

Appointment of Elected Members as Directors of Council Organisations Policy (#2123)

Adopted: June 2014

Introduction

This policy is developed 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/or reappointment of elected members to director or board members of FNDC Council Organisations (COs – definitions are in Appendix 1).

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.”

Background

Council may appoint an elected member to be a director of a Council Organisation (CO), either a Council Controlled Organisation (CCO) such as Te Ahu Charitable Trust or Far North Holdings Ltd (FNHL) which is a CCTO, and has done so on occasion in the past (all Council's COs are listed in Appendix 3). This policy's intent is for there to be no director appointment by the Council, except under exceptional circumstances. It is considered that if Council is not getting the relevant information from its CCTO to make decisions, then communication processes need to be strengthened to provide the appropriate level of information. The appointment of a director, typically, will not resolve this issue or make any significant change to the CCO or CCTO's performance.

Often an elected member has a particular interest in a CCTO and has thought they could best support them through a directorship. If Council appoints an Elected Member, then that elected member would need to be excused when Council is making substantive decisions about the CCTO.

Also, typically, the skills required to be a director are spread across the elected members and if 1 elected member had all the attributes required, then this person is an absolute requirement for Council to retain to act in a governance role, when Council is making decisions about the CCTO, the CCTO's Statement of Intent (SOI) or funding CCTO projects.

Policy Objectives

Unless there are exceptional circumstances then the Council will not appoint an Elected Member as a director of a Council Controlled Trading Organisation.

Exceptional circumstances may include temporary appointment to fill a directorship:

- If there is a retirement or resignation and an elected member has the requisite skills to fill the position while a replacement director is found, or
- The office is vacated through disqualification or removal. Directors/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 likely reasons, which would justify removal of a director/board member, would be where a director/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.

The temporary director must meet the same competency levels as an externally appointed director (see appendix 1) and the temporarily appointed elected member cannot undertake the position of Chair or Deputy Chair

The policy applies to:

- Any potential Council appointment of an Elected Member to a CCTO directorship/Board
- Any potential staff member appointments to a CCTO

This policy does not apply to elected members or staff delegated by Council as 'observers' or as a 'resource' to assist the CCTO to fulfil its obligations to the shareholders (Council).

Policy Statements

1. Council will not appoint elected members as a matter of course to directorships of Council Organisations
2. Council will only appoint elected members as temporary directors until:
 - a. either a vacant director position is filled from an external recruitment process, or
 - b. if appointed to provide a particular skill, when that skill is found in an external recruitment process, or
 - c. if appointed as a last resort due to a process lapse, then until that process is strengthened and the shareholders are confident in the relationship with the CO
3. Council will ensure its governance role as the shareholder by:
 - a. a selection and appointment process that ensures non elected member directors understand and accept the needs and priorities of the shareholders

- b. Council will ensure that its expectations of the CCTO's Board is both clearly articulated and achievable – one such mechanism will be through the Statement of Intent (SOI)
 - c. Council and the CCTO's Board will hold regular discussions on key issues and updates on reaching objectives
 - d. There is a “no surprises agreement” between Council and the CCTO
 - e. Any Committee of Council can request attendance by any CCTO or CCO at its meetings or workshops
4. Council will not appoint staff to any Board of a Council Organisation. Staff can be delegated to assist a CCTO or CCO but cannot hold a voting position

Appendix One – Core Competencies for a Temporary Director

- sound judgement and decision-making
- commercial acumen
- 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
- ability to respond to public scrutiny

Appendix Two - 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.

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.

Appendix Three – Schedule of Council Organisations

Far North Holdings Ltd – a CCTO

Te Ahu Charitable Trust – a CCO

Roland's Wood Trust –a CCO

Far North Museum Trust – a public entity but not classed as a CCO or CCTO (Audit NZ 2014)