

## NOTICE OF SPECIAL MEETING

# COUNCIL

I hereby give notice that pursuant to Standing Order 14.1(b)(i) a Special Meeting of the Council will be held on:-

**DATE:**        **Thursday, 26 September 2002**        **TIME:**        **9.30 am**

**VENUE:**        **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider existing governance arrangements, to determine what arrangements it wishes to put in place for the future and to take any necessary action connected therewith.

20 September 2002

Sharon Simiona  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8820

### **MEMBERSHIP:**

Mayor	RA	Harvey, QSO, JP
Deputy Mayor	CA	Stone
Councillors	DQ	Battersby, JP
	BA	Brady, JP
	JM	Clews, QSO, JP
	RP	Dallow, QPM, JP
	AC	Fenton
	OE	Hoskin, JP
	PA	Hulse
	JP	Lawley
	GE	Nash, JP
	VS	Neeson, JP
	GB	Presland
	GW	Russell
	DA	Yates, JP

(Quorum 8 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A SPECIAL MEETING OF THE COUNCIL (GOVERNANCE) TO BE HELD IN  
THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON THURSDAY, 26 SEPTEMBER 2002, COMMENCING AT 9.30 AM.**

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**1 APOLOGIES**



**2 GOVERNANCE**

**PURPOSE OF THE REPORT**

The purpose of this report is to enable Council to examine and review its existing governance arrangements, and to determine what arrangements it wishes to put in place for the future. This is of particular importance given the explicit requirements on Council in relation to governance and governance policies that are included in the proposed new Local Government legislation.

**BACKGROUND**

Governance is the principal function of the elected Council in its discharge of the functions, duties and responsibilities it has under law. The governance role of Council involves:

- Determining, with and on behalf of the community, what activities the Council will undertake (what should happen).
- Ensuring that what should happen, does.
- Ensuring that what should not happen, does not.
- Monitoring the organisation's performance within these parameters and taking steps to correct any issues that occur outside of this framework.

The Council is given specific guidance on exercising its governance role by the current Local Government Act, which contains restrictions on the powers and decision-making responsibilities so that the Council can delegate. The proposed Local Government legislation will set a different framework for the Council in exercising its governance responsibilities. This framework will be discussed further on in the report.

**STRATEGIC CONTEXT**

The Council's governance role is inextricably linked with how Council sets its strategic vision and goals for the City and the organisation. In particular, the "what should happen" part of the governance process is where Council sets the strategic outcomes it wants to achieve for, with and on behalf of the community, and determines what outputs (activities) the organisation is going to undertake in pursuit of those outcomes.

The establishment of governance policies and practices is the process through which Council can be clear how it will determine its strategic framework, and how it will relate to the Council organisation and other partners/bodies/organisations in order to pursue its vision and goals. The clearer the Council can be in (a) defining what it wants to see happen and how it will go about achieving this, and (b) operating within its espoused policy and framework, the more likely it is to engender understanding, clear communication and "hassle-free" results from the organisation and other parties it deals with.

## ISSUES

There are two main components to the issue of governance for the Council. These are:

1. **The governance relationship with the organisation** - this comprises how Council determines what it requires from the organisation, the relationships through which it will communicate and monitor these requirements, and the tools it will use to communicate, monitor and enforce its requirements.
2. **The governance relationship with other parties with which the Council has some form of governance role** - this is its relationship with other organisations in which Council has an interest whether as owner, beneficiary of outcomes or purchaser. It is of particular relevance to entities such as Local Authority Trading Enterprises and Council controlled Trusts (both to become Council Controlled Organisations (CCO's) under the proposed legislation). In this Council's case, Waitakere City Holdings Limited, Techscape Limited, Waitakere Properties Limited, and Waitakere Enterprise Trust (Enterprise Waitakere) are prominent examples of these "arms-length" but Council controlled entities. The Audit Office through its audit service providers is also liaising with Councils to determine whether there are other organisations not necessarily owned by Council but which meet the new definition of a CCO as per the Local Government Bill. In reaching its conclusions on a case-by-case basis, the Audit Office will recognise the definition of control as contained in the new accounting standard on consolidating financial results.

While these areas overlap in a number of ways, it is useful to separate them to some degree in order to get clarity around the particular relationships involved and the range of tools available to Council in ensuring that its goals are being met effectively and efficiently.

### **Governance Relationship with the Organisation**

This governance relationship is the most important one of all if Council is to be effective in achieving its own strategic goals and those of its community.

