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Auckland Council: Statement of Expectations of substantive Council-controlled organisations, July 2021

This Statement of Expectations is issued in accordance with section 64B of the Local Government Act 2002 and Governing Body resolution GB/XXXX/XX.

It is to be read in conjunction with the Auckland Council CCO Accountability Policy. The Accountability Policy is part of the Long-term Plan, and sets out *what* the role of CCOs in the Auckland Council group is. The Statement of Expectations focusses on *how* CCOs should conduct their business and manage their relationships with Council and other stakeholders. Both documents have statutory status and work in complementary fashion, but cover different elements of accountability.

In particular, it is noted that common expectations of each CCO in respect of improving outcomes for Māori, health and safety, and climate change and reducing carbon emissions are contained in the Accountability Policy.

Section 1: Conduct of relationships

I Relationship with Auckland Council, as the shareholder

Under the CCO model, each CCO:

- operates at arm's length from the council
- has an independent board that is accountable to the council for the CCO's performance
- is a separate legal entity, with directors being responsible for overseeing the management of the business
- must implement the strategic direction and objectives set by the council as its shareholder (section 59, Local Government Act 2002 – "Principal objective of a council-controlled organization").

In general, the role of the council is to set the strategic direction, plans and expectations for CCOs, and to hold them to account on behalf of Aucklanders. The Governing Body (or its committees, under delegation) is responsible for:

- developing plans and strategies that CCOs must give effect to
- appointing and removing directors (including chairs)
- determining board member remuneration
- commenting on the content of draft statements of intent, and approving final statements of intent
- monitoring and assessing the performance of CCOs (including board performance)
- taking decisions as shareholder (e.g. approving major transactions under the Companies Act or the council's Significance and Engagement Policy).

The role of a CCO is to deliver services for Aucklanders, and through this, to implement the direction set by the council as its shareholder. CCOs are expected to act in the best interests of the council group for the benefit of all Aucklanders. The board of a CCO is accountable to the Governing Body of

Auckland Council. The board employs a CCO's chief executive, who is accountable to the board. The board provides direction to the chief executive and staff of the CCO.

In performing these roles, it is important that both the council and the CCOs understand clearly the respective decision-making roles of different parties within the council group, reflecting that at times they may have differing interests, priorities, objectives and views. This places an obligation on Council to ensure it has sufficient capability and resource to work with the CCOs to ensure strategic direction is clear, and that the operational imperatives of the CCOs are taken account of – in other words, that strategies are deliverable and (where necessary) funded. It also means that there needs to be a recognition of one essential aspect of the CCO model: that while CCOs are accountable to the Governing Body, they are nonetheless arm's length organisations with boards who are qualified and experienced to oversee the management of their organisations and their operations. Indeed, this expertise is exactly what is sought in establishing CCOs to undertake specialist functions.

It is acknowledged that the general statement of roles above is significantly influenced by legislatively defined roles that some CCOs have in decision-making and strategy. This includes Watercare's role in price-setting, and Auckland Transport's role in strategies such as the Regional Land Transport Plan and preparing business cases for major projects funded by government. Furthermore, all CCOs have important strategy roles, though as the CCO Review discussed, such roles should be undertaken alongside and with Council's endorsement when the issues are material to the delivery of Council outcomes (for example, a parking strategy or a stadium and venues strategy).

Some of the key elements of how a CCO should undertake its role include:

- Demonstrating the principles of good governance, having a clear understanding of the council's priorities and objectives
- Have a strong awareness of the public service ethos, recognising the organisation's public ownership and the obligations this creates.
- Decision-making must reflect consideration of Māori interests and values. To support the council's commitment to achieving better outcomes with Māori, CCOs should establish enduring relationships with Māori based on respect and understanding.
- CCOs should deliver services efficiently and effectively in a way that displays prudent use of resources and assets, and provide value for money for Aucklanders.
- CCOs should make operational decisions that are aligned with the council's expectations and strategic directions.
- All members of the council group should work with each other to promote the council's vision, and build collaborative relationships built on communication and respect.
- All members of the council group should be transparent, and have an open and honest approach in working with each other and the community.

The council expects the board of each CCO to:

- act lawfully
- make decisions consistent with the CCO's constitution and Statement of Intent (SOI)
- comply with the CCO Accountability Policy
- follow the Board Appointment and Remuneration Policy for board members of council organisations.

Understanding and giving effect to Tāmaki Makaurau’s shared governance

It is critical to understand the unique shared governance model under which Auckland Council has been established. In this model, both the Governing Body and local boards are responsible and democratically accountable for the decision making of Auckland Council. This shared governance structure is underpinned by the Local Government (Auckland Council) Act, but is further defined through the ‘Allocation of Decision Making’ table in council’s Long-term Plan. For example, the Governing Body has, among other decision-making roles, decision-making in relation to the governance of the council’s CCOs. Therefore, the substantive CCOs are directly accountable to Auckland Council through the Governing Body, and the board of each CCO has a direct governance relationship with the Governing Body.

