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## Governance and accountability of council- controlled organisations



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Presented to the House of  
Representatives under section 20 of  
the Public Audit Act 2001.

September 2015

ISBN 978-0-478-44223-6

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# Overview

Council-controlled organisations (CCOs) provide local authorities with opportunities and challenges. They give a local authority the opportunity to engage people with the right skills and experience to focus on operating a business or other undertaking on behalf of the authority. The challenge is that the local authority remains accountable to its community for the CCO's performance. However, despite the name "council-controlled", CCOs are most successful where the local authority seeks to influence rather than control the CCO. CCOs operate best at arm's length from the local authority

CCOs operate in a complex environment. Unlike a privately owned entity, a CCO must meet the expectations of both its shareholders and its community. It operates in a political environment and is accountable to its community for its use of community assets or ratepayer funds.

However, despite the differences between the public and private sectors, the essential requirements for good governance are the same.

In preparing this report, we have talked to several local authorities with CCOs and to CCO directors and managers. The information we have gathered shows that a CCO's success depends largely on an effective relationship between the CCO and its local authority. Such a relationship is based on mutual respect and trust. It goes beyond the statutory requirements and requires ongoing commitment from both parties.

It is also important that the local authority carries out its statutory functions well, to provide the foundations for an effective relationship. In particular, the local authority needs to:

- be clear about the purpose of its CCOs;
- appoint the right people to govern each CCO; and
- meet the requirements for monitoring and accountability.

CCOs have been part of the local government sector since 2002. This report updates our earlier publications on local authority subsidiaries.<sup>1</sup> It offers guidance on how the principles of good governance apply to setting up, operating, and monitoring CCOs. Although we focus on CCOs, the underlying principles and much of the commentary also apply to other local authority subsidiaries.

The report is intended to be useful for local authorities who have CCOs and, in particular, for those thinking about setting up a CCO. Because of the risks and costs associated with owning a CCO, a local authority should not set up one up lightly.

<sup>1</sup> *Local Authority Governance of Subsidiary Entities* (2001) and *Governance of Local Authority Trading Activities* (1994).

This is by no means a comprehensive guide to CCOs. Nor is it general guidance on governance. However, we hope that our discussion of some of the matters that we have encountered will help local authorities and CCOs when they deal with similar issues.

A handwritten signature in black ink, appearing to read 'Phillippa Smith', written in a cursive style.

Phillippa Smith  
Deputy Controller and Auditor-General

25 September 2015

# 1

## Introduction

- 1.1 Most local authorities use subsidiary companies or other entities such as trusts to conduct commercial and non-commercial activities on their behalf. The Local Government Act 2002 (the Act) introduced the term “council-controlled organisation” to describe these entities. Before that, commercial entities controlled by local authorities were called Local Authority Trading Enterprises or LATEs.
- 1.2 This report updates our earlier publications on local authority subsidiaries. It offers guidance on how the principles of good governance apply to setting up, operating, and monitoring CCOs.
- 1.3 Some local authorities also own, or have interests in, subsidiary entities that are not council-controlled organisations, such as electricity lines businesses, port companies, and energy companies. Many of the matters that we discuss in this report are relevant to these other subsidiary entities.

### What is a council-controlled organisation?

- 1.4 The Act defines council organisations, council-controlled organisations (CCOs), and council-controlled trading organisations (CCTOs):
  - A council organisation is the broadest category. It is an entity in which a local authority has any ownership interest whatsoever.
  - A CCO is an entity in which one or more local authorities control 50% or more of the voting rights or appoint 50% or more of the members of the governing body. A CCO can be a company, trust, partnership, incorporated society, joint venture, or other similar profit-sharing arrangement.
  - A CCO that operates a trading undertaking for the purpose of making a profit is referred to as a CCTO. Not-for-profit entities are CCOs.
  - The definition of CCO excludes port companies, energy companies, electricity lines businesses and their parent trusts, and several other named entities.<sup>2</sup>
- 1.5 This report is concerned with entities that meet the 50% ownership threshold – that is, CCOs and CCTOs – rather than other council organisations that do not meet that threshold.
- 1.6 In this report, we use CCO to refer to both CCOs and CCTOs. However, we use CCTO when a point is specific to a CCTO.

### Why we did this work

- 1.7 The Auditor-General is currently the auditor of 124 council-controlled trading organisations (CCTOs) and 74 non-profit CCOs. The Auditor-General also audits another 95 organisations that are related to local authorities but are not CCOs,

including some entities that have been exempted from being CCOs under section 7 of the Act.<sup>3</sup>

- 1.8 Successive Auditors-General have had a long-standing interest in the governance and accountability of public entities and their subsidiaries. In 2001, the then Auditor-General published a report on *Local Authority Governance of Subsidiary Entities*, which updated a 1994 report on *Governance of Local Authority Trading Activities*.
- 1.9 That work pre-dated the Act, which introduced an updated governance and accountability regime for CCOs and brought non-profit entities into the CCO accountability regime. It also pre-dated the reform of local government in Auckland, where CCOs now carry out significant activities on behalf of the Council. In addition, the Auckland Council legislation made some changes to the CCO model that apply only to Auckland.
- 1.10 The statutory framework for CCOs in the Act has been in place for more than 12 years, and the number of CCOs has increased steadily from about 145 in 2002 to 198 in 2015. This document updates our previous publications to reflect the current statutory regime and issues with CCOs.
- 1.11 We wanted to:
- re-examine the principles for good governance of subsidiaries that we proposed in 2001; and
  - identify and discuss the issues relevant to CCOs that have come to our attention since 2002.
- 1.12 In carrying out this work, we focused on the need for:
- a local authority to have a clear purpose for each of its CCOs;
  - an effective and efficient system for the local authority to monitor the CCO and for the CCO to be accountable to the local authority, in accordance with the requirements of the Act; and
  - the CCO to be accountable to its community and for the local authority to be accountable for the CCO's performance.
- 1.13 The last two bullet points distinguish CCOs from other parent/subsidiary models.
- 1.14 A local authority might set up a CCO for a range of purposes. There is no "perfect model". The preferable form for a CCO, its directors, and its monitoring and accountability will all depend on the local authority's purpose for the CCO. A CCO set up to manage a community asset such as a museum is likely to look different from a CCO that manages a business such as an airport.

<sup>3</sup> As at September 2015.



1.15 We set out to consider the various options and opportunities that a CCO gives a local authority. We do not recommend one option over another. We also wanted to discuss the benefits or problems that might arise, with reference to various issues that have come to our attention in recent years.

1.16 Several local authorities have reviewed their CCO arrangements during the last two or three years. These reviews have led to some restructuring of arrangements, including integrating CCO activities back into local authorities. We did not want to repeat the work done by various consultants in reviewing CCO governance structures. Nor did we want to write about governance generally. Rather, we sought to identify and discuss issues specific to CCOs and to offer our view on them.

### How we did this work

1.17 We spoke with elected representatives, current and former board members of CCOs or other subsidiaries, and senior staff from the following local authorities and some of their CCOs:

- Auckland Council;
- Christchurch City Council;
- Dunedin City Council;
- Otago Regional Council;
- Queenstown Lakes District Council;
- Tauranga City Council;
- Wellington City Council; and
- Greater Wellington Regional Council.

1.18 We considered reviews of CCO governance arrangements that were carried out for:

- Dunedin City Council;
- Queenstown Lakes District Council;
- Tauranga City Council; and
- Wellington City Council.<sup>4</sup>

1.19 We also considered our own records, including matters arising during annual financial audits of CCOs and inquiries that involved CCOs. The governance and accountability issues we considered in our inquiry into property investments by Delta Utility Services Limited, a CCO of Dunedin City Council,<sup>5</sup> have contributed to our thinking and work on this study.

<sup>4</sup> We list these reviews in Appendix 2.

<sup>5</sup> *Inquiry into property investments by Delta Utility Services Limited at Luggate and Jacks Point* (2014).

- 1.20 We do not specifically discuss CCOs that have more than one owner. However, the principles and practices set out in this report will apply to those CCOs, although the monitoring and accountability arrangements may be more complex.
- 1.21 We have not specifically focused on Auckland's substantive CCOs because of their differences, and because the council is reviewing them, although we do refer to Auckland where relevant. We have considered the Auckland CCOs in:
- *Planning to meet the forecast demand for drinking water in Auckland* (August 2011); and
  - *Auckland Council: Transition and emerging challenges* (December 2012).

### Outline of this report

- 1.22 The report is structured as follows:
- an outline of the principles and statutory framework underpinning CCOs (Part 2);
  - whether a CCO is the right option (Part 3);
  - getting the design of CCOs right (Part 4);
  - appointing directors (Part 5);
  - accountability and monitoring – the formal requirements (Part 6);
  - monitoring – having an effective relationship between a local authority and its CCOs (Part 7); and
  - operating in the local government environment (Part 8).
- 1.23 We discuss examples of CCOs in Appendix 1.

# 2

## Principles and statutory framework underpinning council-controlled organisations

- 2.1 In this Part, we:
- list the principles of good governance for subsidiary entities;
  - outline the statutory framework for the governance and accountability of CCOs; and
  - note some issues that have arisen with the framework.
- 2.2 We also outline the provisions for Auckland that differ from the framework.

### Principles of good governance for subsidiary entities

- 2.3 In our 2001 report, *Local Authority Governance of Subsidiary Entities*, we proposed five principles for good governance practice for subsidiary entities. They were:

***The subsidiary entity should have a clearly defined purpose.*** We expect the purpose of the entity should be clearly stated and reviewed on a periodic basis. The influence exercised by the local authority over the finances, operations and direction of the entity should be consistent with that purpose.

***The subsidiary entity's governing body should be effective.*** A local authority should have a process in place to appoint a governing body with the skills and competencies to carry out its duties effectively. Procedures should be in place for evaluating the performance of individual members and of the governing body as a whole.

***The parties involved should be assigned clear roles and responsibilities.*** The roles and responsibilities of board members, shareholders, councillors and other parties (such as council and entity staff) should be clearly defined. Clear roles and responsibilities make the trade-offs among differing interests transparent and foster effective decision-making.

***The local authority should be able to hold the subsidiary entity to account.*** A local authority needs the structures, systems, information and capability to –

- promote its interests (for example, as shareholder or purchaser of services);
- influence the direction of the entity, as appropriate within the accountability relationship; and
- monitor performance.

***Mechanisms for accountability to the community must be in place.*** A local authority should demonstrate that it is managing the community's financial and non-financial interests in the entity in an effective and efficient manner.

- 2.4 We confirm these principles and would now add:

**The local authority and subsidiary must establish an effective working relationship based on mutual respect and trust.** That relationship needs to be close enough for the local authority to know how the CCO is performing but still allow the CCO to operate at arm's length.

## The statutory framework for council-controlled organisations

- 2.5 The statutory regime for CCOs is in Part 5 of the Act. No significant amendments have been made to that regime since 2002. However, local authorities should consider how other amendments to the Act, such as the redefinition of the purpose of local government and the requirement for cost-effectiveness in delivering services, might also affect CCOs.
- 2.6 Currently, the main statutory requirements are for a local authority to:
- consult the community before setting up a new CCO;
  - appoint members of the CCO's governing body in keeping with the local authority's policy for such appointments;
  - consider and comment on the CCO's draft statement of intent;
  - describe the significant policies and objectives for the CCO in its long-term plans and annual plans;
  - regularly monitor the performance of the CCO to evaluate its contribution to the local authority's objectives for the CCO and the local authority's overall aims and outcomes;
  - report on the CCO's actual performance and achievements against its planned performance in the local authority's annual report;
  - review the cost-effectiveness of a CCO's provision of local infrastructure, local public services, or regulatory functions; and
  - consider exempting small non-profit CCOs from the accountability requirements in the Act and periodically review any exemptions given.
- 2.7 For CCTOs, a local authority:
- must consider how to assess and manage risks associated with its CCTOs and whether the expected returns from any commercial activities are likely to outweigh the risks inherent in the activities;<sup>6</sup>
  - must not give favourable loans or other forms of financial accommodation to CCTOs; and
  - must not guarantee, indemnify, or give a security for any obligation by a CCTO.
- 2.8 The statutory requirements for a CCO and its board members include to:
- achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent;
  - be a good employer;

6 A local authority's investment policy must state the local authority's policies for investments, including how it assesses and manages risks associated with investments (section 105 of the Act). CCTOs can be regarded as a form of investment. See also section 14(1)(fa) of the Act.

- show a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and endeavouring to accommodate or encourage those interests when able to do so;
- carry out its affairs in keeping with sound business practice (if it is a CCTO);
- make all operational decisions under the authority of the statement of intent and constitution;
- prepare an annual statement of intent, a half-yearly report, and an annual report;<sup>7</sup> and
- meet the requirements of Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987.

## Issues with the statutory framework

- 2.9 We have previously reported on some issues with the statutory framework. These issues include:
- how local authorities have used the power to exempt small CCTOs;
  - compliance by non-profit CCTOs with the requirement to have a statement of intent (this was a new requirement for those entities from 1 July 2004); and
  - the quality of performance measures in statements of intent.
- 2.10 We did most of this work in the first few years after the Act introduced these new measures in 2003. In that work, we commented that some local authorities and CCTOs were slow to learn and meet the new accountability requirements for non-profit CCTOs. The main problem was CCTOs not reporting their performance and achievements in their annual reports because they did not have a statement of intent to report against.<sup>8</sup>
- 2.11 This has now been largely fixed. Most local authorities and CCTOs meet the accountability requirements, and there is less need for us to refer to breaches in our audit reports.
- 2.12 However, the quality of statements of intent has been and remains an issue. In 2007, we published a report on the quality of statements of intent and performance reporting by CCTOs and other public entities.<sup>9</sup> In that report, we criticised the range and quality of performance measures some CCTOs use and how they reported achievements against those measures.

<sup>7</sup> These requirements do not apply to listed companies – see section 71A of the Act.

<sup>8</sup> Controller and Auditor-General (2008), *Local Government: Results of the 2006/07 audits*, “Part 9: Non-profit council-controlled organisations”.

<sup>9</sup> Controller and Auditor-General (2007), *Statements of corporate intent: Legislative compliance and performance reporting*.

- 2.13 It is not clear to us that local authorities are commenting on draft statements of intent or using their power to modify the content of the statement of intent as much as they could. We comment on this in Part 7.
- 2.14 Other issues about CCOs have arisen in annual audits or as matters raised with us by ratepayers. Those matters include:
- whether local authorities had properly consulted before setting up a CCO,<sup>10</sup> including whether the consultation requirement had been avoided when a holding company rather than a local authority formed the CCO;
  - local authorities breaching the Act's prohibitions on giving favourable financial treatment to their CCTOs;<sup>11</sup>
  - the commercial failure of smaller CCTOs;
  - the appropriateness of local authorities subsidising the activities of CCOs that compete with local businesses; and
  - appointing councillors as directors, including concerns about management of conflicts of interest for councillor/directors and whether councillors should be remunerated for their director role.

### **Auckland Council and substantive CCOs**

- 2.15 In 2010, Auckland's local authorities were amalgamated into Auckland Council. The legislation that enacted this amalgamation introduced the concept of a "substantive CCO". These are defined as CCOs that deliver significant services or activities on behalf of Auckland Council or that own or manage assets with a value of more than \$10 million.<sup>12</sup> Seven such CCOs were formed in the amalgamation.
- 2.16 Some additional accountability requirements apply to Auckland Council and its substantive CCOs. These include:
- Auckland Council must have an accountability policy for substantive CCOs. This policy must set out how the Council expects the CCOs to contribute to the priorities of the Council and the Government. The Council may require the CCOs to say how they will do this in their statements of intent.
  - Substantive CCOs must give effect to the Council's long-term plan and act consistently with other plans (including local board plans) and strategies if the Council directs it to do so.

<sup>10</sup> The Act previously required a local authority to use the special consultative procedure before setting up or becoming a shareholder of a CCO. In 2014, this changed to a requirement to consult in keeping with the consultation principles in section 82. This does not apply to a CCO such as a holding company that establishes a subsidiary CCO.