The Council's governance relationship with the Council organisation is in fact a relationship with the Chief Executive. There are a number of formal tools that exist through which the governance relationship is conducted or which impact on the relationship. These are:

- The Annual Plan (and related performance targets).
- The Long Term Financial Strategy (which will become the Long Term Council Plan and the Long Term Council Community Plan under the proposed legislation).
- The Chief Executive's Contract of Employment.
- Performance measures or targets for the Chief Executive established under any contract of employment.
- The Performance Review Committee (and any other meetings convened for the purposes of dealing with Chief Executive/organisation performance).
- Any formal governance policies or operating guidelines set by Council.

In addition, the proposed legislation envisages an explicit set of governance statements which will draw together the above into a framework and address a number of other principles and relationship issues.

Section 24 of the Local Government Bill 2001 provides that the local authority must endeavour to ensure that the following principles apply to the governance of that local authority:

- “(a) the elected members of the local authority are responsible and democratically accountable in their decision-making; and
- (b) *the governance role and expected conduct of elected members is clear and understood by elected members and the community; and*
- (c) *the governance structures and processes are effective, open, and transparent; and*
- (d) *So far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and*
- (e) *the local authority is a good employer; and*
- (f) *the relationship between elected members and management of the local authority is effective and understood.”*

Section 25 provides that the local authority must endeavour to ensure that the following principles apply to the management of that local authority:

- “(a) the management role is clear and understood by elected members, management, and the community, including in relation to the employment of staff, implementation of decisions, and provision of advice; and
- (b) *so far as is practicable, the management structure of the local authority -*
  - (i) *reflects and reinforces the separation of regulatory responsibilities and decision-making processes from other responsibilities and decision-making processes; and*
  - (ii) *is capable of delivering adequate advice to the local authority to facilitate the explicit resolution of conflicting objectives.”*

Section 26 provides that a local authority must prepare and make publicly available, following the triennial general election, a local government statement that includes information on:

- “(a) *the electoral system and the opportunity to change it; and*
- (b) *representation arrangements, including the option of establishing Maori wards or constituencies, and the opportunity to change them; and*
- (c) *members’ roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and*
- (d) *governance structures and processes, membership, and delegations; and*
- (e) *meeting processes (with specific reference to the applicable provisions of the Local Government Official Information and Meetings Act 1987 and standing orders); and*
- (f) *consultation policies; and*
- (g) *policies for liaising with, and memoranda or agreements with, Maori; and*
- (h) *the management structure and the relationship between management and elected members; and*
- (i) *equal employment opportunities policy; and*
- (j) *key approved planning and policy documents and the process for their development and review; and*
- (k) *systems for public access to it and its elected members; and*
- (l) *processes for requests for official information.”*

Key among these requirements are the requirements to explicitly address Councillors' role and conduct (including a code of conduct), governance structures and processes, the relationship between management and elected members, and key approved planning and policy documents together with the process for their development and review.

It is important that Council takes a coordinated, systematic and strategically coherent approach to each of the tools and mechanisms that form part of the governance relationship. Failure to do so can lead to conflicting priorities, unclear expectations and potentially ineffective or "poisonous" relationships between elected members or between elected members and the Chief Executive and management team.

It is also important to recognise that while formal tools are important in the relationship, trust and mutual respect for each other's roles, responsibilities and abilities are vital. Without an element of goodwill and respect, effective working relationships become difficult, and the organisation, the elected Council, but most importantly the Community suffers.

### **Governance Relationships with Other Organisations**

Council's governance relationships with external organisations can be both more complex and more difficult to influence than those with the Chief Executive and the Council organisation. While Council has its own mechanisms for setting its aims and goals for external organisations (the long term planning and Annual Plan mechanisms apply here), it has a lesser number of formal mechanisms for exercising control over the organisations themselves. For LATES such as Waitakere City Holdings Limited, the formal mechanisms for influence are:

- The appointment of Directors.
- The Statement of Corporate Intent development process.

The activities of the entity may be influenced through other mechanisms such as service contracts or agreements, or memoranda of understanding, but these are often outside the governance process.

This situation is further complicated by the absence of a formal framework against which structural options for carrying out non-commercial activities can be evaluated. At a special workshop held on group governance on 15 August 2002, Council expressed its support for the following principles of good group governance as promulgated by the Audit Office in a recent report.

- The subsidiary entity should have a clearly defined purpose.
- The subsidiary entity's governing body should be effective.
- The parties involved should be assigned clear roles and responsibilities.
- The local authority should be able to hold the subsidiary entity to account.
- Mechanisms for accountability to the community must be in place.

It is again important to recognise that the working relationships that are established between Council and its officers and external organisations are vitally important in enabling Council to influence organisations to work towards Council's goals.

