building and professional development					✓
Reliability and dependability					✓

5.66 It is important that the core skills and competencies sought are not overly prescribed so as to create a barrier to achieving good appointments. Most of the requirements that the Council (and other councils) have not included as core competencies are in fact intrinsic to several that are – for example, intellectual ability and confidence to ask questions are included in commercial and governance experience, strategic thinking, and risk assessment. Commitment to Te Tiriti o Waitangi is highly correlated to 'understanding of wider interests of the Council (Crown) as a publicly accountable shareholder'. Reliability and dependability is linked to a high standard of personal integrity and effective teamwork and collaboration.

5.67 Nevertheless staff consider the three shaded competencies could usefully be added to the Council's expectations of core skills and competencies.

- 5.68 Staff also recommend that proposals for appointments to boards should be supported with a skills and competencies matrix for the board which demonstrates the balance held by the incumbent directors and how the candidate adds value to that board.

## 6. Policy Framework Implications Ngā Hīraunga ā- Kaupapa here

### Strategic Alignment Te Rautaki Tīaroaro

- 6.1 This report is consistent with the Council's commitment to good governance of its CCOs. This is aligned to the efficient delivery of the outcomes sought by the [Council's Long Term Plan \(2021 - 2031\)](#).

### Policy Consistency Te Whai Kaupapa here

- 6.2 The decision relates directly to the Council's Plans and Policies – the Council's Policy for the Appointment and Remuneration of Directors of Council Organisations.
- 6.3 This report does not support the [Council's Long Term Plan \(2021 - 2031\)](#).

### Impact on Mana Whenua Ngā Whai Take Mana Whenua

- 6.4 The decision does not involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does specifically impact Mana Whenua, their culture and traditions.
- 6.5 The decision does not involve a matter of interest to Mana Whenua and will not impact on our agreed partnership priorities with Ngā Papatipu Rūnanga.
- 6.6 The recommendations in this report are of a governance nature, although some touch on issues such as including in the core skills and capabilities sought from CCO directors an understanding and commitment to the Council's obligation to Te Tiriti o Waitangi (in addition to the LGA's provision that a local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of a CCO (section 57(3))).

### Climate Change Impact Considerations Ngā Whai Whakaaro mā te Āhuarangi

- 6.7 Not relevant.

### Accessibility Considerations Ngā Whai Whakaaro mā te Hunga Hauā

- 6.8 Not relevant.

## 7. Resource Implications Ngā Hīraunga Rauemi

### Capex/Opex Ngā Utu Whakahaere

- 7.1 Cost to Implement – there are no material direct costs of implementing the recommendations in this paper.
- 7.2 Maintenance/Ongoing costs – nil.
- 7.3 Funding Source – not required.

### Other He mea anō

- 7.4 Not applicable.

## 8. Legal Implications Ngā Hīraunga ā-Ture

### Statutory power to undertake proposals in the report Te Manatū Whakahaere Kaupapa

- 8.1 Section 57(1) of the LGA requires a local authority to adopt a policy that sets out an objective and transparent process for appointing directors to Council organisations.

## Other Legal Implications Ētahi atu Hīraunga-ā-Ture

- 8.2 Other corporate legislation such as the Companies Act 1993 and CCO constitutions provide governance guidance that contributes toward this policy.

## 9. Risk Management Implications Ngā Hīraunga Tūraru

- 9.1 Ensuring the Appointments' Policy reflects contemporary good practice governance minimises the risks associated with the CCO businesses.