<sup>11</sup> See sections 62 and 63.

<sup>12</sup> Section 4(1) of the Local Government (Auckland Council) Act 2009.

- 2.17 Auckland Council can also impose additional accountability requirements on substantive CCOs. It can:
- specify additional planning and reporting requirements beyond those in Part 5 of the Act;
  - set out any requirements for managing strategic assets, including the process for approving any major transactions;
  - require quarterly reporting; and
  - require substantive CCOs (other than Auckland Transport) to adopt 10-year plans covering asset management, service levels, how the CCO will respond to population growth and environmental factors, and how the CCO will give effect to the Council's plans and priorities.
- 2.18 The other unique feature of the Auckland model for substantive CCOs is the statutory prohibition on appointing councillors or local board members to the governing body of a substantive CCO (apart from Auckland Transport, where two councillors may be appointed).
- 2.19 There is also a requirement for all of Auckland Council's CCOs to hold two meetings in public each year:
- At one meeting, the CCO considers comments from shareholders on its draft statement of intent for the forthcoming financial year.
  - The other meeting considers the CCO's performance in the previous financial year against its statement of intent.

# Is a council-controlled organisation the right option?

3.1 In this Part, we look at what a local authority should consider when deciding to set up a CCO. We discuss:

- what the local authority should consider before deciding to set up a CCO;
- the benefits and disadvantages of CCOs; and
- the risks that the local authority should consider.

## Considerations before deciding to set up a council-controlled organisation

3.2 Before deciding to set up a CCO, a local authority needs to comply with the requirements and principles in Part 6 of the Act that apply to decisions. This will include considering the costs and benefits of setting up a CCO as opposed to other options, and identifying who might be affected by the decision and how to consider their views.

### Is a CCO the best option?

3.3 In setting up a CCO, a local authority needs to:

- determine what it is trying to achieve;
- consider whether a CCO is the best means to achieve that objective;
- consider whether a CCO is a cost-effective and sustainable way of achieving the objective;
- decide whether the entity will be a CCO or a CCTO;
- if the CCO is a CCTO, consider whether it will be a viable business in terms of size and capability; and
- ensure that it has the capability and capacity to manage a relationship with the CCO and to monitor its performance.

### Capability to govern and monitor

3.4 The local authority's own ongoing capacity and capability to oversee the subsidiary – both at Council and management levels – is an important question when setting up a CCO. This is particularly so for a local authority setting up a CCO for the first time. The oversight needed includes:

- appointing directors for the new entity;
- managing an effective relationship with the CCO;
- setting an appropriate monitoring framework;
- engaging with accountability and reporting documents prepared by the CCO; and
- meeting the local authority's own accountability and reporting requirements in the Act.



- 3.5 Managing all of these successfully is fundamental to setting up and maintaining a good relationship with the CCO. We discuss each further in Parts 5 to 7.

## Benefits and disadvantages of council-controlled organisations

### The benefits a CCO may bring

- 3.6 In 2009, the Royal Commission on Auckland Governance and the Auckland Transition Agency considered how about 40 council organisations associated with the former Auckland local authorities would fit in to the new Auckland Council structure. The Royal Commission noted that local authorities give the following reasons for placing activities in separate entities:<sup>13</sup>
- improved commercial focus – that is, operating a company with a professional board of directors with the objective of achieving greater operating efficiency;
  - ring-fencing financial risk, by using an incorporated structure to insulate a local authority from financial liability for an activity or venture involving other parties (such as a joint venture);
  - empowering local communities – that is, creating a trust with a set budget funded by a local authority but managed by members of the community for a specific purpose such as maintaining a community centre; and
  - tax-effectiveness – local authorities can derive tax credits from commercial subsidiaries that pay dividends.
- 3.7 Other reviews and stakeholders identified some further benefits of CCOs:<sup>14</sup>
- independence – separation from political direction;
  - streamlining bureaucracy, enabling nimbleness and agility – CCOs have less “process” to follow in making decisions than local authorities;
  - economies of scale, where shared services CCOs combine several local authorities’ similar activities;
  - the ability to recruit and retain high-quality board members and staff who might not be available to be members or employees of a local authority; and
  - access to a wider range of funding sources – a trust or similar entity with community representatives can get donations and contributions for significant community projects and may be eligible for funding that local authorities are not.

<sup>13</sup> *Royal Commission on Auckland Governance* (March 2009), Volume 1, chapter 21, paragraph 21.14, pages 459-460.

<sup>14</sup> Auckland Transition Agency (March 2010), *Auckland in Transition: Report of the Auckland Transition Agency*, “Volume 2 Attachments: Council Controlled Organisations”, Part 1, pages 8-9; Queenstown Lakes District Council (2013), *Organisational Review Assessment of the council-controlled organisation model*, page 8.

## Possible disadvantages of CCOs

- 3.8 Some possible disadvantages of CCOs include:
- the local authority's lack of direct accountability to the community for the services the CCO delivers;
  - tensions between the objectives of pursuing profit and delivering community outcomes;
  - additional ongoing costs – the costs incurred by the local authority in monitoring the performance of the CCO, and the CCO's own costs, can increase overall service delivery costs; and
  - reduced ability to manage risk – arm's-length delivery can make managing risks to the reputation of the local authority more difficult.<sup>15</sup>
- 3.9 Figure 1 gives an example of a local authority that has tried a range of alternative arrangements for service delivery.

### Figure 1 Delivering regulatory services through a council-controlled organisation – Queenstown Lakes District Council

Queenstown Lakes District Council has tried a range of options for delivering its services since the mid- to late 1990s. These include contracting out to the private sector, the CCO model, and then bringing most activities back in-house. In 1998, the Council took the novel step of contracting out its regulatory services to a private company as part of a general move at the time to contract out many of its core services.\* Nine years later, in 2007, the Council decided to end the arrangement with the private company and bring regulatory services one step closer to the Council by buying the private company and forming a new CCO to deliver regulatory services.\*\*Again, this was an unusual arrangement for regulatory services.

In late 2012, the Council commissioned a review of two of its CCOs as part of a wider organisational review of all Council activities.† The review assessed the cost, efficiency, and effectiveness of the CCO model against 13 criteria.†† Other councils reviewing their CCOs might find these criteria useful.

The review recommended that it would be more appropriate for the Council to provide regulatory and recreation and leisure activities than the two CCOs. The primary reasons were to reduce cost, both to the Council and to customers; to reduce fragmentation of activities; to improve integration of policy development and regulatory functions; and to improve management of the tension between commercial and community outcomes.

The Council agreed with the recommendation. In March 2013, it decided to disestablish the two CCOs and to bring their activities back in-house.

\* We reported on how Queenstown Lakes District Council went about this decision, and considerations for other local authorities considering contracting out, in a 1999 report, *Contracting Out Local Authority Regulatory Functions*.

\*\* We inquired into the Council's consultation and decision-making process and reported to the Council in a letter that we published on our website in September 2007, *Queenstown Lakes District Council – regulatory and resource management services*.

† The Council's airport company, Queenstown Airport Corporation Limited, and a forestry joint venture with Central Otago District Council were excluded from the review.

†† Queenstown Lakes District Council (2013), *Organisational Review Assessment of the council-controlled organisation model*, page 3.

15 This paragraph includes points made in Queenstown Lakes District Council (2013), *Organisational Review Assessment of the council-controlled organisation model*, page 8.

## Considering costs and benefits

- 3.10 Although setting up a CCO to manage a local authority service may have cost efficiencies, there will be additional overhead costs associated with establishing and continuing to oversee a CCO. The CCO will have its own overhead costs. It will have a management and administration structure separate from the local authority. It will incur costs in preparing a statement of intent and in reporting against it, and will also incur audit fees. It may have additional accountability requirements under legislation other than the Act, such as the Companies Act 1993 or the Charities Act 2005.
- 3.11 Local authorities should be aware of these costs and take them into account when deciding whether a CCO is the most appropriate model. In short, the scale of a CCO's undertaking should be large enough to justify the additional costs.
- 3.12 The Act was amended in 2014 to require local authorities to review the cost-effectiveness of their service delivery arrangements.<sup>16</sup>
- 3.13 This new requirement requires local authorities to actively consider the place of CCOs in service delivery. A review must consider options for governance, funding and delivery of infrastructure services, and regulatory functions.
- 3.14 The Act lists the options that local authorities must consider when reviewing arrangements. The local authority can:
- retain responsibility for all aspects of service delivery;
  - delegate responsibility for governance and funding to a joint committee or other shared governance arrangement; or
  - retain responsibility for governance and funding but give responsibility for delivery to a CCO, other person or agency, or another local authority.

## Considering risk

- 3.15 Considering risk, and whether the perceived benefits outweigh any inherent risks, is an important step in deciding whether to set up a CCO.
- 3.16 Councillors need to be comfortable with devolving authority to others, because directors of CCOs will effectively be making decisions on their behalf. A local authority must make clear to its CCOs how much risk it will tolerate. Then, when the CCO is operating, it should be able to give the local authority assurance about how it manages risk.

### Local authorities need to consider risk management

- 3.17 Local authorities are required to consider and express their views on risk management from time to time in their investment policy.<sup>17</sup> Local authorities with CCOs need to have an effective governance regime for managing the risks associated with CCOs, including through the statement of intent process. This is part of a council's responsibility for prudent financial management.
- 3.18 In addition, amendments to the Act in 2010 added new requirements to consider the risks of commercial activities. Local authorities must now periodically determine whether the expected returns from any investments or commercial activities are likely to outweigh the risks inherent in the investment or activities.<sup>18</sup>
- 3.19 There is also a requirement to address risk management in contracts between local authorities and CCOs where the CCO is responsible for delivering infrastructure, services, or regulatory functions for the local authority.<sup>19</sup>

### Can a local authority transfer risk to its CCO?

- 3.20 A reason for setting up a separate entity such as a CCO can be to insulate the local authority from financial liability for an activity or venture involving other parties (such as a joint venture). However, when there are concerns or problems, the parent local authority is likely to find that it retains accountability for outcomes – in a reputational sense at least.
- 3.21 When transferring authority and responsibility to the governing body of a CCO, the local authority needs to be clear about its appetite for risk. The local authority also needs to make this clear to CCO directors.

17 Section 105(e) of the Act. CCTOs are usually regarded as a form of investment.

18 Section 14(1)(fa) of the Act.

19 Section 17A(5) of the Act.

3.22 Our inquiry into property investments by Delta Utility Services Limited (Delta) at Jacks Point and Luggate illustrates these points (see Figure 2).<sup>20</sup>

**Figure 2**  
**Losses associated with property investments by a council-controlled trading organisation – Delta Utility Services Limited**

In mid-2008, Delta, a CCTO of Dunedin City Council, entered into a joint venture for a residential sub-division at Luggate, near Wanaka. The property development was not successful, and Delta lost about \$4.4 million from the Luggate joint venture (after tax). Delta also lost about \$2 million on another property investment at Jacks Point, Queenstown. Although the Dunedin City Council had no legal liability for the investments or the losses, the Council's net worth decreased by about \$6.4 million because of Delta's investments. Ratepayers with concerns about the investments directed their criticism at the Council as well as at Delta.

In our inquiry report, we considered that the Council bore some responsibility for the investments even though Delta did not give the Council much information about the investments. This was because the Council's governance regime at that time failed to provide any guidance or oversight to Delta about investment, and the Council had not specified its risk appetite for the activities of its trading organisations. The Council's main interest seemed to have been on returns from its CCTOs and not so much on what they were actually doing.

In 2011, the Council changed the governance arrangements for its CCTOs. We outline those changes in Example 3 in Appendix 1. Delta has subsequently ceased its property development activities.

# Getting the design of a council-controlled organisation right

4.1 In this Part, we consider:

- the importance of being clear about the purpose of a CCO;
- whether a CCO is a CCO or a CCTO;
- the constitution or equivalent founding documents of a CCO; and
- the advantages and disadvantages of holding companies.

4.2 In setting up a CCO, a local authority may need also to consider other questions such as:

- how it will manage possible conflicts between its role as shareholder of a CCO and a role as purchaser of the CCO's services or regulator of the CCO's activities; and
- whether it needs to ensure a "level playing field" between the CCO and the CCO's local competitors.

## The need for clarity of purpose

4.3 It is important that a local authority is clear about why it has a CCO or CCTOs. The purpose of each CCO needs to be clear to the local authority's elected members and to the CCO. The purpose for the CCO is likely to affect:

- the choice of the CCO's legal form;
- the detail of its constitution;
- who the local authority appoints to govern the CCO; and
- the arrangements that the Council puts in place to monitor the performance of the CCO (see Part 7).

4.4 A local authority must consult the community before setting up a CCO.<sup>21</sup> It must be able to state the CCO's purpose clearly to enable effective consultation with the community and to set clear objectives for the CCO. This is an opportunity for the local authority to explain its reasons for setting up a CCO, say why it is choosing a CCO over other options considered, ensure that its objectives for the CCO are known, and take account of community views in its decision-making process.

## Local authorities should consider whether the CCO's purpose is consistent with the purpose of local government

4.5 The purpose of local government was changed in 2012. It now focuses on the needs of the local authority's own district or region for local infrastructure, local public services, and regulatory functions. The purpose for local government formerly referred to promoting the social, cultural, economic, and environmental well-being of communities, in the present and in the future.

- 4.6 A local authority must, in its district or region, “meet the current and future needs ... for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.<sup>22</sup> It would seem that the purpose of a CCO should fall within that statutory definition of the purpose of local government.
- 4.7 Section 11A of the Act provides that a local authority, in performing its role, must have particular regard to the contribution five core services make to its communities:
- network infrastructure;
  - public transport service;
  - solid waste collection and disposal;
  - the avoidance or mitigation of natural hazards; and
  - libraries, museums, reserves, and other recreational facilities and community amenities.
- 4.8 Most of the activities of the CCOs known to us fit within the five core areas listed in paragraph 4.7. Other activities include:
- contracting in areas outside core activities, such as property development, including outside the district or region;
  - economic development;
  - forestry and farming; and
  - technology and innovation (where it is not obviously related to core activities such as waste).
- 4.9 Our observation from this study and our other work with local authorities is that most local authorities have not yet considered in any detail how the 2012 revised purpose of local government might affect or constrain CCO activities.

### **Should the entity be commercial or non-commercial?**

- 4.10 When setting up a CCO, a local authority needs to decide whether the CCO’s main purpose is to operate a business for profit or to perform a public benefit activity, such as provide a service to the community on behalf of the local authority.
- 4.11 If the local authority intends the entity to be a profit-making enterprise, the entity will be a CCTO and the most appropriate structure for the entity is likely to be a company. For non-profit activities, such as operating community facilities, the entity will be a CCO and a structure such as an incorporated society or charitable trust may be more appropriate.
- 4.12 When considering the Auckland Council CCO structure, the Auckland Transition Agency noted the benefits of carrying out commercial activities through CCOs:

- CCOs can use board appointments to introduce commercial disciplines and specialist expertise to add value to CCOs and help them to better achieve their objectives and the Council's long-term strategies.
- CCOs focus on achieving a constrained set of business objectives (as opposed to the much broader focus of councils). This, along with a corresponding drive to align resources with the required outcomes, brings a unifying focus to the entity.
- CCOs can make efficiency gains by aligning systems and processes to the specific needs of the business (again, as opposed to the multi-faceted nature of councils).
- CCOs are often able to collaborate more effectively, especially by forming partnerships and alliances with the private sector. CCOs are commonly perceived as being more commercial and flexible than local authorities.<sup>23</sup>

4.13 From the local authority's perspective, giving responsibility to a capable board to run a commercial activity efficiently on the local authority's behalf can free up the local authority to focus on matters such as strategy, policy, or regulatory functions.

### Why set up non-profit CCOs?

4.14 Most of the reasons for setting up separate entities relate to commercial entities. The Royal Commission noted that the main reason for setting up a non-profit CCO was to empower a local community. As Figure 3 shows, a local authority may also set up a CCO with the intention of distancing it from the local authority to better attract funding from the community, particularly in the arts sector.