At the Council meeting held on Tuesday, 3 September 2002, it was resolved:

- “1. That the Council ratifies the Discussion Document attached at pages A1 to A16 to the Agenda Report.
2. That the Discussion Document be communicated to the Board of Waitakere City Holdings Limited.
3. That the Board of Waitakere City Holdings Limited be directed to work with an Officers Advisory Group, to develop specific changes to Statements of Corporate Intent, in accordance with the Discussion Document.
4. That a process be established for reviewing the Directorate of Waitakere City Holdings Limited, including, subject to Council approval, the appointment of replacement Directors where appropriate.
5. That the Other Matters outlined within the agenda report, being:
  - re-evaluation of the tender criteria;
  - re-evaluating the purpose of Waitakere City Holdings Limited;
  - developing Memoranda of Understanding for trust projects with Waitakere Properties Limited; and
  - meeting with officers of North Shore City Council regarding Techscape strategic goals;be progressed and brought back to Council for further consideration.”

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Resolutions 2 and 3 have been actioned although it will only be practical to give effect to Council's changes to Waitakere City Holdings Limited Statement of Corporate Intent by 26 September 2002. However, the Holding Company Board has stated its clear intention to work with the respective subsidiary companies to ensure that their respective statements of corporate intent give effect to the changes contained in the discussion document received by Council at its emergency meeting. Current legislation enables Council to make changes to entity statements of corporate intent at any stage during the year to which the statement applies.

The chairman of the Holding Company wishes to present the revised Statement of Corporate Intent and outline the timetable for any further revision to the respective subsidiary company statements of corporate intent. The Council meeting / workshop scheduled for 11 October 2002 would provide an ideal opportunity to do this.

Resolutions 4 and 5 above refer to specific matters requiring further review by Council officers before being brought back to Council for further consideration. At the August workshop on governance there was Council support for an in-depth review of the effectiveness of current Council governance mechanisms specifically relating to Council controlled entities, but also non - Council controlled entities subject to significant Council funding. It was suggested at the workshop that this further review take place during the current strategic plan review as this would provide officers with a good understanding of what Council is seeking to achieve in respect of its strategic goals and objectives and whether the existing governance structures and mechanisms are appropriate. The meeting / workshop on 11 October 2002 would provide an ideal opportunity for Council to provide input into the detailed scope of review, an indication of priorities, and a timetable for completion.

#### **DRAFT DOCUMENTS ENVISAGED UNDER THE PROPOSED LEGISLATION**

A1-A49

Draft documents required by the Local Government Bill and based on those proposed by the Local Government New Zealand Governance Working Party are attached at pages A1 to A49. They are submitted for consideration and feedback for further development. Each paper has its own introduction and explanation.

## **PROCESS FOR COUNCIL DISCUSSION**

Council has set aside this meeting and a meeting on 11 October 2002 to discuss and workshop issues on Governance. A programme for discussion at these meetings has been circulated separately.

## **CONCLUSION**

Governance is the elected Council's most important function. Spending time getting governance processes, tools and relationship right will assist the Council to deliver effectively on the Community's goals and priorities.

## **RECOMMENDATION**

That the information be received.

Report prepared by: R McLeod: Director: Corporate & Civic Services and R Rudd: Director of Quality Assurance.



DRAFT I

**Waitakere City Council  
Governance Statements**

**Source documentation for the Waitakere City Council Governance Statements:**

A governance statement is a collection of information about the day-to-day workings of the Council. It includes information about the electoral arrangements, the governance structures and processes (including details such as the governance structures, meeting procedures, and codes of conduct); and the key policies of the Council.

This paper discusses the preparation of Governance Statements. It includes a discussion of the purpose of the statements, the contents of these statements and tips for the preparation of statements. The aim of the paper is to promote good practice in the disclosure of the information rather than just taking a “minimum compliance” approach. This paper does not provide a template governance statement (so much information is specific to this Council that a template would serve little purpose).

The members of the Good Governance Project Team who have produced this document, and the draft Code of Conduct are:

Mary Bourke, Mayor, South Taranaki District Council (Chair)  
Cr Sue Piper, Councillor, Wellington City Council  
Barry Harris, Chief Executive, Environment Waikato  
Darryl Griffin, Manager Democracy Services, Waitakere City Council  
Christine Jones, Corporate Services Manager, Tauranga District Council  
Roger Matthews, Manager Advocacy, Auckland City Council  
Ann Webster, Sector Manager, Office of the Auditor-General  
Gavin Beattie, Senior Policy Analyst, Department of Internal Affairs  
Robert McShane, Senior Policy Analyst, Department of Internal Affairs  
Carl Hansen, Partner, Buddle Findlay (Legal Advisors)

## Part One: What is a Governance Statement?

Section 26 of the Local Government Act 2002 requires the Council to adopt a governance statement. The governance statement is a collection of information about the governance of the City, in terms of the:

- electoral arrangements
- the way in which the governors (Councillors) make decisions and relate to each other and to the management of the local authority
- key policies of the Council.