## Attachments Ngā Tāpirihanga

No.	Title	Reference	Page
A	Council's Policy for the Appointments and Remuneration of Directors of Council Organisations	22/1724580	
B	OAG Declaration 2020	22/1722059	

In addition to the attached documents, the following background information is available:

Document Name – Location / File Link
Not applicable

## Confirmation of Statutory Compliance Te Whakatūtutanga ā-Ture

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).
(a) This report contains:
(i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
(ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.
(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

## Signatories Ngā Kaiwaitohu

Author	Linda Gibb - Performance Monitoring Advisor CCO
Approved By	Leah Scales - General Manager Resources/Chief Financial Officer

## CHRISTCHURCH CITY COUNCIL

### POLICY FOR THE APPOINTMENT AND REMUNERATION OF DIRECTORS TO COUNCIL ORGANISATIONS

#### 1. PURPOSE

- 1.1. The Council will appoint a person to be a director of a Council Organisation only if the person has, in the opinion of the Council, the required skills, knowledge, and experience to guide the organisation and contribute to the achievement of its objectives (s.57(2) Local Government Act 2002).
- 1.2. For the purpose of achieving that outcome, and as required by the Act, this policy sets out objectives and transparent processes for:
  - (a) identifying and considering the skills, knowledge, and experience required of directors of Council Organisations;
  - (b) appointing directors to Council Organisations;
  - (c) setting remuneration levels;

#### 2. OBJECTIVE

- 2.1. The Council's objective, through the implementation of this policy, is the appointment of the best person for each role, based on merit.

#### 3. DEFINITIONS

- 3.1. S. 6 of the LGA 2002 contains statutory definitions that are relevant to the policy, and which are summarised below:

(a) **Council Organisation**

A Company in which the Council holds or controls shares, or has the right to appoint 1 or more directors.

An entity in which the Council controls 1 or more of the votes at any meeting of the members or controlling body of the entity, or the right to appoint 1 or more of the trustees, directors, or managers (however described) of the entity.

The control of shares or votes, or the right of appointment may be direct or indirect (i.e. through the Council's interest in another company or entity).

(b) **Council-controlled Organisation**

A Company in which the Council holds or controls 50% or more of the shares, or has the right to appoint half or more of the directors.

An entity in which the Council controls 50% or more of the votes at any meeting of the members or controlling body of the entity, or the right to appoint half or more of the trustees, directors, or managers (however described) of the entity.

The control of shares or votes, or the right of appointment, may be direct or indirect (i.e. through the Council's interest in another company or entity).

(c) **Council-controlled Trading Organisation**

A Council-controlled Organisation which operates a trading undertaking for the purpose of making a profit.

(d) **Entity**

For the purposes of the LGA 2002 (and this policy) an entity may be any partnership, trust, arrangement for the sharing of profits, union of interest, co-operation, joint venture, or other similar arrangement. It does not include a company, committee, or joint committee of the Council.

If a Council Organisation is not a company, references relating to that entity are further defined as follows:

- (i) equity securities include any form of voting rights;
- (ii) the directors and the board include trustees, managers, members, or office holders (however described);
- (iii) shareholders include any partners, joint venture partners, members, or other persons holding equity securities; and
- (iv) the constitution includes any rules or other documents constituting the organisation or governing its activities;

(e) **Organisations that are not Council-controlled Organisations**

S.6(4) of the LGA 2002 lists a number of entities that are not Council-controlled Organisations, even though 50% of their shares may be held or controlled by a local authority. These include an energy company within the meaning of the Energy Companies Act 1992 and a port company within the meaning of the Port Companies Act 1988.

Orion New Zealand Ltd is an energy company, and Lyttelton Port Company Ltd is a port company. The Council, through CCHL, holds all or the majority of shares in these two companies.

#### **4. OTHER RELEVANT LEGISLATION**

- 4.1. In addition to this policy, the appointment and re-appointment of directors to Council Organisations are governed by their respective constitutions, trust deeds or, in some cases specific legislation. In the event of a conflict, the regulatory requirements of those documents take precedence over this policy.

- 4.2. Where Council Organisations are jointly owned with other entities governance arrangements may be established through shareholder agreements or other documentation. These also take precedence over this policy.