### Figure 3 External funding sources for a non-profit council-controlled organisation – Tauranga Art Gallery

Tauranga Art Gallery was initially set up by an independent trust. Much of the capital funding came from private sources. The Gallery later became a CCO when the Council was required to provide ongoing operational funding and determined that increased oversight was required.

One of the Gallery's objectives, as set out in its Trust Deed, is to lead and promote activities to raise funds for the Gallery. A review of the Gallery's governance structure in January 2013 (Morrison Low, *Tauranga City Council Review of CCOs and Tauranga Art Gallery Trust*) identified the lack of funding as an ongoing concern. The report commented that no public art gallery is self-sustaining financially, and all rely on public funding to be sustainable. The report also recorded a view that potential donors can be reluctant to donate funds to a Council-owned entity because benefactors think that they are subsidising the Council. This concern has led to the establishment of independent fund-raising foundations, in Tauranga and elsewhere.

23 Auckland Transition Agency (March 2010), *Auckland in Transition: Report of the Auckland Transition Agency*, "Volume 2 Attachments: Council Controlled Organisations", page 8.



- 4.15 A local authority may also seek to “ring-fence” risk. We commented in Part 3 that local authorities need to recognise that they are likely to retain reputational responsibility for CCOs even when they try to transfer risk.

### **Tax**

- 4.16 Tax considerations are also relevant in deciding whether to set up a commercial or non-commercial entity, and in CCO group structures where some of the entities are profitable and some are not.
- 4.17 A non-profit CCO with charitable purposes that is not a company may be recognised as exempt from income tax. A CCO can operate on a commercial basis but be a non-profit entity. However, if it has a purpose of making a profit and is able to return profit to its shareholders, it will be a CCTO.
- 4.18 Tax is a complex area on which a local authority should seek specialist advice.

### **The council-controlled organisation’s constitution**

- 4.19 In setting up a CCO, the local authority will prepare the CCO’s constitution. This is a set of rules for governing the actions of a CCO. The Act requires all decisions about operating the CCO to be made in keeping with its statement of intent (discussed in Part 7) and constitution, so it is important to get the constitution right.
- 4.20 Most CCTOs will be companies, but a non-profit CCO could be a trust, partnership, incorporated society, joint venture, or other arrangement. The form of the “constitution” referred to in the Act will vary accordingly.
- 4.21 The constitution is a means by which the local authority can:
- define what matters must be referred back to local authority and what can be decided by the CCO’s directors;
  - permit directors of the CCO to act in the interests of the local authority or holding company, rather than the CCO, as provided by section 131(2) of the Companies Act 1993; and
  - recognise and set out procedures for managing potential conflicts between its roles as owner and purchaser or funder or regulator (see paragraphs 4.37-4.42).
- 4.22 Formal documents such as the constitution and the statement of intent, and non-statutory measures such as a letter of expectations, play an important role in ensuring that the purpose and role of the CCO is clearly understood. These documents should be reviewed regularly – see Example 4 in Appendix 1.

### Section 131(2) of the Companies Act 1993

- 4.23 There is a question as to whether a CCO company's constitution should include a provision enabling a director of the subsidiary to act in what the director believes to be the best interests of the parent rather than the subsidiary, as permitted by section 131(2) of the Companies Act 1993.
- 4.24 In our view, section 131(2) of the Companies Act adds little to the requirements of the Local Government Act. Section 59(1)(a) of the Local Government Act provides that the principal objective of a CCO is to "achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent". This means that the interests of a CCO ought to be aligned with those of its parent authority. However, it is possible that issues may arise that are not specifically covered by the statement of intent.
- 4.25 There are arguments in favour of including a provision to give effect to section 131(2) in a company CCO's constitution. CCOs are part of a local authority group, and the community frequently expects the same accountability from a CCO as it does from the local authority. A section 131(2) provision enables directors to take account of the wider social obligations of the parent authority.
- 4.26 It is possible that directors less used to governance in the public sector might take comfort from such a provision. Further, it might help councillors who are directors of CCOs to manage any potential conflict between their roles as councillor and as director.
- 4.27 Of the local authorities we reviewed during our work, most include a section 131(2) provision in the constitutions of subsidiary companies.

### Holding company

- 4.28 A holding company will have responsibility for managing a local authority's interests in its subsidiary entities and will usually carry out the monitoring role on behalf of the local authority (see Parts 6 and 7). The holding company's primary responsibilities will be for the strategic direction of the local authority's CCOs as a group and monitoring their operational performance.
- 4.29 A holding company can develop and promote best practice in corporate governance processes. It can contribute specialist commercial skills, experience, and business disciplines to the monitoring of the local authority's trading activities and be a valuable adviser to CCO directors and officers.
- 4.30 Of the local authorities we considered in this review, Christchurch City Council, Dunedin City Council, and Greater Wellington Regional Council have holding

companies. Tauranga City Council had a holding company but has now disestablished it.

- 4.31 We discussed the advantages and disadvantages of a holding company with people we interviewed. They identified the following advantages of a holding company:
- It enables a clear focus on subsidiary entities' performance and governance.
  - Borrowing can be managed at a group level.
  - It helps to separate politics from the commercial realities of running a business.
  - It can remove or reduce undue political influence on the appointment of directors for the subsidiaries.
  - It enables an appropriate delineation between operations and governance responsibilities.
- 4.32 On the other hand, interviewees identified the following disadvantages:
- A holding company structure does not help with community relations and often makes discussions between the local authority and an operational CCO difficult.
  - A holding company can act as a barrier between the subsidiary and the elected members – delegating the monitoring role to a holding company can create an additional layer of reporting that elected members do not support because they want to “look the board in the eye”.
- 4.33 We discuss monitoring by holding companies further in Part 7, and Examples 1 and 3 in Appendix 1 are about holding companies.

### Other matters to consider

- 4.34 A local authority will never be just the shareholder of a CCO. It will always be accountable to the community for the activities of the CCO. It is also likely to have other roles for the CCO – such as purchaser, regulator, or promoter of economic development in the district.
- 4.35 A protocol to clarify the various relationships between the local authority and the CCO can help define the governance relationship. Such an agreement will also help define the commercial relationship between a CCO and its parent entity where goods or services are being purchased.
- 4.36 Where possible, local authorities should consider and make their position on these matters clear when setting up a CCO. This is because they can affect community views on the proposal.

### Managing the owner/purchaser roles

- 4.37 When a local authority is purchasing services from its subsidiary, there is an inherent tension between the two roles. As shareholder, the local authority is interested in the efficient and successful operation of the CCO. It sets objectives and expects the CCO to achieve them. Those objectives might include making a profit. However, as purchaser, the local authority will want to minimise the cost of the service, whether that cost is met by the authority directly<sup>24</sup> or by fees paid by ratepayers.
- 4.38 As shareholder, the local authority will monitor the CCO's performance (unless that function is carried out by a holding company). It may also want to monitor aspects of the CCO's performance in providing services. The two concerns should be separate, and the monitoring processes should ideally be kept separate. For instance, different council officials could be responsible for the two functions.
- 4.39 For example, in Christchurch, City Care has separate relationships with Christchurch City Holdings Limited (CCHL) as its parent and with the Council officers for the works contracts it has with the Christchurch City Council.<sup>25</sup> City Care representatives we spoke with said that they had no contact with councillors (other than in their capacity as CCHL directors). They described the relationship with the Council as "purely contractual" and related only to service delivery. City Care's accountability relationship is with its immediate parent, CCHL.
- 4.40 The "ownership" relationship will be recorded in the statement of intent and any letter of expectations. It is important that the purchaser relationship is also recorded.<sup>26</sup> A purchase contract will define matters such as service level, price, and the rights that the local authority will have as purchaser to monitor the CCO's performance of its obligations.
- 4.41 Determining fees and charges is an operational decision that the directors of the subsidiary are responsible for. However, the local authority could reserve the right to set fees or require the CCO to consult it. In practice, ratepayers will want affordable fees and charges for services. Ratepayers may look to their elected representatives to intervene when fees are increased or when ratepayers consider them to be too high. Although actual accountability will lie with the CCO, elected members will retain some political accountability. We discuss this matter further in Part 8 and in Figure 7.

<sup>24</sup> Section 14(1)(f) of the Act requires a local authority to carry out any commercial transactions in accordance with sound business practices.

<sup>25</sup> We discuss City Care and its contracting arrangements in Example 2 of Appendix 1.

<sup>26</sup> If the CCO is responsible for delivery of infrastructure, services, or regulatory functions for the local authority, there must be a contract or other binding agreement, unless one of the exceptions in section 17A applies – see sections 17A and 61 of the Act.

- 4.42 A local authority should consider whether, if the service and its price is so significant or sensitive that elected members want to have a continuing involvement in it, it may not be a suitable function for the local authority to devolve to a CCO.

### Competitive neutrality

- 4.43 Local authorities generally try to promote economic development in their districts by encouraging businesses to set up there. However, there is an argument that CCOs operating in direct competition with private businesses may inhibit competition and deter business growth.
- 4.44 The Act has some restrictions to ensure “competitive neutrality” for CCTOs. These provisions restrict the local authority’s ability to lend money on favourable terms to CCTOs or to give any guarantee, indemnity, or security for a CCTO’s performance of its obligations.<sup>27</sup>
- 4.45 There is no restriction in the Act on a local authority awarding contracts to its CCOs. This is a matter of policy for local authorities. The local authority’s procurement policy should cover contracting with CCOs and how it fits with the local authority’s overall policy and strategy. In some instances, local authorities might have strategic reasons for giving their CCOs work, such as ensuring their financial viability. However, controversy can arise if it appears that the local authority favours its CCOs by awarding contracts to them or subsidising their operations.
- 4.46 In other instances, local authorities require their CCOs to compete for work on the same footing as other businesses. This can be a concern for CCOs, especially if they are facing financial difficulties and if they see themselves as part of the broader council group that the local authority has responsibility for. Equally, the community may consider that the local authority should favour its CCO as a local employer over competitors from outside the district. We consider this further in Example 2 of Appendix 1.
- 4.47 The question of subsidy, whether real or perceived, can arise when a CCO competes with a privately owned business. Figure 4 describes the example of Tauranga City Council’s aquatic centre, which includes a gym.

**Figure 4**  
**Competing with private businesses – Tauranga City Council’s aquatic centre and gym**

Bay Venues Limited is a subsidiary of Tauranga City Council. It manages the Council’s aquatic centre and gym. It charges one fee for membership of both the swimming pool and the gym. Other gym providers argued that they cannot match this deal and that the CCO is subsidising the cost of gym membership.

Tauranga City Council has a policy\* about Council involvement in commercial activity and whether the Council or a CCO should deliver that activity. The policy covers factors such as financial benefit to the community, contribution to the Council’s strategic objectives, synergy with a public service delivered by the Council, and competitive issues.

Councillors were satisfied that the gym was making a profit that subsidised the ratepayer-funded aquatic facility. It appeared that the fees charged were at the upper end of typical membership fees in Tauranga, and that there was no subsidisation of the gym.

The Council has agreed, in its Enduring Statement of Expectations for Bay Venues Limited,† that the CCO may increase fees for “non-commercial pricing decisions” – where an entry price has a Council subsidy – without consulting the Council, provided the increase does not exceed the annual increase in the Consumer Price Index. Any pricing change above that must be agreed with the Council as part of annual funding negotiations. The CCO can set prices for commercial activities as it wants, as long as the Council has warning of any significant change.

\* See Example 5 of Appendix 1 and [http://econtent.tauranga.govt.nz/data/documents/committee\\_meetings/2014/december/agen\\_council\\_15decem2014\\_dc358.pdf](http://econtent.tauranga.govt.nz/data/documents/committee_meetings/2014/december/agen_council_15decem2014_dc358.pdf).

† Commercial Activities in Council Facilities Policy, adopted 15 June 2011.

### Council as regulator

- 4.48 We comment on the regulatory responsibilities of local authorities for the sake of completeness.
- 4.49 Local authorities have many regulatory responsibilities under several statutes. Local authorities can be both service provider and regulator of that service. They can also be in competition with other private providers at the same time.<sup>28</sup>
- 4.50 If a CCO carries out regulatory functions, the local authority should ensure that it puts in place the same separation between the regulator function and the CCO as it does when the local authority carries out the regulated activity.

# 5

## Appointing directors

- 5.1 In this and the following three Parts, we discuss the role of a local authority, and its elected members, in relation to its CCO(s). The local authority's primary responsibilities under the Act are:
- to appoint the directors of a CCO (see Part 5);
  - to set the direction of the CCO through the statement of intent (see Parts 6 and 7);
  - to monitor the CCO's performance (see Parts 6 and 7); and
  - accountability for the CCO's performance (see Part 6).
- 5.2 In this Part, we consider:
- the legal requirements for appointing directors of CCOs;<sup>29</sup>
  - appointing the chair and independent directors;
  - councillors and local authority managers as directors; and
  - the process for appointing directors.

### Legal requirements for appointing directors of a council-controlled organisation

- 5.3 The Act requires a local authority to have an objective and transparent process for appointing directors to a CCO.<sup>30</sup> The Act provides that a local authority can appoint only a person with the appropriate skills, knowledge, or experience to contribute effectively to the entity's achievement of its objectives:

#### **57 Appointment of directors**

*(1) A local authority must 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; 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 only 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.*

- 5.4 A CCO's governing document (such as a trust deed) might also contain provisions about who may be appointed to a CCO's board or the method of appointment.

<sup>29</sup> We use the terms "director" and "board" in the same way that the Act does (see section 6(3)(b)) to include trustees or other office holders responsible for the governance of a CCO.

<sup>30</sup> This requirement applies to all appointments to council organisations, which include CCOs.

- 5.5 Appointing directors is an important role, because it is one of the local authority's principal means for influencing the performance of a CCO. In large part, good governance depends on the performance of the directors. A transparent process is important so that the public can have confidence that directors are appointed on merit and drawn from a wide range of possible appointees.
- 5.6 If a local authority complies with section 57 of the Act, the board of a CCO should be made up of a diverse range of people who are able to bring relevant expertise to the organisation. For the board to be fully effective, it should comprise directors with a range of complementary skills and experience to ensure that ideas are challenged and tested and that decision-making is robust.
- 5.7 The local authority's purpose for a CCO will determine its choice of directors. A CCO is likely to need directors experienced in working in a commercial environment, at least some of whom will be skilled professional directors. A CCO operating a community facility might benefit from drawing a director or two from the community.

### Chair of the board

- 5.8 The local authority usually appoints the chair unless the CCO's constitution states otherwise. An effective chair will influence the success of the board. The chair will be the spokesperson for the entity and will be the primary point of contact between the local authority and the entity. The chair will manage board meetings and play a leadership role in guiding the direction of the CCO.
- 5.9 The local authority should aim to appoint a chair who is experienced in governance and who understands the context in which local government subsidiaries operate.

### Independent directors

- 5.10 The Financial Markets Authority has noted that:  
*Independence of mind is a basic requirement for directors ... Directors with an independent perspective are more likely to constructively challenge each other and executives – and thereby increase the board's effectiveness.*<sup>31</sup>
- 5.11 To meet the statutory requirement for directors with appropriate skills, knowledge, and experience, the local authority is likely to need to appoint directors who are independent of the local authority. The desirability of engaging commercial expertise in a council business is often a reason for setting it up as an arm's-length entity.
- 5.12 The general view is that independent directors can be appointed to provide:

<sup>31</sup> Financial Markets Authority (2014), *Corporate Governance in New Zealand, Principles and Guidelines, A Handbook for directors, executives and advisers*, page 13.



- commercial and governance expertise;
- diversity on the board; and
- an insulating layer between the political activities of the Council and its operational arms.

5.13 Conversely, it is argued that independent board members do not always appreciate the legislative obligations of the parent local authority or that the expectations of a CCO differ from those of a private organisation. Commercial directors may know little about local government and may not understand the political context and expectations for increased transparency.