Strictly speaking, the governance statement is not a new requirement. Local authorities are already required to disclose much of the information required in a governance statement either in an Annual Plan or in their disclosure of information under section 19 of the Local Government Official Information and Meetings Act (LGOIMA) 1987<sup>1</sup>. What is new is the requirement to draw the material together into a single statement.

### Content of Governance Statement

The following information must go into a governance statement:

- the electoral system and the opportunity to change that system
- representation arrangements and the opportunity to change them
- Members roles and conduct (including the code of conduct and any statutory requirements as to Members roles)
- governance structures, membership and delegations
- meeting processes (including the relevant provisions of the Local Government Information and Meetings Act and any standing orders)
- consultation policies
- policies for liaising with Maori, and any memorandum and agreements with Maori

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<sup>1</sup> Local authorities often refer to the document that contains this information as their “Directory of Official Information”. The Local Government Act 2002 repeals sections 19 (dealing with the content of the “directory”) and section 20 (dealing with public access to information in the “directory”).

- management structures and the relationship between management and Elected Members
- the equal employment opportunities policy
- key approved planning and policy documents and the process for their development and review
- systems for public access to the Council and its Elected Members
- processes for requests for official information.

Obviously a majority of this information would not have to be prepared from scratch as it comes from other documents.

The information listed above is only that which is required, the Council that wishes to include other matters in its governance statement may do so.

### **Access to Governance Statements**

The Act requires only that the Council make its governance statements “publicly available”. There are no requirements as to how or where this making available should occur. In other words, the Council is free to publish and circulate written copies, place on a website, place in service centres and libraries, mail a copy to each ratepayer, or use any or all of these methods, or any other method it considers appropriate.

Interestingly, unlike section 19 of LGOIMA, there is no restriction on charging for the statement. The Council may, for example, make a “reasonable” fee or charge for the statement under section 105 of the Act. Of course, local authorities that wish to do this should balance the wish to recover costs and the desirability of having much of the information widely available.

### **Preparation of the Governance Statement**

The only legal requirement is that the Council must prepare a governance statement after each triennial election of Members and make the statement publicly available. The Members do not have to formally adopt the statement (although some of the key elements such as the code of conduct and some of the key planning and policy documents must be formally adopted).

There is a requirement, of sorts, to review a governance statement. However the requirement is only that the Council must update its governance statement, as it considers appropriate. The Council need not review its governance statement each year (as was the case with the requirements of section 19 LGOIMA), although obviously there is a balance between the cost and work involved in preparing a statement and the obligation to keep the local community informed.

The Governance Statement is a substantive document (in fact it may be a collection of documents rather than a single document). Some of the provisions, such as the requirements to include the key policy and planning documents and the code of conduct, are quite explicit in its requirement to include the full documents rather than summaries. This is a key document for the general public as it explains how the council conducts its business, and to the extent that it is possible, it should be kept to a manageable size.

*Statements should explain the “why” as well as the “what” ...*

The Governance Statement will contain information about some matters that will seem rather arcane to the general public such as standing orders, codes of conduct etc. Many of these documents will set out “rules” for the conduct of council business e.g. the general public will have a set time to speak at Council Meetings. The Council’s governance statement should not only state what our “house rules” are but explain why the rule is in place e.g. a standing order to the effect that the Council has an “Open Forum” for half an hour at the start of Council Meetings might carry an explanation that the Council wishes to hear from the community on issues “of the day”, and to avoid distractions while the Council is considering other business. If some aspect of the statement is a legal requirement - say so. Statements that are just a list of rules are more likely to alienate readers and may leave some with the impression that their democratic rights are being trampled on.

## Part Two: Contents of the Governance Statement

### Electoral Systems

The purpose of including information on electoral systems in the governance statement is to ensure that the electors of the local authority understand how their representatives are elected, and more importantly, how they can change the system.

Compliance with this particular requirement would include:

1. identification of the electoral system (i.e. first past the post or single transferable vote)
2. identification of other options available under the Local Electoral Act 2001 (i.e. whichever electoral system is not identified under 1. above)
3. a description of the legal procedures for reviewing electoral systems (the Council has to review its system at least once every six years, either the Council or its electors can demand a poll, and the processes for an elector demand for a poll).

### Representation Arrangements

The purpose of including information on representation arrangements in the governance statements is to ensure that the electors understand how the Council sets up its representation system and how this might be changed.