In this regard, the substantive CCOs should:

- understand the role of the Governing Body
- proactively build and maintain good relationships with members of the Governing Body
- actively engage with the relevant ward councillors on projects and issues within their ward

Local boards make decisions on local activities and services and they play an important role in representing local communities. Local Boards are not a ‘stakeholder’, but an integral part of the Council’s governance system. The activities of CCOs are very important in local communities, and each CCO must ensure that it works effectively with local boards. Substantive CCOs will need to recognise local interests while ensuring that regional priorities and strategies are achieved. The substantive CCOs should:

- understand the role of local boards, both their role as local decision-makers and their responsibility to identify and communicate the views and preferences of the communities in its local board area
- proactively build and maintain good relationships with each local board

There are likely to be cases in which decisions will affect a local board’s governance role; have a significant local impact (taking into account any mitigation measures); or require a CCO to undertake local or regional community consultation, but where the local board is not the appropriate decision-maker. In such cases, CCOs should consult with local boards genuinely and early in a way that allows local boards to influence such decisions. Clarity should be sought by a CCO about the appropriate decision-maker in cases where this may not be clear (or there is conflict about it).

In particular, local boards will be involved as governors (not stakeholders) when the decision impacts on their local governance role or has high community interest in their local community.

Achieving outcomes for Aucklanders

CCOs are expected to contribute to achieving outcomes for Aucklanders. This is to be achieved by adhering to the following principles:

- Working together, both with Council and other CCOs, to align activities to achieve the outcomes set out in the Auckland Plan 2050.
- Building and maintaining a culture of collaboration across the group to achieve the objectives and priorities of the council as set out in the Auckland Plan and its supporting strategies and plans.
- Contribute to the development and/or refresh of group strategies and action plans intended to deliver on the Auckland Plan 2050.

- Deliver key activities as prioritised through the Long-term Plan.

Operating as a group

CCOs are part of the Auckland Council group and are expected to operate in ways which contribute to the success of the group as a whole. A commitment to collaborative, proactive, joined-up engagement and communications applies not only to the CCOs but to Council in its roles also.

This is to be achieved by adhering to the following principles:

- Working together, both with Council and other CCOs, to align and achieve group strategies as set out in the Auckland Plan and prioritised through the Long-term Plan.
- Building and maintaining a culture of collaboration across the council group, and operating on a 'no surprises' basis (see also below)
- Open and transparent sharing of information where that is required to achieve outcomes.
- Presenting a unified front across the council and CCOs on key issues facing Tāmaki Makaurau, including coordinating on communications
- Implementing agreed group policies such as those on Treasury, Insurance and Procurement, and participating in the development of any further group policies.
- Participating proactively and constructively in efforts to achieve efficiencies and savings for the council group and make the most of its size and scale, including group procurement and the use of shared services.
- Acknowledging the council's wider policy settings in its own operational decision-making and considering issues from the perspective of the council.

A key example of working as a group is in our engagement with central government. To assist the government to have a clear understanding of the outcomes we are seeking for Aucklanders, it is important that the council group speaks with one voice when making submissions to central government on policy or legislative proposals. In this regard it is important to note the following expectations:

- Auckland Council organisation leads the preparation of submissions on policy and legislative matters and proposals of importance to the council group.
- Auckland Council organisation involves relevant CCOs in the development of these submissions to reflect the views of the council group. It is expected that council involves CCOs early to allow them to develop and seek authorization for their contributions to the council group submission.
- CCOs do not make direct submissions to government which express policy views.
- When council has decided not to submit on a matter, a CCO can develop submissions authorized by its board that are limited to feedback of a technical nature. In these cases, the CCO must have prior agreement from council's Auckland Plan Strategy & Research Department. It is expected that the CCO would work with relevant teams within council in developing its submission.

The 'no surprises' principle

The public expects a high standard of accountability and transparency from the council group. As the sole shareholder of each substantive CCO, the council is ultimately held accountable by the public for the activities of its CCOs. This is a key element of working as a group.

CCOs must ensure that elected members (via the Mayoral Office, Auckland Council Chief Executive, any assigned liaison councillor, and / or CCO Governance team, as appropriate) are kept informed well in advance of anything that could be potentially contentious, whether or not the issue is

covered by the SOI or legislation. All CCOs should assess whether an issue is likely to attract public interest and ensure the mayor, councillors and/or local boards (as appropriate) are fully briefed. This will include an opportunity for the council to provide guidance on the issue prior to any decision being made or any release of information to the public.