5.14 Local authorities should recognise that new directors from the private sector might not have experience of the challenges of the local government environment. A CCO's induction for new directors should be designed to address that need.

### Councillors as directors of CCOs

5.15 Local authorities may want to appoint councillors to the boards of their CCOs.<sup>32</sup> Reasons may include a desire to prioritise the parent local authority's objectives and expectations and to provide a way for information to flow between the subsidiary and the local authority.

5.16 The same statutory provisions apply to appointing an elected member as a director: the appointment process should be objective and transparent, and the elected member should have the requisite skills, knowledge, or experience to contribute as a director.

5.17 Our review identified a range of opinions about appointing elected members. Each of the following arguments, for and against, was made to us several times during interviews.

5.18 Elected members say that councillor-directors:

- are likely to have a good knowledge and understanding of local government and of the local community;
- contribute valuable "political nous" to a CCO board;
- provide an extra layer of assurance that the subsidiary will be kept in touch with the "mood" of the Council;
- add value by managing matters about the CCO that are before the Council;
- contribute to the diversity of the board; and
- can act as a representative for their community's interests.

<sup>32</sup> However, the Auckland model for substantive CCOs has a statutory prohibition on appointing councillors or local board members to the governing body of a substantive CCO (apart from Auckland Transport, where two councillors can be appointed).

- 5.19 Councillor-directors can also add to the Council's understanding of the affairs of the CCO. Around the Council table, they are able to provide clarity to their colleagues about matters affecting the CCO. They can ensure that the Council has an informed debate that focuses on the main issues for decision. That said, councillor-directors may be unable to participate in decisions on matters about the CCO because of their interest as a director.
- 5.20 However, those we interviewed also identified disadvantages in having councillors on boards. The principal arguments made against councillor-directors were:
- councillor-directors often lack the skills to perform well as a director;
  - there is an inherent conflict between a councillor-director's obligations to the Council and their community and their obligations to the subsidiary; and
  - councillor-directors are more likely to be subjected to, and swayed by, pressure from community groups, so that it may be more difficult for a councillor-director to maintain confidentiality of commercial or other information about the CCO's business.
- 5.21 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 focused 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.
- 5.22 Most independent directors and CCO board chairs we spoke to believed that the disadvantages of councillor appointments outweigh the benefits. The unanimous view was that CCO directors should be competent to carry out the governance function effectively, and some noted that some councillor-directors lack that competence.
- 5.23 We consider that appointing elected members to CCO boards should be the exception. If local authorities wish to appoint elected members to their subsidiary boards, then the appointment should be open and transparent, and subject to the same selection criteria as for independent directors.
- 5.24 We acknowledge the argument that elected members can make a contribution to CCO governance. We also recognise that councillor-directors may add value to a board by being a Council voice, by ensuring that the CCO's objectives are aligned to those of the local authority, and by providing a community perspective. However, a councillor-director must have the necessary skills and experience to contribute fully to the governance of the CCO.

- 5.25 If a local authority appoints councillors to the boards of its subsidiaries to ensure that the CCO remains mindful of its shareholder's expectations, the councillor's presence on the board should not be a substitute for a formal system for monitoring and accountability. There are other, more transparent methods for the parent local authority to influence a CCO, such as the statement of intent process, a letter of expectations, the dividend policy, and approval of major transactions.
- 5.26 In our view, 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.

### Local authority managers as directors of CCOs

- 5.27 A local authority may want to appoint its chief executive or another senior officer to the board of a CCO.
- 5.28 Many of the advantages and disadvantages with councillor-directors will apply also to managers as directors. There is also real potential for a manager's role as adviser to the Council to conflict with his or her obligations to the CCO as director.

### Appointments process

- 5.29 A local authority must adopt a policy that sets out a "transparent and objective" process for appointing members of a governing body with the skills and competencies to carry out their duties effectively (see paragraph 5.3).
- 5.30 The policy should cover such matters as:
- who is eligible (or not eligible) for appointment – for example, elected members, staff, residents of the district;
  - the process for identifying which skills appointees should have;
  - how candidates will be identified;
  - how candidates' skills will be assessed;
  - the composition of the appointment panel (for example, does it include external members?);
  - the role of the board chair (for example, will the chair be consulted or be a member of the appointment panel?); and
  - the remuneration of directors.
- 5.31 Each local authority we spoke to had appropriate appointments policies for independent directors. However, the processes for appointing councillor-directors were less clear. An exception was Christchurch City Council.

- 5.32 Many local authorities do not include the CCO chair in the process of appointing directors. Some chairs said it would be useful for them to take part. This was because they have greater knowledge and experience of current board members and are better able to determine the “fit” of a preferred candidate. Although it is the right of the local authority to appoint directors to its boards, we recognise that there may be value in including the chair in the appointments process.

### **Remuneration of CCO directors**

- 5.33 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.
- 5.34 Wellington City Council adopted a policy in 2011 that councillors appointed to subsidiary boards are not remunerated. One councillor-director told us that this policy was intended to take the politics out of appointments. However, he thought that councillor-directors are now “second class citizens” because they are treated differently from remunerated independent directors.

# 6

## Accountability and monitoring – the formal requirements

- 6.1 In this Part, we discuss the primary requirements for:
- a local authority and a CCO to account for the CCO’s performance;
  - a local authority’s monitoring of its CCOs; and
  - exempting small CCOs from the accountability requirements in the Act.

### Statutory requirements for accountability and monitoring

#### The CCO

- 6.2 The Act requires a CCO to prepare and publish:
- an annual statement of intent, agreed to by the parent local authority (see Part 7); and
  - an annual report, which must include a comparison of its actual and intended performance (as set out in its statement of intent), and audited financial statements.<sup>33</sup>
- 6.3 A CCO must produce a half-yearly report for shareholders on the entity’s operations during the half year, including the information required by its statement of intent.<sup>34</sup> The form and content of the half-year reports will differ according to those requirements. The report may contain financial information, but it does not have to be audited.

#### The local authority

- 6.4 The Act requires a local authority to:
- consult its community before setting up a CCO;<sup>35</sup>
  - include its significant objectives and policies for ownership and control of CCOs in its long-term plan and signal any significant changes in its annual plans;<sup>36</sup> and
  - include in its annual report a comparison of the CCO’s actual performance with the intended performance set out in the local authority’s long-term plan (or annual plan).<sup>37</sup>
- 6.5 A local authority may include forecast financial statements for its CCOs in its long-term plans and annual plans.<sup>38</sup>

<sup>33</sup> Sections 67 and 68 of the Act.

<sup>34</sup> Section 66 of the Act.

<sup>35</sup> Section 56 of the Act.

<sup>36</sup> Section 95 and Schedule 10, clause 7, of the Act.

<sup>37</sup> Schedule 10, clause 28(c), of the Act.

<sup>38</sup> Schedule 10, clauses 12 and 18, of the Act.

- 6.6 The focus of local authority reporting is on how the local authority's significant policies and objectives for owning and controlling CCOs have been met and on whether the CCO has delivered on planned achievements and results as set out in the local authority's long-term or annual plans.<sup>39</sup> The local authority's annual report must include enough information to enable an informed assessment of the operations of the CCO, including a comparison with the CCO's stated objectives in its statement of intent.
- 6.7 The Act requires a local authority to set out its objectives and strategies for having CCOs and how it will measure the CCOs' performance, not just the objectives and performance measures for the CCOs.

### Reporting on specified activities

- 6.8 From the 2015 long-term plans, local authorities and CCOs that provide five specified groups of activities must use a standard set of performance measures when reporting to their communities on the delivery of those activities. The groups of activities are:
- water supply;
  - sewerage and the treatment and disposal of sewage;
  - stormwater drainage;
  - flood protection and control works; and
  - roads and footpaths.
- 6.9 If a CCO provides these activities, it must include additional information in its statement of intent and report against that information in its annual report. The additional information is a statement of intended levels of service provision that specifies:
- the mandatory performance measures for the group of activity;
  - if mandatory performance measures have not been specified, the performance measures that the CCO considers will enable the public to assess the level of service for major aspects of groups of activities; and
  - the CCO's target for each performance measure.

### Monitoring

- 6.10 A local authority must monitor the performance of its CCOs to evaluate their contribution to the achievement of:
- the local authority's objectives for the organisation;
  - the desired results set out in the CCO's statement of intent; and
  - the overall aims of the local authority.<sup>40</sup>

<sup>39</sup> Schedule 10, clauses 7 and 28, of the Act.

<sup>40</sup> Section 65 of the Act.

- 6.11 Monitoring includes the local authority agreeing to the CCO's statement of intent and putting systems in place to evaluate whether the CCO has achieved the local authority's objectives for it and the CCO's contribution to the local authority's overall aims and outcomes. Carried out well, monitoring gives the local authority assurance that the CCO is meeting the objectives that the local authority has set. Monitoring provides the basis for a constructive relationship between local authority and CCO.
- 6.12 We further discuss monitoring, both formal and informal, in Part 7.

### **Public access to information**

- 6.13 Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to CCOs as if they were local authorities. This means that the provisions of that Act about access to official information apply to CCOs. However, the provisions of that Act about meetings do not apply. The Ombudsmen Act 1975 also applies to CCOs – meaning that an Ombudsman can investigate and report on any matter of administration involving a CCO.

### **Review of purpose**

- 6.14 The requirement that a local authority state its own objectives in owning CCOs and that it agree to the CCO's statement of intent means that local authorities are likely to review these matters regularly.
- 6.15 Generally, the local authorities we spoke to were clear about their overall strategy and objectives for their CCOs. Most had stated this well in their accountability documents, although one had focused on the role and objectives of its CCOs rather than what the Council sought from them.
- 6.16 The local authorities that have CCOs for investment purposes were particularly clear on purpose – for example, Dunedin City Council, which requires its CCOs to “maximise dividends”.<sup>41</sup> The process that Tauranga City Council used to review its CCOs and agree on their purpose is set out in Example 5 in Appendix 1.

### **Exempting CCOs from accountability requirements**

- 6.17 The Act provides for some entities to be exempted from being a CCO. The consequence of exemption is that the Act no longer applies to the entity for the period of the exemption. The practical effect is that the entity does not have to meet the reporting requirements for CCOs set out in the Act. However, the parent local authority should still monitor the entity's performance.

- 6.18 Under section 7, there are two means by which a CCO may be exempted:
- The Governor-General may exempt an entity on a recommendation from the Minister of Local Government. This provision is aimed at entities that are already subject to appropriate accountability under their own Acts. Therefore, the Minister must be satisfied that the entity's accountability under its own Act is of a similar nature and effect to that required of a CCO under the Act.<sup>42</sup>
  - A local authority can exempt "small" organisations. This provision addresses concerns about compliance costs for small non-profit trusts. The Act does not define "small", but local authorities cannot exempt CCTOs. In exempting non-profit entities, local authorities must have regard to:
    - the nature and scope of the activities provided by the entity; and
    - the costs and benefits, if an exemption is granted, to the local authority, the entity, and the community.
- 6.19 If a local authority exempts a CCO, it may revoke the exemption at any time. A local authority must review an exemption within three years after it is granted and then at intervals of no more than three years. In most instances, although the exempt entity is no longer required to prepare financial statements under the Act, it is required to do so under its rules or trust deed.<sup>43</sup>
- 6.20 Most exempt CCOs are trusts that operate community facilities in the arts, cultural heritage, recreation, or social services areas. These activities are often done by small non-profit community entities such as trusts. If those entities are small, the costs of accountability under the Act may outweigh the benefits and they are likely to be appropriate candidates for exemption.
- 6.21 There are about 30 CCOs exempted by their local authorities that are still subject to audit by the Auditor-General. They have annual revenues that range from under \$5,000 to \$13.3 million and assets that range from under \$7,000 to almost \$19 million. They include some larger entities associated with the Auckland Council that are "small" in the context of the Auckland Council.

42 The Otago Museum Trust Board, Museum of Transport and Technology Board, and Canterbury Museum Trust Board have been exempted by the Governor-General under section 7(1).

43 The Auditor-General continues to audit most of these exempt entities under their trust deeds or rules, despite their being exempted from the Act.



# 7

## Monitoring – having an effective relationship between a local authority and its council-controlled organisations

- 7.1 In this Part, we discuss matters that local authorities should consider when determining the most effective model for monitoring the performance of their CCOs. These matters include:
- the importance of an effective relationship between a local authority and its CCOs; and
  - appropriate administrative processes, both formal and informal, for monitoring a CCO's performance.

### An effective relationship between a local authority and its council-controlled organisations

- 7.2 However a local authority chooses to monitor its CCOs, its primary aim should be to find a system that enables an effective relationship between parent and subsidiary. That relationship should go beyond the formal statutory requirements.
- 7.3 An effective relationship is founded on mutual respect between local authority and CCO for the role of the other. It needs to be close enough for the Council to know how the CCO is performing, but still leave the CCO space to operate at arm's length.
- 7.4 A CCO is part of the Council's broader operations, and the Council is ultimately accountable to the community for the performance of the CCO. The Council will want confidence that the CCO is performing well and meeting community expectations, and that it is operating as a public sector entity should. The Council should not be surprised by the activities of the CCO and, if things go wrong, the CCO should have ready access to the Mayor and the local authority's chief executive.
- 7.5 After an effective relationship has been established, it needs to be maintained. Elected members and board members change. Induction for new elected members should include a briefing about the local authority's CCOs and how the local authority manages its relationship with them. Similarly, induction for new board members should include a briefing on the CCO's relationship with the local authority.
- 7.6 In our work with local government, we sometimes observe tensions in the relationship between local authorities and their subsidiaries. Difficulties can arise for several reasons, including:
- a lack of strategic alignment between the local authority and the CCO;
  - inadequate communication between the local authority and the CCO;
  - the CCO failing to appreciate and respect the accountability obligations of the local authority; and

- the local authority failing to respect the confidentiality of information provided by the CCO or to allow the CCO to manage its business at arm's length.

7.7 Elected members are directly answerable to their community for the delivery of services and the appropriate use of ratepayer funds, so it is unsurprising that they expect to maintain oversight of a CCO. However, for the relationship between the Council and its CCO to operate effectively, the Council has to trust the CCO to deliver on its expectations.

7.8 The local authority's formal and informal mechanisms for monitoring a CCO's performance should be designed to support that relationship of trust.

### What does monitoring include?

7.9 There is no one model for monitoring CCOs. The arrangements that a local authority adopts should fit the particular circumstances of the CCO. Details may even differ from one CCO to another – there may be different practices for a CCO and a CCTO in the same group.

7.10 However, a framework for monitoring should:

- offer opportunity for genuine engagement between the Council and CCO, at appropriate intervals and at the appropriate level of seniority, on the Council's strategy and priorities and on the CCO's business performance and risks;
- enable adequate consideration of the CCO's draft statement of intent;
- comply with the relevant legislation;
- not impose costs on either the local authority or the CCO that are out of proportion to the benefits that the CCO achieves; and
- enable councillors to pursue their interest in the CCO's business openly and transparently.<sup>44</sup>

7.11 At a minimum, a monitoring regime will include:

- agreement of the statement of intent;
- regular reporting by the CCO, at least each quarter, on progress against the objectives set in the statement of intent; and
- a good relationship between the local authority and the CCO, at both governance level and officer level, which enables issues to be dealt with early.

### Statement of intent

7.12 Monitoring is not a means for a local authority to control a CCO, but it is an opportunity to set its direction. Engagement on a CCO's statement of intent is the local authority's primary opportunity for influencing the actions of the CCO. The statement of intent should reflect the strategic direction of both the parent

44 Letter to the chief executives of Watercare Services Limited and Auckland Council (2011).

and the CCO.<sup>45</sup> The statement of intent must set out the CCO's objectives and the nature and scope of the activities it will carry out.