Compliance with this part of section 26 would include:

1. whether the Council has wards or constituencies or elects its Members “at large” or a combination of the two
2. where the Council has wards or constituencies then for each ward or constituency:
  - the name of the ward or constituency
  - the location of the ward or constituency (i.e. a map or some other generally excepted geographic reference)
  - the number of representatives each ward elects
  - whether the ward or constituency is a Maori ward or constituency

3. whether or not the Council has Community Boards, and if so then:
  - Community Board names and locations
  - Community Board Membership (including whether and how many Elected Members are appointed to the Board by the Council and how many are elected)
  - delegations of powers to Community Boards
4. the procedures through which the arrangements for representation can be changed e.g. the review of Membership and basis of election, the role of the Local Government Commission etc.

### **Members Roles and Conduct**

This part of the governance statement sets out the roles and conduct of Elected Members. It's inclusion gives the public a better understanding of the things that "their" Elected Members can and cannot do e.g. all Council decisions are made collectively and in the interests of the entire City, the Mayor cannot dismiss a staff member or lawfully give a staff member an instruction. It is also a good source document for Elected Members.

This part of the governance statement should include:

- reference to the provisions of Schedule 5 of the Local Government Act, the Local Authorities (Members Interests) Act, and the Secret Commissions Act that deal with the roles and conduct of Elected Members
- the code of conduct currently in force within the Council (note the requirement is for the whole code, not just a summary of the code)
- any other protocols or policies that relate to the roles and conduct of Elected Members.

### **Governance Structures and Processes**

This part of section 26 gives residents information on the governance arrangements subordinate to the Council. The wording of the section 26 requirement is somewhat wider than the present requirements of LGOIMA. The LGOIMA requirement specifically extends only to standing committees, the governance statement requirement refers to "governance structures and processes" which takes in any ad-hoc committees and council controlled organisations.

1. a list of the standing committees and subcommittees, and for each committee:
  - the name of each committee
  - the terms of reference for each committee
  - the membership of each committee (with the presiding Member clearly identified)
  - any delegations of authority to each committee
  - some statement of the frequency with which committees that hold frequent meetings actually do meet
2. a statement of the procedures for creating any ad-hoc committees
3. a list of council controlled organisations including:
  - their name
  - their objective(s)
  - the location of their principal office
  - the membership of the governing body of the organisation
  - any Council nominees to the organisation.

### **Meeting Processes**

The inclusion of this requirement in the governance statement promotes transparency in the operation of local government. In particular it assists the public in understanding their rights to attend meetings of Council and Council Committees, speak at these meetings etc. It also provides the public with the ability to scrutinise Council decision making processes to ensure that correct procedures have been followed.

Governance statements that comply with this part of section 26 will include:

1. references to the applicable provisions of Part VII of LGOIMA with regard to the conduct of the meeting (notification, availability of agendas and supporting papers, public access and exclusion thereof, maintenance of order etc)
2. references to the applicable provisions of Schedule 5 of the Local Government Act regarding the adoption of standing orders, procedures for their amendment, and circumstances when the Council may suspend standing orders
3. a copy of the standing orders in force within the Council.

## **Consultation Policies**

The purpose of this part of section 26 is to let interested people know when they can expect that they will be consulted on a particular matter. This would include the following information:

- a description of the provisions of the relevant provisions of sections 66-72 of the Local Government Act, in particular the principles of consultation, the special consultative procedure and the requirements to use that procedure
- Council's policies on what constitutes a significant proposal
- any details of consultation methods other than the special consultative procedure, and the circumstances in which the Council might use them.
- any policies, protocols, memoranda of understanding that the Council has with Maori in its area.

## **Management Structures and Processes**

This is another requirement that has been taken from section 19 LGOIMA. Section 26 is a good deal less prescriptive than LGOIMA. Whereas LGOIMA required identification of the various branches and divisions of the management structure of the Council, and a list of the names and business contact details of each division or branch supervisor, section 26 requires only a description of the management structure and of the relationship between management and Elected Members.

When developing contents for this part of the governance statement the Council should remember that the purpose of this part of the governance statement is to allow residents to direct their queries to the correct place in the Council. To this end providing more information rather than less would be helpful to both the resident and the Council.

An interesting part of this requirement is the inclusion of the phrase "the relationship between management and Elected Members". It is not entirely clear what the legislation envisages here. It is believed that all that is required is a statement that under section 28 of the Local Government Act 2002, the Chief Executive is the employer of all staff, and thus is the only person who may lawfully give an instruction to a staff member, and of the practical consequences of this provision (e.g. complaints about a particular staff member should be sent to the Chief Executive rather than any Elected Member etc).