Issues that should be raised with council include (but are not limited to):

- potential / actual conflicts of interests by directors
- potential / actual litigation by or against a CCO, its directors or employees
- fraudulent acts by a CCO's directors or employees
- significant restructuring
- large scale redundancies
- industrial disputes
- significant acquisitions and divestments, whether in scale or the nature of the activities
- the release of significant information under LGOIMA
- significant consent applications
- activities with international relations implications.

If in doubt, a CCO should contact CCO Governance to discuss the issue. They can help to determine the significance of and potential political interest in an issue. This may specifically include transactions which fall short of being a major transaction, but which may nonetheless be a significant change to the CCO's business (such as acquiring a new entity). In such cases an early discussion about the proposal with appropriate Council staff should be undertaken (such as governance or finance staff), prior to advice being given to the CCO Board and that Board making decisions which bind it into a course of action.

Auckland Council's Communications department has primary, but not exclusive, responsibility for maintaining a relationship with CCO communications staff. This is a two-way, no surprises relationship that is guided by the Auckland Council Group Communications Framework and Action Plan.

If a CCO becomes aware of any potential media coverage of activities (not limited to those listed above) that could attract critical comment, or on which the mayor, committee chairs, councillors or local board members may be asked to comment, they should advise the relevant council contacts.

A specific piece of work to more clearly define principles and processes (along with examples and to whom relevant information should be passed to) is part of the CCO Review implementation programme. It is intended that representatives of CCOs will be part of this work. Once this work has been completed, this section of the Statement of Expectations will be revised to align with it.

Expectation to participate in strategy and policy development

Another key element of operating as a group is the expectation to participate fully in Council's long-term and annual planning processes, including providing accurate, timely and full advice and information where that is required for council decision-making.

Beyond these core planning processes, CCOs will also be involved in strategic and policy development processes relevant to them. This is a two-way commitment: for Council to ensure that CCOs are appropriately involved, and for CCOs to contribute as necessary.

This may include requests for workshops from time-to-time, whether annual governance workshops to discuss strategy and priorities for the CCO, or on specific topics on an ad-hoc basis.

Branding

In order to support public understanding that the Council group operates together, Council's branding guidelines are to be adhered to.

II Relationships with communities and specified stakeholders

The broad principles of relationships and engagement for council with communities and stakeholders are set out in section 14 of the Local Government Act 2002. Council's expectation is that these principles are also adhered to by its CCOs.

Accountability to communities is managed through the various accountability mechanisms to Council (both Governing Body and Local Boards). When consulting on significant projects, Council's expectation is that local boards will play a critical role in determining community views and preferences.

Council expects that CCOs will continue to improve their responsiveness to the community, and in particular community concerns and complaints. Putting in place a measure to demonstrate how such responsiveness is improving over time will be a critical step.

III Relationships with iwi, hapū, and other Māori organisations

Relationships with iwi, hapū and Māori organisations (including the Mana Whenua Kaitiaki Forum and the Independent Māori Statutory Board)

Refer s60A of the LGA – before making decisions that significantly affect land or water, CCOs need to take into account the relationship of Māori with their ancestral land, water, sites, wāhi tapu and other taonga

Section 2: Shareholder obligations with which CCOs must act consistently

I Statutory obligations

CCOs must be aware of and ensure that they comply with all relevant legislative requirements, at all times. In this regard, CCOs should be particular aware of:

- the Local Government Act 2002 (relevant obligations include: the Treaty of Waitangi, shareholder objectives, being a good employer, social and environmental responsibility and community interests, sound business practice, and accountability)
- the Local Government (Auckland Council) Act 2009 (relevant obligations include: the Auckland ("spatial") Plan (s79), the Long-term Plan and other plans/strategies, and additional accountability requirements specific to Auckland Council's CCOs).

Additional legislation which contain statutory obligations includes (but is not limited to, especially in respect of individual CCO activities such as water or transport):

- the Companies Act 1993
- the Income Tax Act 2007
- the Goods and Services Act 1985
- the Health and Safety at Work Act 2015
- the Employment Relations Act 2000
- the Privacy Act 1993

- the Copyright Act 1994
- the Human Rights Act 1993
- the Local Government Official Information and Meetings Act 1987
- the Protected Disclosures Act 2000.

II Obligations arising from agreements Auckland Council has with third parties

From time-to-time, Auckland Council may enter or be required to enter agreements and arrangements with parties outside the Auckland Council group. Where those agreements affect and are relevant to the work of a CCO, Council will expect that CCOs will help Council deliver on its commitments with those third parties. This is consistent with the principle of taking a group approach in conducting relationships. CCOs can expect that Council will seek input and collaborate with CCOs before entering agreements with third parties which may affect the business of CCOs.