- 7.13 The statement of intent must set out the CCO's intended objectives and actions for three years. If the CCO has subsidiaries, the statement of intent must cover them as well. The statement of intent must not be inconsistent with the CCO's constitution.
- 7.14 The Act makes the importance of the statement of intent and constitution clear. It provides that all decisions about the operation of a CCO must be made by, or under the authority of, the board, in keeping with the statement of intent and the constitution.<sup>46</sup>
- 7.15 We have observed, in this review and in other work, that both CCOs and local authorities can underrate the significance and value of the statement of intent. It can be considered a compliance burden rather than a useful tool for planning, management, and reporting, and for the CCO's accountability to the public. The importance of the statement of intent process is illustrated by Example 4 in Appendix 1.
- 7.16 The Act requires the local authority to agree to the statement of intent. A local authority should consider the draft carefully and require the CCO to modify it if necessary. Local authorities can also require the CCO to modify the statement of intent during the year, asking it to add or remove content.<sup>47</sup> Our understanding is that the modification process is little used.
- 7.17 Agreement on the statement of intent ensures that the subsidiary is operating within broad parameters approved by the shareholder. By facilitating an effective and robust process, with councillors who are engaged, and a subsidiary that is responsive and committed to working with its shareholder, the local authority will ensure that the agreed statement of intent is a document that provides clarity and direction for all parties. Figure 5 shows one approach to achieving this.

45 See Schedule 8 of the Act for the purpose of the statement of intent, and process and content requirements.

46 Section 60 of the Act.

47 Section 65(2) of the Act.

**Figure 5**  
**Aligning council-controlled organisations with their local authority’s strategy – Wellington City Council**

One approach is to let the CCOs consider how they fit with the local authority’s overall strategy. Wellington City Council told us that, when the Council was developing a long-term strategy for the city,\* all CCOs were asked through letters of expectation to tell the Council how they were contributing, rather than the council setting out its expectations. This was a “bottom up” method for ensuring that the CCOs considered the strategic direction of their shareholder and what they needed to do to ensure alignment in the early stages of development of the Council’s strategy.

\* Known as *Wellington Towards 2040: Smart Capital*.

**Timing**

- 7.18 The Act requires a CCO to:
- present its draft statement of intent to its shareholder on or before 1 March each year;
  - to consider the shareholder’s comments within two months;
  - to complete the statement of intent by 30 June; and
  - to make it publicly available within one month of completion.<sup>48</sup>
- 7.19 This time frame was intended to fit with the local authority’s consultation on its annual or long-term plan, which must also be completed by 30 June.
- 7.20 However, most local authorities finalise their draft annual plans or consultation documents in March or early April. This allows a local authority little time to incorporate information about the CCO into those documents. In practice, some local authorities require their CCOs to submit information at an earlier date than the statutory date for the draft statement of intent. Directors of one CCO commented that they were required to provide budget information in the previous October. They thought that it was too early from a commercial point of view to have firm plans for the next financial year beginning nine months ahead.
- 7.21 That said, the formal presentation of the draft statement of intent draft should not be the local authority’s first intimation of any significant new initiative that the CCO plans. Ideally, the local authority and the CCO would be in regular discussions about the CCO’s proposals before the draft statement of intent is presented. If engagement starts early, there should be no surprises when the draft statement of intent is presented. This should enable the local authority to incorporate any significant proposals in its documents for consultation.

48 Schedule 8, clauses 2, 3, and 7, of the Act.

### Letter of expectations

- 7.22 Some local authorities (for example, Christchurch and Tauranga City Councils) also provide their CCOs with a letter of expectations. Although there is no statutory requirement for a local authority to do this, it can be a useful mechanism for providing clarity about roles and responsibilities, and for setting clear boundaries on how the board meets its obligations. It can be a valuable addition to the local authority's monitoring regime.

### Monitoring regimes

- 7.23 Local authorities use a variety of models for monitoring their subsidiary entities. Some assign responsibility to a holding company. Others prefer to monitor their subsidiaries directly, sometimes through a sub-committee of the Council with support from a dedicated Council business unit.

### Holding company

- 7.24 A holding company has responsibility for managing a local authority's interests in its subsidiary entities and will usually carry out the monitoring role on behalf of the local authority. It can also review the performance of the boards and directors of its subsidiaries.
- 7.25 Of the local authorities that we considered in this review, three have holding companies that monitor their subsidiaries – Christchurch and Dunedin City Councils, and Greater Wellington Regional Council. Example 1 in Appendix 1 describes the Christchurch group. Example 3 in Appendix 1 describes changes Dunedin City Council made to its holding company after a review.

### Council monitoring

- 7.26 Of the local authorities we considered, three have in-house CCO monitoring units that support the Council in its monitoring of CCOs.
- 7.27 Auckland Council set up a CCO Governance and Monitoring Committee of Council to monitor the performance of its CCOs, appoint directors, and negotiate the statements of intent. Auckland Council has a dedicated monitoring unit in the Council's Finance team to monitor and assess performance.
- 7.28 At Wellington City Council, monitoring of CCOs is carried out by the relevant committee of Council, based on the committee's area of responsibility. The Council has a dedicated CCO business unit that provides support and advice to the committees, manages the Council's relationships with its CCOs, and oversees the monitoring regime.

- 7.29 The advantage of an in-house monitoring unit is that it is a ready point of contact in the local authority for CCOs. It can also be a ready source of advice for elected members.
- 7.30 However, there are disadvantages. There is a risk that council officers can become involved in the business of the CCO. Several of the CCO interviewees claimed that CCOs' performance reports to the Council were in effect prepared by council officers, rather than by CCOs.
- 7.31 If an in-house business unit performs the monitoring role, the local authority should ensure that council officers respect the subsidiary's governance framework and management structure and allow the subsidiary to fulfil its obligations without undue interference.
- 7.32 As we noted in paragraph 3.4, the need to monitor CCOs and manage the local authority's relationship with them means that the local authority must have the capability to do so. This is particularly so where the Council carries out the monitoring directly, supported by its officers.

### Informal mechanisms

- 7.33 In addition to the statutory requirements, local authorities and CCOs can consider other ways to improve the effectiveness of their relationship. Which mechanisms are appropriate will depend on the nature of the CCO.
- 7.34 For local authorities, this may include:
- supplementing the statutory accountability framework to make their expectations clear to CCOs, such as by sending a letter of expectations;
  - involving their CCOs in their strategic planning processes (see Figure 5); and
  - periodically reviewing how their CCOs contribute to the local authority's overall objectives and outcomes.
- 7.35 For both CCOs and local authorities, other considerations are:
- agreeing how often CCO boards or board representatives should meet with elected members, whether formally at Council meetings or informally (perhaps in a workshop setting);
  - whether to set up regular meetings between the Mayor and the chair and their respective chief executives;
  - agreeing on appropriate communication channels for CCO staff and local authority staff;
  - considering informal ways of communicating, including briefings or workshops for significant activities or projects;

- considering whether reporting more regularly than half yearly is necessary and, if so, to what purpose; and
- agreeing to a “no surprises” approach to communication.

7.36 Informal points of contact will help to support a “no surprises” approach and help the CCO to understand the local authority’s appetite (or lack of appetite) for risk. Particularly for a CCTO, informal points of contact provide an opportunity for the directors and managers of the CCTO to understand the culture that the local authority considers acceptable for a public sector entity.

### Council observers on CCO boards

7.37 We encountered a few instances where a shareholder local authority sends an “observer” to board meetings of its CCO subsidiary. The observer might be the Mayor or another elected member, or an employee of the local authority. The observer reports back to the local authority informally on the CCO’s business. The reasons usually given were that the observer gave the local authority “some comfort” about the CCO and could provide the local authority’s perspective to the CCO.

7.38 If there is an effective monitoring regime and a good relationship between the local authority and the CCO, we consider that an observer is unlikely to add much. However, in the example of Port Otago Limited in Figure 6, the role was based on good relationships and seemed to work well. If there is to be an observer, then the role must be clearly defined and understood by the CCO, the local authority, and the observer. For example:

- Does the observer have the right to speak at meetings?
- Does the observer convey information to the board from the Council?
- Who does the observer report back to and on what matters?
- What CCO information will the observer receive?
- Does the observer have access to confidential information, and who can the observer report that information to?
- Could the observer’s role amount to them being a “deemed director” of the CCO?<sup>49</sup>

7.39 We suggest that, if there is to be an observer, the role should be designed to benefit both the local authority and the CCO. Above all, an observer should not be a substitute for formal monitoring by the local authority.

**Figure 6**  
**Otago Regional Council observers at Port Otago Limited**

We spoke with representatives from Port Otago Limited (the company) and Otago Regional Council. The company has both port and property activities. It is governed by a six-member board and pays regular dividends to the Council.

The company and the Council told us that the long-standing accountability and governance relationship between them, which involves both formal and informal mechanisms, works well.

The board members are independent directors appointed by the Council. The Council does not appoint councillors to the board. A senior Council staff member attends board meetings as an observer.

As well as formal half-yearly and annual reports, the company's chair and chief executive report periodically to the whole Council, and a liaison group of company and Council representatives meets as required to discuss particular issues. The liaison group also briefs councillors from time to time. The company takes a "no surprises" approach to its dealings with the Council.

### Board evaluations

- 7.40 Another aspect of performance monitoring is regular evaluation of a CCO board's performance – whether by the board itself, by a holding company, or by a reviewer external to the board. Evaluation should cover the performance of the board as a whole and the performance of individual directors.
- 7.41 Formal evaluation is an opportunity to assess how well the board is performing, to identify possible improvements in how it operates, and to identify skill gaps in directors. It can identify training and development needs for individual directors.
- 7.42 The Institute of Directors is a source of guidance on evaluating board performance.

### Compliance costs

- 7.43 Local authorities and their CCOs can incur significant costs in ensuring the CCO's accountability to the shareholder and the community. A local authority should consider whether the obligations it imposes on its subsidiary entity, in terms of both staff resourcing and costs, are in proportion to the function, size, and capability of the entity.
- 7.44 It is important that the local authority establishes clear channels of communication with the CCO for monitoring purposes and that those channels are used. For example, an elected member wanting information from the CCO should seek that information through the appropriate Council officer. To go direct to the CCO risks duplication and can impose an administrative burden on CCO staff outside the formal accountability requirements.



- 7.45 There is also a risk that a local authority's role as owner can become confused with its day-to-day engagement with the CCO as the provider of a service. We noted in our review of Watercare Services Limited in 2011<sup>50</sup> that such confusion of relationships could require additional reporting by Watercare that goes beyond what councillors need to know to discharge their governance role.
- 7.46 If a local authority purchases services from the CCO, it will want to monitor service performance. This dual interest as shareholder and purchaser can lead to more intensive scrutiny than a similar entity might experience from its shareholders in the private sector.

# Operating in the local government environment



- 8.1 In this Part, we focus on matters that directors (and managers) of a CCO will encounter as part of a public entity but are unlikely to meet in the private sector. These matters include:
- operating in the political environment of local government;
  - accountability in that environment;
  - requirements for releasing information; and
  - managing conflicts of interest.
- 8.2 These add to factors we discussed in earlier Parts of the report:
- the statutory requirements for accountability and monitoring (Part 6); and
  - the features of an effective relationship between a local authority and its CCOs (Part 7).
- 8.3 Although it is easy to identify differences between public and private sectors, the essential requirements for good governance are the same.

## Operating in a political environment

- 8.4 A CCO operates in a complex environment. Although a CCO may be an arm's-length commercial operation, unlike a privately owned entity, it operates in a political environment. It must meet the expectations of both shareholder and community. A CCO is the steward of community assets or uses ratepayer funds. It is accountable to the community for their use. At the same time, the parent local authority is accountable to the community for the performance of the CCO.
- 8.5 CCOs are publicly owned entities. As elected representatives of the community, councillors have a legitimate interest in a CCO's activities. As a consequence, CCOs are subject to scrutiny from members of the public and from elected members that a business in the private sector is unlikely to experience. Private sector businesses are used to operating in private. Public sector entities must be prepared to operate in public.
- 8.6 Public scrutiny is often apparent in the expectation that information will be readily available or in allegations that a director's personal interests conflict with those of the CCO. These matters are discussed later in this Part.
- 8.7 Further, elected members have a direct accountability to the community that elected them. They are also likely to have many connections in the community. Directors of CCOs may be less connected to the community, so members of the public may turn to councillors when they perceive problems with a CCO.
- 8.8 A decision of a CCO justified on commercial or other grounds and consistent with the agreed objectives set out in its statement of intent might nevertheless be

unpopular with the community. The community might expect councillors to bring pressure on the CCO to review its decision. An example could be land that a CCO owns but does not currently use. The CCO might seek a commercial return on the land, whereas the community might prefer that the land be used as a park or playground.

### **Political accountability**

- 8.9 The formal statutory requirements are unlikely to address all of the accountability issues with CCOs that might arise. Problems in accounting for the performance of a CCO generally arise from the complexity of the relationships between a subsidiary entity, its shareholding local authority, and the community.
- 8.10 We discussed the question of political accountability with the people we interviewed – whether elected members, CCO directors, or officials. Drawing on those discussions, and on our other work in the local government sector, we believe that addressing the following matters can help.

#### **CCOs must understand the political environment they operate in**

- 8.11 A CCO must understand the political environment it operates in. Directors and managers of a CCO need to acknowledge that councillors often engage with the community and will, from time to time, also want to engage on matters to do with the CCO.
- 8.12 CCOs can perceive that, when the CCO is running smoothly, the local authority receives the credit but that, when things go wrong, the subsidiary gets the blame. CCOs need to understand that, as owner, the local authority will want to publicise “good news stories” about its subsidiaries.
- 8.13 However, the parent local authority also needs to understand that its adoption of the CCO’s successes can send a conflicting message to the community, who may then assume that the local authority is responsible for the delivery of service or stewardship of assets.

#### **Handling complaints about CCOs**

- 8.14 It is simple to say that responsibility for handling complaints about a CCO should sit with the Council when the issue concerns the Council’s strategy for the CCO, and with the CCO when the complaint concerns the CCO’s delivery of service or performance more generally.

- 8.15 As Figure 7 shows, in practice, complaints will be made directly to councillors or the local authority, who are likely to want to try to resolve the matter rather than referring it to the CCO.
- 8.16 We suggest that the local authority and the CCO agree a protocol on handling complaints to avoid confusion about the accountability of the CCO.

**Figure 7**  
**Handling complaints – Wellington City Council**

Wellington City Council faced criticism from community groups after it merged Wellington's major events venues, including the Wellington Town Hall and the Michael Fowler Centre, into a CCO called Positively Wellington Venues Limited. The merger followed concerns that the venues were costing too much to manage in-house. The Council's terms of reference for the CCO required it to break even but also to achieve greater community access to the facilities. However, elected members began to receive complaints from community groups used to getting discounted rates under the previous structure, who believed that the rates were too high.

The CCO then faced political pressure to review its fees, which had been set at a level to ensure that the subsidiary covered its costs. In spite of the political pressure, the fees remained unchanged.

**CCOs must have effective engagement with the community**

- 8.17 A CCO needs to engage with the community, especially if it is delivering a service on behalf of the Council. The nature of the engagement will depend on the business of the CCO. For example, if the CCO delivers a service, the relationship with the community will be that of supplier and customer.
- 8.18 CCOs need to think about what information they make available to the community, because the community is ultimately the CCO's owner. We discuss the statutory requirements for the release of information in paragraphs 8.21-8.29.

**Local authorities should say what they want**

- 8.19 We discussed in Part 7 the importance of an effective relationship and clear expectations between the local authority and the CCO. Expectations may be communicated by any or all of the statement of intent, a letter of expectations, and a policy drafted by the subsidiary and agreed to by the local authority.
- 8.20 These expectations can include the level and means of the CCO's community engagement. It is an opportunity for the local authority to identify issues it wishes to deal with itself or on which it wants to be consulted before there is public communication. Such issues might concern, for example, the tension between dividend to the local authority and subsidy of service to the community or between dividend and investment in the CCO's business. The local authority and

the CCO should try to anticipate the issues that might arise and agree in advance how they should be handled.

## Releasing information

- 8.21 A CCO is subject to the requirements of the Local Government Official Information and Meetings Act 1987 about releasing information. The presumption is that information will be released unless one of the specified grounds for withholding information applies – for example, to enable the carrying out commercial activities or to protect legal professional privilege.