## Equal Employment Opportunities Policy

The requirement to include an EEO policy in the governance statement is the only actual requirement to have an EEO policy. Unlike the Local Government Act 1974 there is no statement of the objectives of an EEO policy, and no requirement to report against this in the Annual Report. This governance statement is therefore the only *required* public statement of the Council's EEO policy.

The information that should go in the governance statement should include:

- the Council's understanding of EEO
- any specific programme that the Council has for addressing EEO issues.

## Key Approved Planning and Policy Documents

A governance statement has to contain the key *approved* policy and planning documents. The Act is clear that the statement *has to contain the documents themselves* rather than a summary, or information on where these documents can be obtained.

The Act contains no guidance on what the key policy and planning documents are. The Council may wish to use the procedures for determining significance when deciding whether or not a particular policy or plan is a "key" document and thus should go in the governance statement. The Act is also clear that only approved documents need be included in the statement. Drafts or proposals need not go in the statement.

The key policy and planning documents are:

1. the long term Council community plan including
  - a statement of the community outcomes, the Council's contribution to the community outcomes and the statement of how the Council will work with other agencies
  - the revenue policy
  - the finance policy
  - the asset management policy
  - the liability management policy
  - the investment policy

- policies and objectives with respect to council controlled organisations
  - policies on public/private partnerships
  - policies on determining significance
  - forecast and projected financial statements and the significant forecasting assumptions in that statement
  - the balance sheet management statement
  - the funding impact statement
  - the Council may want to consider whether or not the rates remission policy, rates postponement policy and rates relief policy on Maori freehold land are key policy documents (although if the Council decides to include its entire LTCCP in its statement that will do this as a matter of course)
2. the annual plan
  3. the district plan
  4. district roading plan
  5. any other plan or policy that the Council might regard as key e.g. the Growth Strategy may be regarded as a key planning document and should be included in the Governance Statement.

This part of the statement must also set out the procedures through which these documents are developed and reviewed. So for example the document would state that the Council has to prepare and adopt an annual plan every year, but need not review its community outcomes any more frequently than once every six years.

### **Systems for Public Access**

This requirement promotes the provision of information to getting access to the Council and its Elected Members. This includes information such as:

- the street and postal address and the telephone number of the Council's principle office and other offices and service centres (if any)
- any other information that would allow an interested person to communicate with the Council (emails, websites etc).

### **Procedures for Dealing with Official Information**

This part of section 26 replicates a requirement in section 19 LGOIMA and gives the public information regarding the procedures they should follow when making a request for official information.

The governance statement should include the following:

1. a description of the provisions of LGOIMA regarding what types of information constitutes “official information”, access to official information, grounds for refusing access to official information, rights of appeal etc
2. details of any procedures that the Council has in place for dealing with requests for official information
3. the contact point or points within the Council for requests for official information.

DRAFT I

**“Working Together for the Community”  
A Guide to Preparing a Code of Conduct  
Under the Local Government Act 2002**

## Introduction

One of the few occasions that local affairs can be practically guaranteed media exposure is when there is a breakdown in the relationships between Elected Members and the council staff, or between Elected Members. While these fortunately do not happen often, when they do they are very public and tend to reflect poorly on the sector as a whole. Our system of governance is based on mutual respect and trust, it is therefore often the cases that once such working relationships are damaged the damage is often irreparable and requires a triennial election to start things anew.

For this reason, the Local Government Act requires that local authorities adopt a Code of Conduct, and that Elected Members adhere to the provisions of that Code. There is a range of sanctions for breaches of the Code of Conduct ranging from removal from Council Committees and the like, through to civil liability or criminal prosecution in extreme circumstances.

This paper discusses the requirement to adopt a Code of Conduct. The first part of the paper discusses the requirement itself and gives some tips for the preparation of a Code of Conduct. The second part provides a draft Code of Conduct based on a template developed by the group.

The members of the Good Governance Project Team who have produced this draft Code of Conduct and the paper on the preparation of Governance Statements are:

Mary Bourke, Mayor, South Taranaki District Council (Chair)  
Cr Sue Piper, Councillor, Wellington City Council  
Barry Harris, Chief Executive, Environment Waikato  
Darryl Griffin, Manager Democracy Services, Waitakere City Council  
Christine Jones, Corporate Services Manager, Tauranga District Council  
Roger Matthews, Manager Advocacy, Auckland City Council  
Ann Webster, Sector Manager, Office of the Auditor-General  
Gavin Beattie, Senior Policy Analyst, Department of Internal Affairs  
Robert McShane, Senior Policy Analyst, Department of Internal Affairs  
Carl Hansen, Partner, Buddle Findlay (Legal Advisors)

## What is a Code of Conduct?

A code of conduct is a document that sets out the standards of behaviour that are expected from Elected Members (including the Mayor, Councillors, Community Board Members and Appointed Members).