Nonetheless, it is recognised that these commitments may sometimes create additional responsibilities for CCOs, or have unintended consequences for elements of a CCO's strategic and operational programmes. In such cases a CCO should discuss this at the earliest possible opportunity with Council with a view to reaching agreement on the specific role the CCO should play in regards to the third party. This agreement may in some cases require a formal agreement to be negotiated.

Current examples of third parties with which Council may have agreements affecting CCOs include (but are not limited to):

- Tupuna Maunga Authority o Tamaki Makaurau
- Haumaru Housing
- Auckland War Memorial Museum, Museum of Transport and Technology
- Eden Park Trust Board.

Section 3: Other expectations

This section provides a range of more general expectations which Council has of its CCOs. The Local Government Act s64B provides for a general ability to specify such shareholder expectations, including those in relation to community engagement and collaboration to deliver services.

Delivering on Kia Ora Tāmaki Makaurau/Maori Responsiveness Framework

Key expectations in this regard are contained in the Accountability Policy, which requires CCOs to give effect to Council's direction. Once the revised Kia Ora Tāmaki Makaurau Framework is approved and begins to be implemented, additional expectations may be added to the Statement of Expectations reflecting it.

Strategy development

[to be developed, reflecting council's strategy guidance document]

Data sharing

As part of strategy development, it is critical that appropriate data is shared across the Council group to inform strategy and evaluation. Council expects that CCOs will provide such data in a timely fashion when it is requested and is clearly relevant to the work being undertaken.

Climate change

Council's expectations in respect of climate change outcomes are contained in the Accountability Policy.

Provide value for money

Each substantive CCO is to ensure that it provides value for money for Aucklanders, which means achieving the outcomes and levels of service specified by the council in an efficient and effective way. This is to be achieved by:

- Being accountable for decisions about spending and the use of council group resources and assets.
- Ensuring that all activities and services are underpinned by prudent use of resources and assets.
- Ensuring that there is a high degree of transparency in financial planning, budgeting, and sources of revenue.
- Informing the council well in advance of entering into any commitments or obligations that may have financial impacts which are outside of approved funding; or negatively affect the council group's prudential ratios through a significant increase in council group debt or reduction in revenue.
- Ensuring that there is a justifiable business purpose for all spending.
- Ensuring that significant investments are supported by robust business cases which meet the standards of any relevant council group policies and provide a clear and strategic rationale for investment.

Manage risk appropriately

Each substantive CCO is to proactively manage all their risks including strategic, financial, operational, and reputational risks (including the risk of fraud and/or corruption). Each CCO must:

- manage, monitor and report on their risk management activities undertaken in accordance with either the council's Enterprise Risk Management Policy and Framework, or the CCO's own risk management framework
- actively report on the effectiveness of their risk management processes and outcomes
- proactively report on all significant risks and issues and their management to ensure no surprises, transparency and that the significant risks are being appropriately managed.
- provide quarterly reports on risk management to the Audit and Risk Committee, and appear before that Committee as requested by it.

Remuneration

Council expects CCOs to adhere to the group remuneration policy.

While CCO Chief executive salaries are set by boards, Council's expectation is that salaries should not exceed the salary paid to the group chief executive. For new appointments, careful attention should be given to the relativities with the salary of previous incumbents.

Quality advice to boards

We expect that advice given by CCO staff to boards has the rigour as reflected in the council's quality advice standards (for advice to elected members), particularly in relation to risks and credible analysis. Over time, CCOs should ensure that the quality of their internal advice is in alignment with the standards used internally by Council.

Council has a comprehensive set of tools and guidance which can be used by the CCOs, including tools for the development of strategies (subject to Council ensuring this material is accessible to all staff within the group).

Balance commercial and public good

CCOs may have objectives which relate to commercial purposes. At times, these may appear to be in conflict with other objectives of a more public good nature. CCOs are public entities of Auckland Council, and are not fully commercial, profit-seeking organisations. This means that while commercial activity may be an important part of CCO activity and revenue, it is fundamentally intended to be in the service of the public good strategic goals which have been agreed with Council.

Different CCOs will have a different balance of commercial activity and, in balancing different objectives, a CCO Board should ensure it is clear about the choices it is making and the balance it is striking. In the first instance this should be reflected in the Statement of Intent, and agreed with Council. This balance, and the trade-offs, should also be evident (such as in Board papers) when a Board is considering a significant decision. Where there is doubt about a course of significant potential action, the CCO should ensure Council is fully informed of the trade-offs and seek advice on how interests should be balanced.

Job Descriptions

Over time, Council would expect that job descriptions for chief executives and senior staff in CCOs will come to reflect that these roles are within the Auckland Council group of organisations, and therefore the importance of being responsive to Council direction (including in this Statement of Expectations) and working effectively with senior council staff. Job descriptions should also refer to the need to contribute to Maori outcomes.