## **5. POLICY STRUCTURE**

- 5.1. There are four parts to the policy:

- Part One: appointments to Council Organisations that are not Council-controlled Organisations;
- Part Two: appointments to Christchurch City Holdings Ltd (CCHL);
- Part Three: appointments to other Council-controlled Organisations;
- Part Four: remuneration;

## **6. PART ONE - APPOINTMENTS TO COUNCIL ORGANISATIONS**

- 6.1. The Council has a minority interest in numerous Council Organisations. This may have been sought by the Council, or requested by the organisation. In some cases, the Council's involvement may be a statutory requirement or provided for in the organisation's founding document (such as a trust deed, rules, or constitution).
- 6.2. As soon as practicable after each local body triennial election, the Council will establish a panel, to be known as the Council Organisation Appointments Panel, for the purpose of recommending elected members and others to Council Organisations. Members of the Panel will be the Mayor and the Deputy Mayor (or their nominees).
- 6.3. Before considering an appointment, the Panel will determine whether there is a benefit to the Council being represented on the governing body of the organisation.
- 6.4. The Panel will call for expressions of interest from all elected members, including Community Board members if the Panel considers this appropriate. Potential appointees will be assessed against the skills, knowledge, and experience the Panel has determined are required for each position.
- 6.5. The Panel will report its recommendations to the Council to enable appointments to be made in a timely manner.
- 6.6. Council officers, in their capacity as employees of the Council, may be appointed to a Council Organisation, with the approval of the Chief Executive. This will usually be for the purpose of ensuring the Council's interests are monitored and managed.
- 6.7. Officer appointments will be deemed to be part of that officer's normal duties and will lapse on completion of his or her employment with the Council, or earlier at the direction of the Chief Executive.

## **7. PART TWO – APPOINTMENTS TO CHRISTCHURCH CITY HOLDINGS LTD (CCHL)**

### **Background**

- 7.1. CCHL's constitution contains a number of provisions relating to the appointment of directors.
- 7.2. For example, the size of the board may not be fewer than three nor more than eight, subject to the Council determining otherwise. Currently the Council has decided there should be eight, comprising the Mayor, three Councillors, and four Non-Council directors.
- 7.3. A Council director is defined as a Council member, Community Board member, or an employee of a Local Authority.
- 7.4. The Council is entitled to appoint and remove any person as a director. At least two members of the board must be Non-Council directors.
- 7.5. The constitution also requires Council directors of CCHL to retire on a date specified by the Council, but which must be within three months of each local body triennial election. Of the four Non-Council directors, two are required to retire annually in accordance with CCHL's rotations policy.
- 7.6. All retiring directors are deemed to be re-appointed, unless the Council has given notice that re-appointment is not to be assumed, another person has been appointed to the vacated office, or that the vacated office is not to be filled for the time being.
- 7.7. CCHL directors will not generally be appointed for more than three terms of three years each, subject to the requirements referred to in paragraphs 7.5 and 7.6 above.
- 7.8. Directors may be removed from office at any time by notice in writing by the Council, as shareholder. Without limitation, the Council may give such notice if it believes a director
  - (a) No longer has the confidence of the CCHL board;
  - (b) Has breached ethical standards in circumstances where the Council believes the breach reflects badly on CCHL or the Council;
  - (c) Has not acted in the best interests of the company;
  - (d) Has breached an obligation of confidentiality imposed on directors, including speaking publicly on board matters without the board's authority.
  - (e) Has breached the principles of collective responsibility.

### **Appointments Committee**

- 7.9. As soon as practicable after each local body triennial election, or as otherwise required, the Council will establish an Appointments Committee for the purpose of recommending the appointment of directors to CCHL (Council and Non-Council directors). The members of the committee will comprise the chairperson of the CCHL

board, an external commercial advisor with relevant experience and knowledge, and up to two other members nominated by the Council.

- 7.10. Any recommendation made must be the unanimous decision of the committee.