## Sensitive information

- 8.22 The request for commercially sensitive information may come from the parent local authority. A CCO is not required to include information in its statement of intent, its half-yearly report, or its annual report that it could properly withhold under the Local Government Official Information and Meetings Act.<sup>51</sup>
- 8.23 However, as the owner, the local authority will expect to receive important commercial information from its subsidiary, including sensitive information that may not be public. This can be particularly challenging if the subsidiary is a listed company.
- 8.24 The local authority is entitled to receive information it needs to hold its subsidiary to account, including sensitive information. Local authorities need strategic commercial information to act as diligent shareholders. They need to understand the board's strategy for the CCO, business cases for major investments, the financial outlook for the business, and expected turnover.
- 8.25 However, the local authority should ensure that it has effective processes to manage the exchange of sensitive information and minimise the risk of confidentiality breaches. Concerns about the risks of sensitive information being publicly disclosed can impede the flow of information and affect the relationship if the concerns are not proactively managed and the risks minimised.
- 8.26 Setting procedures for handling sensitive information, having a common understanding of respective interests, and having clear expectations about how such information will be protected will support a relationship of trust and confidence.
- 8.27 There was a general acknowledgement among the CCOs we spoke to that a higher level of transparency is required because a subsidiary entity is publicly owned. However, they also observed that this requirement can have a negative effect on operations if the subsidiary cannot maintain a competitive edge.

- 8.28 One subsidiary told us that it is often a challenge to strike a balance between meeting obligations for transparency in the accountability documents while maintaining commercial sensitivity. Although the subsidiary complies with its obligations to include specific information in its statement of intent, it is always mindful that competitors use the documents because they signal proposed or actual commercial activity. This affects what information is included. See also Example 4 in Appendix 1.
- 8.29 Some local authority subsidiaries are companies listed on the New Zealand Stock Exchange and subject to its rules about information flows. This can affect what information can be shared with the shareholder. In addition, listed companies are exempted from the requirement to prepare a statement of intent, a half-yearly report, and an annual report.<sup>52</sup> As a result, the local authority may not receive as much information as it wants.

### Confidentiality breaches

- 8.30 Sometimes, information can be misused. Many of the CCO directors and managers we spoke with mentioned the risk that not all elected members were prepared to keep sensitive information about the CCO's activities confidential.
- 8.31 Such confidentiality breaches can inhibit the exchange of information and have a detrimental effect on the relationship between a local authority and its CCO. They can also create risk for the commercial position of the CCO.
- 8.32 We mentioned in our 2014 report into investments by Delta Utility Services Limited that there can be a tension between open communication and commercial sensitivity for CCOs:
- 7.33 *For council-controlled trading organisations, there can be a tension between open communication and commercial sensitivity. There will often be a good reason for a council-controlled organisation to protect or withhold information during commercial negotiations [under the Local Government Official Information and Meetings Act 1987], including when the council-controlled organisation considers that there is a risk of leaking confidential information that might affect those negotiations.*
- 7.34 *However, when decisions have been made, confidentiality considerations should become less important, and council-controlled organisations need to decide then how best to communicate with their shareholding councils. Private sector entities dealing with council-controlled organisations should be aware of this, and that the situation is more complex when dealing with a public entity.<sup>53</sup>*

<sup>52</sup> Section 71A of the Act.

<sup>53</sup> Controller and Auditor-General (2014), *Inquiry into property investments by Delta Utility Services Limited at Luggate and Jacks Point*, page 126.

- 8.33 CCHL told us that it has not experienced significant issues with breaches of confidentiality. There is a clear understanding between the holding company and its subsidiaries that all reports are treated as confidential, because competitors could use information made public. As a result, the subsidiaries provide more detailed information in their reports to CCHL than they otherwise might.
- 8.34 However, sensitive information is excluded from reports that go to the Council to minimise the risk of information being leaked to the public.
- 8.35 CCHL's guidelines for the conduct of directors require directors to observe the confidentiality of non-public information acquired by them as directors.

### **Conflicts of interest**

- 8.36 CCOs are public entities and stewards of public assets. In that context, the perception that a director of a CCO is acting in their own interest is serious. Given the public scrutiny of public entities, allegations of conflicts of interest seem to arise readily. It is important to handle such allegations carefully. In the mind of the public, the perception of a conflict of interest can be as damaging as an actual conflict.
- 8.37 Actual conflicts of interest will often arise. New Zealand has a small population, and CCO directors are likely to have other interests in the business and local communities. Conflicts of interest, potential or actual, should be identified, declared, and carefully managed.
- 8.38 For CCO companies, the provisions of the Companies Act 1993 about conflicts of interest apply to board members. That Act defines an interest in a transaction to be when a director is a party to, or will or may derive a material financial benefit from, the transaction, or if they are a director, officer, or trustee of a party to the transaction.
- 8.39 When such a situation arises, a director must disclose their interest to the board and add it to the interests register. If there is a likelihood of an interest causing a future conflict, a director can include a general notice in the interests register. This is then regarded as enough disclosure of interest for that transaction.
- 8.40 Failing to disclose interests in keeping with the requirements of the Companies Act is an offence.
- 8.41 Councillor-directors are also subject to these requirements. In addition, they must be mindful of the conflict of interest rules contained in the Local Authorities (Members' Interests) Act 1968 when they are participating in matters before the local authority that they may have a pecuniary interest in.

- 8.42 Even if there is no pecuniary interest, a councillor can create legal risk to a decision before a local authority if their participation raises:
- a conflict between their duty as a member of the local authority and any duty to act in the interests of the subsidiary; or
  - a risk of predetermination, if the councillor has taken part in earlier discussions on the matter at the subsidiary board table and then takes part in discussions on the same matter at the council table.<sup>54</sup>

<sup>54</sup> See our 2007 good practice guide, *Managing conflicts of interest: Guidance for public entities*.



# Appendix 1

## Examples of council-controlled organisations

The following examples describe matters that we consider might help local authorities who have CCOs or who are thinking of setting them up. The examples are referred to where relevant in the text of the report.

The first example is about Christchurch City Council's holding company, Christchurch City Holdings Limited (CCHL), and its monitoring of the Council's CCOs.

The City Care Limited example is about one of the Christchurch CCOs. It is included as an example of a local authority having a contracting relationship with a CCO in addition to the shareholder-subsidary relationship.

The third example is about Dunedin City Council's group of CCTOs and the review of the group's governance structure.

The fourth example is a discussion of Queenstown Lakes District Council and Queenstown Airport Corporation Limited, about the Airport company's issue of a minority shareholding to Auckland International Airport Limited without formally consulting its parent local authority. This example illustrates the need for trust between a Council and its subsidiary, and the significance of the subsidiary's constitution.

The fifth example is about Tauranga City Council working with the directors of its primary CCO to determine a new governance model for all of its CCOs.

### Example 1: Christchurch City Holdings Limited and group

We reviewed Christchurch City Council's wholly owned subsidiary CCHL and its group of subsidiaries because they have been in place for more than 20 years and appear to operate successfully.

We spoke to chairs and chief executives of several of the subsidiary companies, to the then Mayor, and to the chief executive of CCHL.

The Council set up CCHL in 1993 as a holding company for the Council's commercial investments. It was designed as a "confidential, independent, non-political buffer between the Council and the companies it owned". The holding company structure was adopted to ensure a commercial approach to managing the investments.<sup>55</sup>

CCHL's main purpose is to invest in, and promote the establishment of, significant infrastructure assets in a commercially viable manner. Its statement of intent for 2014/15 notes that "CCHL is mindful of the significant investment by the Council in its operations, and of the need to preserve and grow shareholder value

and the level of dividends to the Council”. It has no role in the operations of the subsidiaries.

A board of eight directors governs CCHL, which currently employs three staff.

### Group structure

The Council has interests in a range of subsidiaries. CCHL holds the majority of shares in, and monitors seven of, these subsidiaries:

- Orion New Zealand Limited – an electricity distribution network covering 8000 square kilometres in central Canterbury. The Council has an 89.3% shareholding through CCHL. Orion owns the electrical contracting business Connetics Limited.
- Christchurch International Airport Limited – which owns and operates Christchurch International Airport. CCHL has a 75% shareholding and the Crown holds the remaining 25%.
- Enable Services Limited (trading as Enable Networks) – a CCTO wholly owned by CCHL that delivers high-speed fibre optic networks to Christchurch.
- Lyttelton Port Company Limited – Christchurch’s deep-water port, now wholly owned by CCHL.
- Eco Central Limited – which oversees the processing of refuse and recycling collections throughout Canterbury. CCHL wholly owns this CCTO.
- Red Bus Limited – a CCTO wholly owned by CCHL that provides public passenger transport and freight services in Canterbury.
- City Care Limited – a CCTO wholly owned by CCHL that constructs and maintains infrastructure and property assets. It operates throughout New Zealand.

The Council has designated its shareholdings in CCHL and five of the seven CCTO subsidiaries as “strategic assets” in its significance policy. City Care Limited and Red Bus Limited are no longer designated as strategic assets.

When CCHL was set up, it had assets worth \$170 million. As at 30 June 2014, the group was reported as owning assets with a combined value of \$3.2 billion. Its 2014 group profit before tax was \$454 million.<sup>56</sup> Its subsidiaries are reported to have generated average returns, including capital growth, of more than 14% each year since 1995. CCHL has paid \$1.1 billion in capital and dividend payments to the Council since 1995.

<sup>56</sup> Total comprehensive income for the year net of tax was \$553 million.

## **Appointment of directors**

As required by the Act, the Council has adopted a policy for the appointment and remuneration of directors of its subsidiaries.<sup>57</sup>

### **Christchurch City Holdings Limited**

The Council appoints the directors of CCHL. The CCHL board comprises four Council directors and four independent directors.

After each Council election, the Council forms a Council Appointments Committee to recommend to the Council candidates for non-Council director positions on the CCHL board when vacancies arise.

The Committee usually comprises the CCHL chair, a councillor, a recently retired councillor, and an experienced external director, none of whom are seeking appointment to the board.

The Committee first determines the skills, knowledge, and experience that the directors need for the board to be effective. The policy notes that, because of the confidential and sensitive nature of much of the business coming before the board, “it is critical to the success of this board that it has a composition which is capable of maintaining the confidence of both the Council and the subsidiary companies”. The intention is that Council directors and non-Council directors are all appointed on merit.

The Council also appoints the Chair of the CCHL board, on the nomination of the Council Appointments Committee. A CCHL Chair Succession Planning Policy provides for the Council Appointments Committee to ensure smooth transition between CCHL chairs.

### **CCHL’s subsidiaries**

CCHL manages appointments to the boards of CCHL subsidiaries, in keeping with the Council’s policy for appointing directors. If there are minority shareholders, CCHL consults them on appointments as necessary. As with appointments to CCHL’s own board, the focus is on ensuring that each board has an appropriate balance of relevant skills and expertise, and that appointments are made on merit. The policy emphasises the need for directors to understand “the wider interests of the publicly accountable shareholder”.

CCHL maintains an up-to-date list of candidates. When there is a vacancy on the board of one of the subsidiaries, the selection process is carried out by the CCHL Governance Committee. The Committee determines the skills, knowledge, and experience needed for the vacancy, in consultation with the chair of the relevant board. The Committee then reviews its database for potential candidates, and also

<sup>57</sup> See “Policy on Appointment and Remuneration of Directors”, 27 October 2011. The Council first adopted a policy on appointments in 1997.

engages a recruitment consultant to identify other possible candidates. It then establishes a long list of candidates.

It usually selects four candidates to interview. The Committee then recommends its preferred candidate to the full CCHL board. The board then makes a recommendation to the Council, which makes the final decision.

Elected members are not precluded from appointment, but they must go through the same appointments process as independent candidates. At the time of writing, no councillors were appointed to any of the CCHL subsidiaries' boards, although councillors are appointed to the boards of four other subsidiaries owned directly by the Council.

### **Monitoring and oversight**

The formal monitoring process comprises:

- completing and approving each CCTO's statement of intent;
- half-yearly presentations by each CCTO to the CCHL board;
- quarterly reports to CCHL by each CCTO; and
- annual letters of expectation.

The CCHL board considers each subsidiary's draft statement of intent and recommends the final statement of intent to the Council. The Council separately reviews the statements of intent. Twice a year, the chair, chief executive, and chief financial officer of each subsidiary meet the CCHL board and report progress against the objectives in their statement of intent.

In addition, the subsidiaries report to CCHL each quarter. Reports to the CCHL board are confidential. We were told that the confidentiality enables frank discussions and that there has been little difficulty in maintaining appropriate confidentiality in recent years.

CCHL reports to the Council on the subsidiaries' statements of intent. It also provides the Council with a periodic report on the subsidiaries' performance. However, because of the need to keep commercial information confidential, it will also conduct workshops for elected members on subsidiaries' performance and issues of interest.

At the start of each Council term, CCHL runs an education programme for all councillors as part of the Council's induction programme. The education programme sets out the rules and expectations for how the subsidiaries and CCHL will engage with the Council. It provides clarity about roles and responsibilities. CCHL has a Board Charter that sets out the roles and responsibilities of the board, and the Council has guidelines for the conduct of directors of CCHL and its subsidiaries.

In addition, all directors (both councillors and independent directors) are given an induction session led by CCHL's chief executive. The chief executive provides them with various documents and explains the company processes to them. All directors are encouraged to become members of the Institute of Directors, and CCHL funds their attendance at appropriate governance-related courses.

CCHL has a Director Induction policy that requires a subsidiary board to hold an induction programme for new directors as soon as possible after their appointment. The chair of the subsidiary is responsible for meeting the obligation.

Underpinning the relationships between CCHL and its subsidiaries, and CCHL and the Council, is a clear "no surprises" policy – that is, the subsidiary must give the shareholder timely warning of major issues.

When we carried out our work in Christchurch for this report, Lyttelton Port Company Limited was listed on the New Zealand Stock Exchange. Because of its obligations as a listed company to treat all of its shareholders the same, it could not provide any information to CCHL that was not also publicly available. As a result, CCHL's monitoring regime for that company differed. In effect, the port company briefed the CCHL board only annually.

### **Remuneration of directors**

CCHL determines the remuneration paid to directors of the CCTOs and must review it at least every three years. Fees for each board are set as an aggregate amount, leaving each board to determine the remuneration for individual directors.

In setting remuneration, CCHL is required to take account of:

- the need to attract and retain appropriately qualified directors;
- the remuneration paid to comparable companies in New Zealand;
- the performance of the CCTO and any changes in the nature of its business; and
- any other relevant factors.

The Council's policy requires that a Council director on a CCTO board is entitled to receive:

*... normal directors' fees due to this policy being based on all appointments being based on merit and directors being appointed to act in the interests of the company and not as representatives. It is considered that all directors on any board should be treated equally in recognition of the responsibility taken on by all directors to act in the interest of the company they serve.*

The Council sets fees for directors of CCHL after the Council elections, based on a recommendation from CCHL. Again, the policy provides that no distinction is to be made between non-Council directors and Council directors when assessing fees. However, since the 2013 election, the Council directors do not receive fees. Instead, CCHL donates an equivalent amount to charity.

The policy requires CCHL to arrange and pay for directors' liability insurance for, and to indemnify, each of its directors. The policy further notes that the Council supports the payment by CCTOs of directors' liability insurance and the indemnification of all directors.

## Complaints

We asked those we interviewed how complaints about a CCTO were managed, particularly where the complaint was made to a councillor or to CCHL.

We were told that a complaint about the activities of a CCTO was usually directed to the CCTO. If an elected member received a complaint, or had a query of their own, the matter is handled through the chief executive of CCHL.

## Our observations

The directors and chief executives of subsidiaries we spoke to largely supported the CCHL holding company model. They variously described CCHL as a "buffer" or "insulating layer" between the Council and the operations of the CCTOs.

That separation allowed them to focus on commercial objectives. It reduced their concerns about their ability to keep commercial information confidential under political and public scrutiny. However, they were conscious that, as Council-owned entities, they needed to meet a higher standard of transparency than companies operating in the private sector.