Under the Local Government Act 2002 every local authority **must** adopt a code of conduct as soon as practicable after the commencement of the Act. Prior to this adoption of a code of conduct was not mandatory, although many councils had some protocols (whether formal or informal) covering the relationships between Elected Members, staff and the general public.

The requirement to adopt a code of conduct only applies to local authorities. There is no requirement for a *Community Board* to adopt such a code, although many may wish to. Those Community Boards that do adopt a code of conduct need not adopt the code adopted by their parent local authority, although there may be advantages in them doing so.

The code of conduct must be included as part of the Council's Governance Statement required under section 26.

Local authorities are **not** required to consult the public on the contents of a code of conduct. The only procedural requirement is that the code of conduct must be "adopted" by the Council i.e. adopted by resolution at a Council meeting.

The Act does not set out any list of required contents for a code of conduct. The only exception is that the local authority must specifically consider whether or not to require that Elected Members who are undischarged bankrupts must declare that fact.

Once adopted, a code of conduct may be amended but cannot be revoked (unless the local authority adopts a replacement code). Amendment of a code or adoption of a new code requires a 75 percent vote of the members of the local authority. In other words, extreme care should be taken in developing a code because once adopted, you are likely to be "stuck with it" for some time. The Code of Conduct continues in force after the elections unless the new Council, in accordance with the 75% rule, amends it.

### Content of Codes of Conduct

Legally there are no required contents for a code of conduct. The only obligation on a local authority is to adopt a code, and in so doing to consider whether it will require Elected Members to declare whether or not they are undischarged bankrupts.

However a good code of conduct may well contain the following items:

- a statement of the roles and responsibilities of the Mayor, other Elected Members, and the Chief Executive
- provisions dealing with communications with the media – who may make an “official” communication and in what circumstances, what are others rights
- provisions dealing with ethical conduct
- provisions dealing with confidentiality of information received during the course of duties
- provisions that deal with communication between Elected Members and members of the council staff
- procedures for investigating and resolving alleged breaches of the code of conduct
- details of sanctions – what they are, when they might be applied, processes for their application (where these processes are inside the control of council)
- provisions for the review of a code of conduct (both in terms of the statutory requirements and any processes the local authority has put in place).

## **Sanctions**

The Act requires that all Elected Members must comply with the provisions of the code of conduct. The question then arises as to whether there are sanctions in place if an Elected Member breaches the code of conduct.

The following may be used as sanctions for a breach of a code of conduct:

- censure (either public or otherwise)
- refusal or removal of “privileges” e.g. attendance at Conferences, removal of cell phones or computers where the council provides these
- removal of the Elected Member from Council Committees and/or other representative type bodies (which serves two purposes firstly there is a loss of “status” and secondly, the loss of memberships also hits the offending member “in the pocket” as they no longer collect meeting allowances)
- prosecution under section 200 of the Local Government Act, which leaves a member liable for a fine of up to \$20,000 on conviction
- the provisions of the Local Government (Members Interests) Act where the member has breached those provisions
- inviting the Auditor-General to prepare a report on any financial loss or damage suffered by a local authority as the result of the breach (which could potentially lead to the member having to personally make good the loss or damage).

## Tips on Preparing a Code of Conduct

*Codes of conduct should be as explicit as possible ...*

Codes of conduct are part of the “house rules” that govern relationships and behaviour. While some high level principles may be desirable to “set the scene” for the remainder of the code, a document that talks in vague generalities will be difficult both to adhere to, and to enforce, particularly with regard to the more severe sanctions. In particular, a local authority that wants recourse to prosecution under section 200 of the Local Government Act should make its provisions very clear and clearly identify what behaviour constitutes breach of the code.

*Codes of conduct are not a means of preventing Elected Members from expressing their views ...*

Some in local government hold to the view that a code of conduct is a means of preventing Elected Members from expressing their views and stifling debate once a decision is taken.

Such a view is typically couched in terms such as “collective responsibility” and is based on the mistaken notion that local government functions in a similar manner to Cabinet. It does not. A council is closer in its nature to Parliament with the expression of differing points of view. Provided that an Elected Member does not attempt to present a personal view as anything other than that, then they have the right to express such views.

Codes of conduct should promote debate and make it clear that personal views, and the rights of *all* members to express personal views are to be respected.

What a code of conduct does is set boundaries on standards of behaviour in expressing and promoting those views, and means of resolving situations when Elected Members breach those standards. Codes of conduct that are overly restrictive on the expression of views may breach the New Zealand Bill of Rights Act 1990.