#### **Appointments process**

- 7.11. The Appointments Committee will assess the skills, knowledge and experience required for appointment as a director of the CCHL board (both independent and Council directors), taking into account such other factors as:
- (a) encouraging diversity;
  - (b) the Council's objectives for CCHL (described in its Statement of Intent);
  - (c) CCHL's relationship with the Council, as CCHL's sole shareholder;
  - (d) succession planning;
- 7.12. In addition, there are a number of core competencies expected of all appointees, including:
- (a) sound judgement and decision-making;
  - (b) a public service ethos;
  - (c) a high standard of personal integrity;
  - (d) commercial and governance experience;
  - (e) clear communication skills and an ability to debate in a reasoned manner;
  - (f) effective teamwork and collaboration;
  - (g) ability to think strategically;
  - (h) risk assessment and contingency management;
  - (i) commitment to the principles of good corporate citizenship;
  - (j) understanding of the wider interests of the Council, as a publicly accountable shareholder.
- 7.13. The committee will prepare a list of possible candidates to be interviewed. In preparing the list, the committee will use a number of resources including, but not exclusively, public advertising, a data base of potential candidates maintained by CCHL, personal recommendations and self-referrals, identifying individuals with the required skills and competencies, and a specialist consultant.
- 7.14. Where a candidate is being re-appointed or has previously been a director on the board of another Council-controlled Organisation, the committee may choose not to interview that person but will first discuss the matter with the relevant board Chairperson. The process for considering re-appointment will be as set out in paragraphs 8.16 – 8.19 of this policy.

- 7.15. The Appointments Committee will report to the Council on the outcome of the appointments process and the committee's recommendations. The Council will be the final decision-maker.
- 7.16. The Council expects all participants in the appointment process to undertake the work required of them in a timely manner.

### **Succession Planning**

- 7.17. These provisions are specifically for the position of Chairperson of the CCHL board.
- 7.18. A director appointed as Chairperson in their third three year term may serve in that role for a maximum of six years, unless the Council decides otherwise.
- 7.19. The Appointments Committee will be responsible for managing the succession planning process, which may (but not necessarily) be initiated by the board. This must commence at least six months before the settling-in period referred to below, and one year before the proposed retirement of the current Chairperson.
- 7.20. The process may be initiated by the board, and will include discussions with the Chairperson, assessing the skills, knowledge and expertise required for the role, and identifying any board members who may be possible candidates.
- 7.21. If the proposed candidate is new to the board there must be time for a settling-in period of at least one year before that person can be nominated for the role of Chairperson.
- 7.22. The qualities expected of the Chairperson include (but not exclusively) the ability to develop and maintain a sound relationship with the Council based on mutual trust and confidence and a close but independent working relationship with CCHL's Chief Executive, and to use the collective skills of the board and executive team for the purpose of achieving the Council's objectives for CCHL (described in its Statement of Intent).
- 7.23. The Chairperson must also be able to lead and encourage full participation in board decision-making, ensure the timeliness and relevance of information, assume the role of spokesperson for CCHL, and have a reputation for integrity and credibility within the business community.

## **8. PART THREE – APPOINTMENTS TO OTHER COUNCIL-CONTROLLED ORGANISATIONS**

### **Background**

- 8.1. CCHL or the Council holds all, or a majority of, the shares in Christchurch International Airport Ltd, City Care Ltd, Enable Services Ltd, Red Bus Ltd and Eco-Central Ltd. and Civic Building Ltd. These are Council-controlled Trading Organisation and, with the exception of Civic Building Ltd, are subsidiaries of CCHL.
- 8.2. CCHL or the Council holds all of the shares in Vbase Ltd, Development Christchurch Ltd, Tuam Ltd, and ChristchurchNZ Holdings Ltd (which holds all of the shares in

ChristchurchNZ Ltd). These are Council-controlled Organisations not engaged in trading for the purpose of making a profit.