They thought that the monitoring regime was effective in providing a degree of clarity about responsibilities and expectations. One chair described CCHL's monitoring as "reasonable and appropriate".

They all said that the appointments process worked well, that CCHL was always aware of the skills needed for the vacant positions, and that the sub-committee usually identified suitable candidates.

We noted several factors that might contribute to the apparent success of the CCHL model:

- The roles of Council, CCHL, and the subsidiaries are clear. They are also clearly understood by the various participants.

- There is a clear focus on skills and capability in appointments to boards.
- There appeared to be mutual respect and confidence between CCHL and subsidiaries.
- There is effective separation between political and operational matters, although this may mean that elected representatives have limited access to information about the businesses.

## **Example 2: City Care Limited – contracting with the parent council**

### **Introduction**

City Care Limited (City Care) is a CCTO wholly owned by Christchurch City Council through its holding company, CCHL. The Council has awarded several contracts to City Care. This has led to allegations that the Council is subsidising City Care and unfairly disadvantaging competitors.

We have included this example because it illustrates the potential conflict between a Council's interest as a shareholder and its interest in obtaining "value for money" for its ratepayers through a competitive purchase process, and treating other businesses in its district fairly.

### **City Care**

The Council formed City Care in November 1999. City Care acquired the Works Operations Unit of the Council. Most, but not all, of the maintenance work previously done by the Council was awarded to City Care at that initial stage.

City Care's main activities are maintaining parks, gardens, sports fields, buildings and public facilities, roading networks, and water, wastewater, and storm water networks. Its clients include local and central government authorities and commercial businesses nationwide.

City Care employs about 1500 staff. It has offices in 16 locations around the country, including in Auckland, Hamilton, Tauranga, Wellington, and Christchurch. In early 2013, City Care launched its Building Construction division. It competes with other CCTOs and privately owned businesses for work throughout the country.

City Care is one of the five members of the Stronger Christchurch Infrastructure Rebuild Team (SCIRT), an alliance responsible for rebuilding damaged roading and water, storm water, and wastewater networks in Christchurch after the 2011 earthquakes.

One of City Care's primary objectives is to operate a successful business to generate a dividend stream for the Council. In 2013/14, City Care reported a profit of \$12.9 million (compared with \$2.8 million the previous year) and paid an annual dividend of \$5.67 million (\$6.28 million the previous year) to CCHL.

### **Christchurch City Council contracts awarded to City Care Limited**

Since 1999, City Care has been awarded Council contracts for maintenance work on the Council's core assets. The Council and City Care entered into arrangements that secured favourable treatment for City Care for up to five years from formation. In 2003, the Council agreed to an extension of the term of some of its contracts in return for a reduction in the price paid to City Care.

The Council also agreed to cover a proportion of any redundancy costs that City Care might incur from a change in its circumstances. That obligation expired on 1 December 2009.

#### **Contracts awarded between 2008 and 2010**

In 2008, when some of the maintenance contracts had expired and others were due to expire within two years, the Council considered whether to enter into negotiations with City Care for three groups of maintenance contracts or to seek competitive tenders.

The Council took advice about whether it was able to enter into direct negotiations with City Care or whether it needed to carry out a contestable process. The advice was that, because City Care was (then) a strategic asset, the Council could take into account considerations such as the benefit of a strong, financially sound subsidiary and the effective and efficient use of Council resources.

Provided it followed the statutory decision-making process, the Council was able to negotiate new contracts with City Care. That process required the Council to consider the views and preferences of persons and organisations likely to be affected by, or to have an interest in, the decision – including contractors wishing to compete for the contracts.

Elected members considered the effect of City Care losing the contracts it held at that time not only on City Care but also on the wider Council group. In the end, councillors instructed the chief executive to begin negotiations with City Care while taking appropriate steps to ensure that any recommendation after the negotiation process was independently verified as being in keeping with sound business practice.



The Council agreed that its Audit and Risk Management Committee would appoint a panel to enter into negotiations with City Care. The panel was to follow our 2008 good practice guide, *Procurement guidance for public entities*.<sup>58</sup> Subject to the panel's approval, the chief executive was authorised to enter into the contracts after notifying the Council. The chief executive was required to report back to the Council if, in his view, the negotiated terms and conditions did not give the Council value for money. In that instance, the Council would start a competitive tender process.

After successful negotiations, City Care was awarded several facilities management and water and waste management contracts.

#### **Contracts awarded between 2010 and 2012**

During 2010/11, several Council urban parks contracts were due to expire.

The parks contract negotiation was in progress at the time of the September 2010 earthquake. As a result, the negotiation did not proceed. The Council asked City Care to continue the work under the previous contract.

Because of the Canterbury earthquakes, the roading maintenance contracts that were due to expire on 30 June 2011 were rolled over for another year. In June 2012, after direct negotiations, the Council entered into three contracts with City Care to maintain urban parks, road landscapes, and land drainage and waterways for a fixed term of two years.

The direct negotiations followed the process previously agreed by the Council.

#### **Contracts since 2012**

The Council has progressively put contracts to competitive tender. Since 2012, City Care has successfully competed in a tender to retain the roading maintenance work. The parks contract was also tendered, but City Care did not win the tender.

#### **Public perception**

There has at times been negative comment in the media about the Council awarding contracts to City Care without going through a competitive tender process. Industry members have commented about the perceived absence of competition. We have also received queries about the Council's decision to negotiate new maintenance contracts directly with City Care.

#### **Our observations**

A local authority is not obliged to tender its contracts. It is open to the Council to determine its own procurement policy, having regard to the principles that govern the use of all public funds. These principles are contained in *Procurement guidance*

*for public entities*, and we expect public entities to consider these principles when relevant.

One of the principles is about ensuring value for money. Although open tendering can be the best way of demonstrating value for money, it is not the only way. The Council has the discretion to determine how it can obtain and demonstrate value for money.

If its subsidiary is a potential supplier, the Council is likely to also want to support its subsidiary and to take account of the effect of the subsidiary failing to prosper on the wider Council group.

In the contracts referred to above, the Council decided that the effect on the Council and group would be too great if City Care were not successful in a competitive tender process. The Council made a strategic decision to negotiate directly with its subsidiary. However, the overriding objective was a contract price that provided value for money to the ratepayer, while ensuring the ongoing viability of its subsidiary. If that outcome was not achievable through direct negotiations, the Council determined that it would then tender the contracts.

However, this came at the cost of a perception that the Council was unfairly favouring its subsidiary and stifling healthy competition.

The Council appears to have paid due regard to our recommendations about procurement in making its decision. In weighing up the advantages and disadvantages, the Council should always have the best interests of the ratepayer at the forefront of its decision-making. In this instance, the Council decided that the advantages in entering into direct negotiations rather than tendering the contracts outweighed the disadvantages of negative publicity about the lack of competition and the perceived effect on the industry.

### Example 3: Dunedin City Council

#### Dunedin City Holdings Limited

Dunedin City Council (the Council) has a long-established CCO group structure. It formed its first CCOs in the early 1990s and its holding company in 1992.

The Dunedin City group comprises:<sup>59</sup>

- Dunedin City Holdings Limited, a holding company that owns and/or monitors the other companies in the group;
- a treasury company that manages borrowing by the Council and the CCOs;
- three CCTOs owned for investment purposes – that is, to make a profit rather

<sup>59</sup> Dunedin City Council, *Long Term Plan 2015/16-2024/25*, Volume 2, “Section 6: Council Controlled Organisations”, pages 310-311.

than to deliver Council-related services to the public – and subsidiaries and associated companies of those entities;

- two companies involved in managing and operating the Council’s major facilities;
- the Taieri Gorge Railway, a tourism company;
- Dunedin’s airport (the Council has a 50% ownership share);
- a property owning company (the Council has a 49% ownership share); and
- three non-trading companies and one small trust.<sup>60</sup>

The Council’s long-term plan is clear about why the Council has CCTOs. It states:

***Council-Owned Companies***

*Council-owned companies are an important component in the Council’s financial strategy. While they are valuable assets in terms of their capital value, the income (income includes dividends, subvention payments and interest) they generate from their operations are used to keep down the levels of funding required from the city’s ratepayers.*<sup>61</sup>

The CCTOs generate cash for the Council through dividend payments to the holding company, which the holding company then pays to the Council. The holding company also pays market interest to the Council on a shareholder advance provided by the Council. These dividend and interest payments contribute to the Council’s cash flow, and it uses the dividend payments to help fund Council activities.

## **Review of council-controlled trading organisations**

From 2006, the Council sought higher dividends from the holding company. It considered that the after-tax profits and cash flows in the group as a whole could support higher dividends. The Council needed to fund several large infrastructure projects and wanted more funding from its holding company and subsidiaries. As the pressure for higher returns continued during the next few years, the holding company began borrowing to sustain the dividends.

The Council and holding company could not agree on the size and nature of the Council’s funding problems or solutions, and there were perceived dysfunctional relationships within the group. By early 2011, tensions had come to a head and the Council commissioned a governance review by Warren Larsen (the Larsen review).<sup>62</sup>

60 These have been exempted from accountability requirements under section 7(3) of the Act.

61 Dunedin City Council, *Long-Term Plan 2015/16-2024/25*, Section 1: Major Issues and Strategies, page 41.

62 Larsen Consulting (2011), *Governance Review of All Companies in Which Dunedin City Council and/or Dunedin City Holdings Limited has an equity interest of 50% or more*.

### **Governance arrangements lacked commercial tension**

The Larsen review was critical of the governance arrangements in the Council group and recommended changes. The long-standing governance practice in the Council group was that the five directors of the Council's holding company were also directors of the CCTOs. This meant that the boards of the holding company and the CCTOs had largely the same directors for more than 10 years.

There were historical reasons for this arrangement, but the Larsen review found that it had led to a lack of commercial tension in the group. This was because the holding company was not fulfilling a strategic and performance monitoring role for the subsidiaries. There was a risk that too much collegiality could impede robust debate (between the board of the holding company and the boards of the subsidiaries, because they were largely the same).

Other long-standing practices included:

- a councillor chaired the holding company and was also a director of the subsidiaries, but he did not see himself as a conduit for information back to the Council;
- a senior Council officer was the secretary of the holding company and attended holding company board meetings; and
- the Mayor and chief executive of the Council attended part of those board meetings.

Despite these arrangements, the Larsen review noted that:

- a few people often held important information, which was not shared appropriately;
- communication within the Council and with its investment companies needed to improve, with more formal reporting structures between the holding company and the subsidiary companies, and between the holding company and the Council;
- part of the blame for communication problems lay with councillors because of their poor attendance at important meetings about holding company matters; and
- councillors needed to show more trust and capability in handling confidential information.

The Council changed the governance arrangements after the Larsen review to provide that a director could not be on the board of both the holding company and a subsidiary in the group, and that councillors and staff members could not be on subsidiary boards. The Council appointed a new holding company board in October 2011 with no councillors on it. It also created a position of group chief financial officer.

## **Our observations**

The Larsen review illustrates the importance of maintaining tension in a company group structure between the monitoring responsibilities of the shareholder and the accountability of the subsidiary. It illustrates the importance of:

- good communication between CCOs and local authorities and between subsidiaries and their holding companies, and the risk of relying purely on informal arrangements;
- local authorities being clear with their CCOs about their appetite for risk;
- having different directors involved in the holding company and the subsidiaries so there is independent oversight and monitoring of the performance of the subsidiaries; and
- independent review of CCO governance arrangements from time to time, particularly long-standing arrangements.

The Larsen review contains useful observations for other local authorities with CCOs, particularly those with group structures.

## **Example 4: Queenstown Lakes District Council – Queenstown Airport Corporation Limited**

### **Introduction**

This example is about a decision in 2010 by Queenstown Airport Corporation Limited (Queenstown Airport) to issue a minority shareholding in the company to Auckland International Airport Limited (Auckland Airport) without formally consulting its then 100% shareholder – the Queenstown Lakes District Council.

The decision was subject to legal challenge by a group of concerned ratepayers and Air New Zealand against Queenstown Airport, Auckland Airport, and the Council. The legal proceedings were discontinued before a substantive court hearing.

We include this example because it illustrates:

- the importance of relationships and systems that support good communication between a local authority and its subsidiary;
- the tension between accountability and the need to keep some commercial matters confidential; and
- the need for the constitution of a wholly owned subsidiary of a local authority to be kept up to date and appropriate.

In preparing this example, we talked with the main participants from the Council and the Queenstown Airport board to learn their perspective on the transaction. We also considered some of the legal advice prepared for Queenstown Airport, and affidavits and other material prepared for the judicial review proceedings.

### Share issue

On 7 July 2010, Queenstown Airport entered into an agreement with Auckland Airport to issue just under 25% of the shares in Queenstown Airport to Auckland Airport. The agreement established a “strategic alliance” between the two airport companies. The Queenstown Airport board did not seek formal approval from the Council before issuing the shares to Auckland Airport.

The Queenstown Airport board had been discussing a possible alliance with Auckland Airport since late 2009, including the possibility of raising capital by issuing shares to Auckland Airport. The negotiations were carried out under a confidentiality agreement between Queenstown Airport and Auckland Airport, in keeping with standard commercial practice.

The board considered two main options at a meeting in late June 2010. The options were:

- asking the Council to decide on the best way for Queenstown Airport to raise capital; or
- raising the capital by issuing shares to Auckland Airport.

The board noted that the first option would take longer and would not necessarily achieve the same value. Any requirement for the Council to formally engage in the process would have increased the time needed to complete the transaction. It would also have increased the risk of others with competing commercial interests becoming involved.

The board had independent commercial advice on the merits of the share issue proposal. It was satisfied that issuing shares to raise capital was in the best interests of the company and its shareholder.

### Constitution

Under Queenstown Airport’s constitution at that time, the board could issue shares in the company to new shareholders without first having to offer them to existing shareholders. The board had legal advice confirming that its constitution did not require it to seek the Council’s approval to issue a minority shareholding to Auckland Airport. However, the legal advice said that it would be highly unusual for the board to proceed without notifying the Council.

The board did not want to issue more than a 25% shareholding without engaging the Council. Therefore, it agreed with Auckland Airport that:

- Queenstown Airport would initially issue a 24.99% shareholding to Auckland Airport; and
- the board of Queenstown Airport would have the option to issue a second tranche of shares to Auckland Airport, subject to formal engagement with, and approval from, the Council.<sup>63</sup>

### **Communication between the board and the Council**

The chair of the Queenstown Airport board had sounded out the then Mayor<sup>64</sup> on options to raise capital, including the proposal to issue shares to Auckland Airport, in March 2010 and again in April and May. The chair was not seeking the Council's approval of the transaction but attempting a "no surprises" approach. The board was concerned that information about the proposal might be leaked and prejudice the deal if the whole Council were told too early.

In mid-June, the Mayor asked the chair to brief more people within the local authority. At a meeting on 17 June 2010, the chair briefed the Mayor, the Deputy Mayor, the chief executive,<sup>65</sup> and the Council's financial controller. The chair required them to sign confidentiality agreements. The chair was not seeking agreement to the proposal but providing information about it and seeking reactions from those present. The financial controller was concerned about whether the proposal was lawful, and raised the issue of compliance with the statement of intent. His preference would have been to have a confidential Council workshop about the proposal, but the Airport board was concerned about confidentiality. The meeting agreed that all councillors should be briefed on the transaction shortly before it was announced.

### **The statement of intent**

The Council considered Queenstown Airport's draft statement of intent at a workshop in March 2010. The draft statement of intent did not mention raising capital or the proposed issue of shares. It said, "No capital injections from shareholders are expected in the current period."

In late June 2010, Queenstown Airport amended the draft Statement of Intent to say, "The company will consider the need for and source of capital subscriptions as may be required."

<sup>63</sup> Auckland Airport and Queenstown Airport cancelled the agreement about a second tranche of shares in March 2011.

<sup>64</sup> References in this Example to the Mayor and chief executive are to the people who held those positions at the time of these events in 2010.