- 8.3. CCHL also owns all, or a majority of, the shares in Lyttelton Port Company Ltd and Orion New Zealand Ltd which, as explained earlier, are not defined as Council-controlled Organisations in the LGA 2002. They are, however, treated as Council-controlled Trading Organisations for the purposes of this policy.
- 8.4. CCHL has responsibility for the appointment of directors to all of the organisations set out in paragraphs 8.1, 8.2, and 8.3.
- 8.5. Transwaste Canterbury Ltd was established as a joint venture company by private interests and five local authorities (including the Council) to develop, own and operate the Kate Valley regional landfill. It is a Council-controlled Trading Organisation but appointments to the board of Transwaste Canterbury are made and managed through the Canterbury Regional Landfill Joint Committee.
- 8.6. The Council recommends that appointments made by the joint committee follow a similar appointments process to that described in this Part Three.
- 8.7. The Central Plains Water Trust is a Council-controlled Organisation, but appointments are made and managed through the Central Plains Joint Committee established by the Council and Selwyn District Council. This policy does not apply to those appointments.
- 8.8. The Council has the right to appoint half or more of the members of governing bodies of other Council-controlled Organisations, such as Riccarton Bush Trust, World Buskers Festival Trust, Rod Donald Banks Peninsula Trust, and Christchurch Agency for Energy Trust. These appointments are made and managed in accordance with each organisation's constitution, shareholders agreement, specific legislation, or rules.
- 8.9. The Council may ask CCHL to undertake the appointments process in respect of these organisations, and any other Council-controlled Organisations not referred to in this policy or established after the policy has been adopted. Any process undertaken by CCHL will comply with the provisions of this Part Three.
- 8.10. Appointments to the governing bodies of Council-controlled Organisations will generally be for no more than three terms of three years each, unless the Council decides otherwise. Appointees are also subject to any requirements for the rotation of members contained in the organisations' constitution, shareholders agreement, or rules.
- 8.11. Where CCHL owns all or the majority of shares in a Council-controlled Organisation, CCHL will be responsible for exercising its rights as shareholder in respect of the removal of directors from the boards of those organisations. In doing so, CCHL will have regard to the matters contained in paragraph 7.8 of Part Two of this policy, as well as the views and preferences of the Council.

### **Governance and Appointments Committee**

- 8.12. CCHL will establish a Governance and Appointments Committee to recommend the appointments for which CCHL is responsible. The membership and terms of reference of the committee will be determined by CCHL.

### **Appointments Process**

- 8.13. CCHL is to ensure that the appointments process will be the same as that for the appointment of directors to CCHL. This will include an assessment of the skills, knowledge and experience required for each board and take into account the factors referred to in Part Two.
- 8.14. Elected members are not eligible for appointment to Council-controlled Organisations other than CCHL, unless there are compelling reasons for the Council deciding otherwise, or it is provided for in an entity's constitution, rules, or specific legislation.
- 8.15. The Governance and Appointments Committee will report its recommendations to the CCHL board, which will then seek the approval of the Council before confirming the nominations for appointment with the governing body of each organisation. How the appointments are made will be subject to the entity's constitution, shareholders' agreement, or rules.
- 8.16. Should appointments be required to Council-controlled Organisations not referred to in this policy, or established after the policy has been adopted, the Council may engage CCHL to conduct the appointments process in accordance with the provisions of this Part Three.
- 8.17. A current director whose term of office is about to expire may be entitled to seek re-appointment. If CCHL is responsible for appointments to that organisation, the re-appointments process will begin with the chairperson of the CCHL board consulting the chairperson of the organisation.
- 8.18. The matters discussed will include, without limitation, whether the skills of the incumbent add value to the work of the governing body or other skills are needed, the director's length of tenure, and/or succession planning.
- 8.19. The outcome of the discussion will be reported to the Governance and Appointments Committee which will form a view on whether or not to recommend re-appointment.
- 8.20. The CCHL board may approve a recommendation to re-appoint without further reference to the Council. If re-appointment is not approved, then CCHL will undertake an appointments process for the director's position in accordance with this Part Three.

## **9. PART FOUR – REMUNERATION**

- 9.1. CCHL is responsible for approving remuneration levels for the directors appointed to the Council-controlled Organisations and Council-controlled Trading Organisations referred to in paragraphs 8.1, 8.2, and 8.3 of Part Two of this policy.
- 9.2. For that purpose CCHL will undertake a review of remuneration levels for appointees as soon as practicable after each local body triennial election, or more frequently if

CCHL considers it necessary. The review will cover all members of each board (elected members and independents), including CCHL.

- 9.3. CCHL will also be responsible for reviewing and approving any changes to remuneration levels that may be required should the Council decide that a Council-controlled Organisation has become a Council-controlled Trading Organisation. The review will be carried out in accordance with this Part Four.
- 9.4. CCHL will commission an independent consultant to benchmark the level of fees paid. This will include reference to organisations that are comparable to each Council-controlled Organisation (whether trading for a profit or not), and the annual Institute of Directors' Fees Survey.
- 9.5. The review will take into account factors such as the need to attract and retain appropriately qualified people, the external market for comparable positions, and the objectives of each organisation.
- 9.6. Also to be considered will be the size and scale of the organisation, its complexity and scope, the level of accountability, and the type of expertise and specialisation needed. CCHL will ensure it understands the role and responsibilities of each board of directors appointed to the organisations CCHL monitors.
- 9.7. An important principle for the Council is that the remuneration of members of the governing body of a Council-controlled Organisation will reflect the fact there is an element of public service involved. The Council will therefore expect fees to be set at or below the average for comparable private sector entities.
- 9.8. CCHL will apply this principle in the context of ensuring strong governance outcomes through attracting and retaining high quality appointees, and remuneration levels that recognise the public service element identified by the Council.
- 9.9. The information obtained by CCHL in the course of its review will be presented to the CCHL board for consideration and approval. CCHL will then confirm the remuneration levels to be set for each organisation it monitors, to be implemented in accordance with the organisation's constitution, shareholders' agreement, or rules.
- 9.10. To recognise the element of public service referred to earlier the Council has resolved that a person appointed to the governing body of an external organisation in his or her capacity as an elected member or employee of the Council will not receive the remuneration otherwise payable in respect of that appointment.
- 9.11. Instead, those organisations will be directed to donate an equivalent amount to recipients specified by the Council from time to time, to be paid as at 30 June each year. The recipients will be charitable organisations established for the purpose of benefitting the community (or a particular sector of it) or funds administered by the Council for the benefit of ratepayers, such as the Mayor's Welfare Fund and the Innovation and Sustainability Fund.
- 9.12. The external organisations referred to in paragraphs 9.10 and 9.11 include, (but not exclusively) Council Organisations, Council-controlled Organisations and Council-controlled Trading Organisations.



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19 June 2020

File Ref: LAMIA379

Christchurch City Council  
Attn: Ian Thomson, Special Counsel Governance  
Legal Services Unit  
Via email: [Ian.Thomson@ccc.govt.nz](mailto:Ian.Thomson@ccc.govt.nz)

Dear Ian

**LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 – REVIEW OF POLICY FOR THE APPOINTMENT AND REMUNERATION OF DIRECTORS TO COUNCIL ORGANISATIONS**

We refer to your letter of 10 June 2020.

On behalf of all members, the Christchurch City Council has requested a declaration under section 6 of the Local Authorities (Members' Interests) Act 1968 (the Act) to enable all Councillors to be involved in decision-making about the Council's Policy for the Appointment and Remuneration of Directors to Council Organisations 2017 (remuneration policy).

For the reasons explained below, we have decided to issue the declaration allowing all Councillors to discuss and vote on the remuneration policy, despite their direct or potential financial interest.

We have issued the declaration on the basis that we are satisfied that it is in the interests of the electors or inhabitants of the area that all members be allowed to participate in the remuneration policy review.

**The law**

The 'non-participation rule' in section 6(1) of the Act prohibits a member of a local authority or its committees from discussing or voting on a matter before the authority in which the member has a financial interest, other than an interest in common with the public.