<sup>65</sup> The Council had a new chief executive who had started in March 2010.

Councillors were given a copy of the final statement of intent, but the change was not pointed out to them. Those in the Council who had signed the confidentiality agreements considered that those agreements meant that they could not mention the change.

### The transaction

The Queenstown Airport board resolved to issue the shares on 7 July 2010. Auckland Airport countersigned the agreement after financial markets closed on that day. Councillors were briefed on the transaction at 4pm that day. The time was chosen to ensure that there would be no leak before the matter could be made known to the market. On 8 July 2010, the transaction was announced and became public.

### The legal challenge

Some councillors and some members of the Queenstown community were concerned about the share issue. The concerns included that the Council had not been consulted and that local people had not had the opportunity to express their views or to purchase shares in the airport.

A group of Queenstown people and business owners opposed to the sale and Air New Zealand began judicial review proceedings against the Council, Queenstown Airport, and Auckland Airport.<sup>66</sup> They considered that the Council had a duty under the Act to consult them on the matter.

### Our observations

#### Communication between the Council and its subsidiary

Until early 2010, when the Council's chief executive left, there had been informal communication between the chief executives of Queenstown Airport and the Council, and between the Chair of Queenstown Airport and the Mayor. The Mayor and chief executive also had a standing invitation to attend board meetings. The Council's new chief executive started in March 2010 and had not established a relationship or communication arrangements with Queenstown Airport during these events.

There were no protocols between the Council and Queenstown Airport for handling sensitive information. A protocol could have helped to guide communication about the proposal, although it would not have dealt with the concern about the risk of leaks by some councillors.

One of the board's objectives, as reflected in Queenstown Airport's statement of intent and noted in the Council's 2009 long-term plan, was to:

<sup>66</sup> The group formed a company, Queenstown Community Strategic Assets Group Trustee Limited, to act as trustee for an incorporated society to be formed for the purpose of opposing the share issue.



*Ensure adequate communication exists between the Queenstown Airport and the community and its elected representatives by way of an ongoing public information service and the holding of regular open meetings with a liaison group comprising community group representatives, interested individuals, airport users, etc, while continuing existing reporting systems.*

However, this broad objective did not suit a sensitive commercial negotiation where the board was subject to confidentiality requirements and did not trust all councillors to keep information confidential.

#### **Statement of intent**

Clause 1 of Schedule 8 of the Act says that the purpose of a statement of intent is to state the CCO's intentions for the year, to provide an opportunity for the shareholders to influence its direction, and to provide a basis for the accountability of the directors to the shareholders for the performance of the organisation.

The change to Queenstown Airport's statement of intent was made late and was not drawn to councillors' attention. The reference to raising capital was brief and vague given the board's actual intention at the time. It is questionable whether the statement of intent met the purpose requirements of the Act.

#### **Confidentiality**

The Mayor and others in the local authority were given information about the proposed transaction in confidence. That put them in a difficult position. The Mayor had to decide when to inform the rest of the Council about the proposed transaction. The chief executive and a senior staff member were also obliged to keep the proposal confidential. That meant that the chief executive was unable to meet her responsibility as the Council's main advisor.

The Queenstown Airport board members were also subject to confidentiality requirements, which made it difficult for the board to adhere to a "no surprises" policy and keep the Council fully informed. The confidentiality requirements were not consistent with accountability to a local authority shareholder and the wider community. Standard private sector confidentiality requirements may need to be adapted for a transaction with a publicly owned entity.

#### **The constitution was out of date and had not been kept under regular review**

Queenstown Airport was incorporated as a company in 1988. The constitution was written in 1996 when the company was re-registered under the Companies Act 1993.

Under section 45 of the Companies Act, if a board intends to issue new shares of equal rank to existing shares, the existing shareholders have a “pre-emptive right” to be offered the new shares unless the constitution of the company modifies or negates that requirement. Queenstown Airport’s constitution removed the pre-emptive rights of existing shareholders and provided that the board could issue shares of any class at any time, to any person and in such numbers as the board thought fit.

Such a provision was unusual for a council-owned company. It was not consistent with the Act. Shares in an airport company are a “strategic asset” of the local authority under the Act, which means that a local authority cannot transfer ownership or control of the shares unless it consults on the proposal in its long-term plan or by amending its long-term plan.

The Council had not considered whether the constitution was adequate to protect its interests in the airport company nor had it made appropriate changes in response to the Act.<sup>67</sup>

### **Example 5: Tauranga City Council – creating a new governance model for council-controlled organisations**

Tauranga City Council has recently adopted a new model for the governance and oversight of its CCOs. This example describes and comments on the process the Council used in developing the model.

#### **Tauranga CCOs**

Tauranga City Council has several CCOs. These include Bay Venues Limited (which oversees the Council’s aquatic and indoor sport and recreation facilities), Tauranga Art Gallery Trust, and Western Bay of Plenty Visitor and Tourism Trust. The Council also owns shares in Bay of Plenty Local Authority Shared Services (BOP LASS Limited) and New Zealand Local Government Funding Agency Limited.

#### **Organisational review**

In January 2012, the Council commissioned a strategic review of its then CCO structure to ensure that the structure was compatible with the Council’s outcomes and to determine the optimal operating structure for the CCOs.<sup>68</sup> The review was to consider the purpose and viability of each CCO, as well as the potential for cost savings or increased revenues. At that time, the CCOs included Tauranga City Aquatics Limited and Tauranga City Venues Limited, which were wholly owned by a holding company, Tauranga City Investments Limited.

<sup>67</sup> The constitution has since been amended to restrict the board’s power to issue new shares without shareholder approval.

<sup>68</sup> Morrison Low (2012), *Tauranga City Council: Review of CCOs and Allied Leisure Activities*.

The review came about because of a range of issues with the CCOs, and with Tauranga City Aquatics Limited and Tauranga City Venues Limited in particular. Those issues included lack of financial sustainability and poor relationships between the Council and the CCOs.

The review found that the CCOs were managed under four disparate regimes and that each had a separate relationship with the Council. As a consequence, the CCOs were not working together effectively.

The review identified a lack of clarity about the purpose of each CCO and uncertainty about expectations, roles, and responsibilities. It recommended that Tauranga City Venues Limited and Tauranga City Aquatics Limited be consolidated into a new entity, with a mix of public good and commercial drivers. The intention was to enable the new CCO to be more self-sufficient and less dependent on rates funding.

After the review, but largely as a result of direction from newly elected members and pressure from the two CCOs, the Council decided to restructure its subsidiaries. Bay Venues Limited (Bay Venues) was formed by the merger of Tauranga City Aquatics Limited and Tauranga City Venues Limited on 1 July 2013. Bay Venues was then amalgamated with the holding company, Tauranga City Investments Limited, on 1 July 2014.

### **Developing a new governance framework**

After the new CCO was formed on 1 July 2014, Council staff ran a series of workshops and meetings with elected members (and, in several instances, Bay Venues directors). These workshops and meetings were held to discuss and agree a process for setting a governance framework for Bay Venues.

It was intended that the new framework would enable the Council to clarify its expectations of Bay Venues. Ultimately, the framework would apply to all of the Council's CCOs. The objective was to help the CCO boards to operate efficiently and to clarify their responsibilities.

As part of this process, councillors wanted to establish a greater rapport with the board of Bay Venues. Councillors recognised that the new governance model would be more effective if the two groups could work together on its development. They agreed that, where appropriate, Bay Venues directors would be invited to be a part of the development of the framework.

However, councillors wanted first to identify the important pillars of an ideal governance model. In a workshop, councillors and Bay Venues directors considered the experience of Auckland Council in managing its CCOs. They heard from two

guest commentators, including an Auckland councillor, who spoke about their experience of the Auckland model.

The councillors and directors identified six main areas they wanted to clarify:

- the role of the board;
- the role of the Council;
- governance principles;
- organisational purpose;
- funding principles; and
- decision-making principles.

These six matters were then addressed as part of the development of the governance manual (discussed later in this example).

Councillors held a further workshop to determine the purpose of Bay Venues. They decided to assess each component of Bay Venues' business to determine whether it had more of a commercial focus or a community focus. Components with a commercial focus needed a clear definition of acceptable risk and to be properly empowered to function effectively. Community-focused components usually had more ratepayer subsidy, which meant that the Council should lead the setting of prices for the CCO's services.

This assessment enabled councillors and directors to identify the implications of each decision – such as setting user fees, monitoring progress, and ratepayer subsidy.

### **CCO Governance Manual**

Informed by several workshops, meetings, and discussions, councillors agreed to set up a joint CCO working group, comprising four elected members and four Bay Venues board members, to develop a CCO Governance Manual. The Governance Manual was initially for Bay Venues but was intended to ultimately apply to all of the Council's CCOs. The Council wanted to develop a document that clearly outlined the Council's expectations of the board over the long term.

The completed document – now referred to as the Enduring Statement of Expectations<sup>69</sup> – outlines the Council's expectations of the Bay Venues board for matters that are unlikely to change from year to year.

The Enduring Statement of Expectations is designed to complement the annual letter of expectation. It identifies seven principles that the joint CCO working

69 See Example 5 of Appendix 1 and the minutes of Tauranga City Council's meeting of 15 December 2014, "Enduring Statement of Expectations for Bay Venues Ltd" (available on the Council's website – [www.tauranga.govt.nz](http://www.tauranga.govt.nz)).

group agreed were needed for a strong governance relationship. These principles are:

- *Provide key services which deliver value to the customer/ratepayer.*
- *Run the business in an efficient and effective manner.*
- *Manage and invest in assets in a way that maintains and enhances them into the future.*
- *Operate in an entrepreneurial manner (a manner which is results-focused, demonstrates proactive leadership and a preparedness to take sensible levels of risk relative to the nature of the entity).*
- *Operate in a manner which does not fiscally disadvantage the Council.*
- *Generate an ongoing decrease in the overall ratepayer contribution to Bay Venues.*
- *Report to Council in a timely and transparent manner that ensures no surprises.*

The Enduring Statement of Expectations clearly describes the purpose of Bay Venues and clarifies the respective roles of the Council and the CCO board. It also provides decision-making guidelines by allocating responsibility depending on the nature of the decision to be made.

The Enduring Statement of Expectations includes a set of relationship expectations, including communication protocols, branding expectations, financial reporting obligations, and consultation expectations. It provides clarity about funding, including the principles to be applied. It also establishes the Council's expectations for public meetings, director appointments, and performance review processes.

#### **Letter of expectation**

The same CCO working group then set about developing an annual letter of expectation for Bay Venues, to outline the Council's short-term goals for the CCO. The Council expected that the focus areas and deliverables identified in the letter of expectation would be reflected and incorporated into the CCO's next statement of intent.

The letter of expectation provides direction on issues that are important to the Council. It clarifies that the Council's role is to determine the outcomes that Bay Venues is expected to deliver, to set out the parameters Bay Venues will operate within, and to monitor Bay Venues' performance.

The letter of expectation provides specific performance measures that the Council will use to assess the performance of the CCO. The targets are derived from direction provided by elected members and from the Council's agreed strategic objectives, informed by several Council strategies and policies.

The letter of expectation was provided to Bay Venues in November 2014. The Council required that Bay Venues incorporate the focus areas and deliverables into its 2015/16 draft statement of intent, which Bay Venues provided to the Council for consideration by 1 March 2015.

The CCO Working Group reviewed the draft statement of intent before it was considered by the Council. The CCO Working Group agreed that applying the letter of expectation and the Enduring Statement of Expectations to the development of the draft statement of intent was a positive step.

### **Review of funding options**

As part of the governance review, the Council also reviewed the financial structure of Bay Venues to determine whether it was the best way to deliver the Council's objectives. In particular, the Council considered whether the mix of commercial and community-focused assets in a CCO model is the most effective way to meet its needs.

After a series of workshops that involved both elected members and Bay Venues directors, a set of principles about the financial structure of Bay Venues was agreed. The principles are:

- *Asset ownership should be in the entity managing the service in relation to that venue.*
- *An initial debt to equity ratio of 20:80 is appropriate.*
- *The initial debt servicing grant should match the initial debt servicing cost.*
- *Council should take up the interest rate risk on initial debt.*
- *Unless specifically decided by Council, new capital projects should have debt servicing costs covered from additional revenue.*
- *A business case will be required for all new capital projects (new capital excludes renewals).*
- *Depreciation funding will be retained within Council.*
- *Renewals will be funded by specific renewal grants.*

Council staff prepared a draft report that the Bay Venues board considered. The report was then updated to include the directors' recommendations and presented to elected members for final consideration and approval. The financial restructuring was completed in June 2015.

## **Our observations**

The Council appears to have gone through a careful process to determine the purpose and objectives of its CCOs and the Council's expectations of them. The process provided a forum for the main parties to reach a shared view on a comprehensive set of issues to do with the Council and its CCOs. It also enabled councillors and some board members of the major CCO to develop good working relationships.

The Council has documented the results of the work in two documents that set out its expectations of its CCOs.

A longer-term Enduring Statement of Expectations that clearly states a set of governing principles and procedures provides clarity of purpose and should contribute to a robust and effective relationship built on mutual trust and understanding.

An annual letter of expectation to inform the CCOs' development of their statements of intent is a valuable mechanism for ensuring clear objectives and strategic alignment with the Council.

In trying to establish a better working relationship with its CCOs, elected members and board members have been actively involved in preparing these two documents. This should ensure that the documents are regarded as authoritative and meaningful governance documents.

# Appendix 2

## Reviews of council-controlled organisation structures that we referred to

We referred to the following reviews of CCO structures when preparing this report.

- Larsen Consulting (2011), *Governance Review of All Companies in Which Dunedin City Council and/or Dunedin City Holdings Limited has an equity interest of 50% or more* – commissioned by the Dunedin City Council because of tensions between the Council and its holding company about funding problems (the level of sustainable dividends) and solutions.
- Morrison Low (November 2012), *Tauranga City Council: Review of CCOs and Allied Leisure Activities* – a strategic review commissioned by Tauranga City Council of all of its CCOs to ensure alignment with the Council's outcomes and to determine the optimal operating structure.
- Queenstown Lakes District Council (March 2013), *Organisational Review Assessment of the council-controlled organisation model* – commissioned by the Queenstown Lakes District Council as part of a wider organisational review of all Council activities, focusing on cost, efficiency, and effectiveness of the CCO model against 13 criteria. The Council's airport company CCTO, Queenstown Airport Corporation Limited, and its forestry joint venture with Central Otago District Council were excluded from the review.
- Wellington City Council – three reviews by Plimmer Consulting: *What Works? A report for Wellington City Council on getting the best from council-controlled organisations* (August 2012); *CCOs governance review – A report for Wellington City Council on a review of its council-controlled organisations* (October 2012); and *Enhancing alignment and performance – Wellington City Council's CCOs* (August 2012) – the Council commissioned a phased review of ways in which it could get the best outcomes from its CCOs.



# Publications by the Auditor-General

Other publications issued by the Auditor-General recently have been:

- Reviewing aspects of the Auckland Manukau Eastern Transport Initiative
- Annual Report 2014/15
- Service performance reporting: Results of the annual audits of TEIs for the year ended 31 December 2014
- Request for inquiry into the regulation of the ancient swamp kauri industry
- Kaipara District Council: The Auditor-General's decision on requests to make a report under section 44 of the Local Government Act 2002
- Consulting the community about local authorities' 10-year plans
- New Zealand Police: Enforcing drink-driving laws – Progress in responding to the Auditor-General's recommendation
- Response to queries about recovery from the Canterbury earthquakes
- Annual Plan 2015/16
- Reflections from our audits: *Service delivery*
- Being accountable to the public: Timeliness of reporting by public entities
- Effectiveness of governance arrangements in the arts, culture, and heritage sector
- Health Promotion Agency – Katherine Rich – Possible conflicts of interest
- Whānau Ora: The first four years
- Inland Revenue Department: Governance of the Business Transformation programme
- Auckland Council: How it deals with building consents
- Draft annual plan 2015/16
- Auditor-General's findings about AgResearch's Future Footprint project

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