Under section 6(4) of the Act, the Auditor-General can grant a declaration that the non-participation rule will not apply to a matter or class of matters if he is satisfied that:

- applying the rule would 'impede the transaction of business of the Council'; or
- it is 'in the interests of the electors or inhabitants of the district of the local authority or of the area under its jurisdiction' that the rule should not apply.

**The declaration requested**

In your letter of 10 June 2020 you have requested, on behalf of all members, a declaration under section 6(4). The scope of the declaration sought is to enable all Councillors to participate in the discussion and voting on whether or not to amend the remuneration policy. This discussion is scheduled to be held at a Council meeting on 25 June 2020 (June meeting).

Under the current remuneration policy, Councillor-directors appointed to an external organisation<sup>1</sup> of the Council in their capacity as an elected member of the Council do not personally receive any fees for that appointment.<sup>2</sup> Instead, the external organisations donate equivalent sums to organisations identified by the Council.<sup>3</sup>

One of the options to be discussed at the June meeting is resetting the remuneration policy to permit Councillor-directors to retain the fees paid by the external organisations.

<sup>1</sup> "External organisations" include Council Organisations, Council-controlled Organisations and Council-controlled Trading Organisations, [Clause 9.12 of the Policy for the Appointment and Remuneration of Directors to Council Organisations].

<sup>2</sup> Clause 9.10 of the Policy for the Appointment and Remuneration of Directors to Council Organisations.

<sup>3</sup> Clause 9.11 of the Policy for the Appointment and Remuneration of Directors to Council Organisations.

You have told us that:

- all members may have a financial interest in the outcome of this discussion given all members could potentially be appointed to an external organisation at some point in the future; and
- the participation of all elected members in the decision-making on the remuneration policy is more important than their individual interests.

#### **Our view**

In our view, it is likely that all Councillors have a financial interest in the outcome of the discussion about the remuneration policy. Those councillors who are willing to be appointed as directors of an external organisation have an interest in the policy on the fees paid to those positions. Members who are not currently Councillor-directors could be appointed to the boards of external organisations and entitled to any remuneration payable. Therefore all councillors are potentially affected by any change to the remuneration policy.

This means that all members are potentially prohibited from participating in decision-making about the policy unless we are satisfied that there are grounds to issue a declaration under the Act.

There is an exception in section 6(3)(c) of the Act that applies to the election or appointment of a member of a local authority to any office, even if the member may be remunerated or receive an allowance for that role.

We do not think the exception applies here. It is for the narrower situation of deciding which particular councillors should be appointed to other bodies, rather than the broader issues covered by the remuneration policy (particularly whether or not the member will receive a financial benefit for performing the role).

In this case, the remuneration policy covers significant policy matters concerning Councillors' contributions of their skills, knowledge and experience to guide external organisations. We think that it is in the interests of the community for all councillors to be able to participate in decision-making about the fees payable for Councillor appointments to commercial boards, despite their direct and potential financial interests. We have granted similar declarations for other councils considering their remuneration policies for external organisations.

#### **Declaration**


The Auditor-General hereby issues a declaration under section 6(4) of the Act authorising all members of the governing body of the Christchurch City Council to participate in decision-making regarding the Council's 2017 Policy for the Appointment and Remuneration of Directors to Council Organisations, on the grounds that it is in the interests of the electors or inhabitants of the area that they be allowed to do so.

If the 2017 iteration of the Policy for the Appointment and Remuneration of Directors to Council Organisations is amended or superseded, the declaration will not apply to any discussion or voting on the amended or new policy.

We would be grateful if you would inform the mayor and councillors of the contents of this letter.

If you have any queries about this matter please feel free to contact me or Miriam Davie, Senior Solicitor on 021 222 6220.

Yours sincerely



Melanie Webb  
Assistant Auditor-General, Legal Policy and Inquiries Group

Copy to: Andy Burns (Appointed Auditor)  
Jonathan Keate, Office of the Auditor-General (Sector Manager)