*Elected Members should “own” the code ...*

Nothing is more likely to promote non-compliance with a code of conduct than Elected Members being invited to endorse a code that others have prepared.

Elected Members should “workshop” the code as soon as practicable after the declaration of the election result. Given that most codes of conduct are likely to include provisions governing with the relationship between Elected Members and the Chief Executive, and through that person, the staff; it may be desirable to have any workshop facilitated by an independent person.

Buy-in to the code will also be enhanced if Elected Members are invited to formally sign-up. Although legally bound by a code regardless, people are more likely to respect and adhere to a code they have formally put their names to. The draft code that follows includes a declaration from the Member that they will abide by the code.

*Codes should be clear about the consequences of a breach for both the Elected Member and the local authority.*

One of the reasons codes of conduct have historically been seen as “toothless” is that many Elected Members and officers are unaware of the range of sanctions that can be applied, even under the Local Government Act 1974.

Many Elected Members see only the sanctions of censure, removal from committees etc, and removal of other “privileges” which can sometimes be seen as doing little more than providing an opportunity for publicity for the Member who has been sanctioned and as a generator of negative publicity. Often both Members and staff are genuinely unaware that for example, leaking information on a tender may leave the Council open to prosecution under the Privacy Act, or even civil action (and that the Auditor-General may become involved where the Council suffers financial loss).

Clear information about the possible consequences of a breach both for the Member and for the local authority provide a clear warning that should give pause to most people before they do things that might constitute a breach of the code.

*Codes of conduct cannot stand-alone ...*

Codes of conduct work best when they are supported by other mechanisms. A document that sits in a file and is exhumed only when some one may have breached the code will quickly become something akin to “the ambulance at the bottom of the cliff”.

The most obvious supporting mechanism is training. A good code of conduct will remind members of their obligations under the Local Government Act, the Members' Interests Act, the Local Government Official Information and Meetings Act etc. A code that replicated all of the relevant provisions would probably be of a size where no one person (either member or staff) could remember them all. All Elected Members should receive training in their obligations under these Acts at beginning of each triennium. Other provisions of the code of conduct should be wrapped in with such training.

Codes of conduct will also be linked to other procedural documents such as Standing Orders. Standing Orders provide rules that set out processes and to some degree standards of conduct for the more formal situations such as meetings of Council or Council Committees; codes of conduct govern the day-to-day less formal relationships.

## Waitakere City Council Code of Conduct

### Part One: Introduction

Schedule 5 of the Local Government Act 2002 requires each local authority to adopt a Code of Conduct. Once adopted, all Elected Members are required to comply with the Code.

This Code of Conduct provides guidance on the standards of behaviour that are expected from the Mayor and Elected Members of the Waitakere City Council. The Code applies to Elected Members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive
- the media
- the general public.

This Code (does not) applies(y) to Members of the Henderson, Massey, New Lynn and Waitakere Community Boards. ((These) Boards have prepared their own Code (which is substantially similar to this one)).

The objective of the Code is to enhance:

- the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good government of the Waitakere City
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance between the Elected Members as a group and between the Elected Members and management.

This Code of Conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities (recorded in Part Two of the Code)
- agreed general principles of conduct or etiquette (recorded in Part Three of the Code)

- specific Codes of conduct applying to particular circumstances or matters (also recorded in Part Three of the Code)

Elected Members are primarily accountable to the electors of the district through the ballot box and other democratic processes. However members must note that they are also accountable to the Auditor-General in respect of unlawful actions or expenditure or for breaches of the Local Authority Member's Interests Act. In extreme circumstances, Elected Members who deliberately or flagrantly breach the Code of Conduct may also be liable for prosecution under section 200 of the Local Government Act 2002. Anyone prosecuted under that section may be fined up to \$20,000 per breach.

## **Part Two: Roles and Responsibilities**

This part of the Code describes the roles and responsibilities of Elected Members, the additional roles of the Mayor and Deputy Mayor, and the role of the Chief Executive.

### **Elected Members**

Elected Members, acting as the Council, are responsible for:

- the development and adoption of Council policy
- the preparation of the Council budget (Annual Plan) (including determining any expenditure requirements and the means for funding those requirements)
- monitoring the performance of the Council against its stated objectives and policies
- employment of the Chief Executive
- representing the interests of the residents and ratepayers of the Waitakere City Council (Note: on election, the Members' first responsibility is to the District as a whole rather than any particular Ward).

The Council can only act by majority decisions at meetings. Each member has one vote, with the presiding member having a casting vote in the event of an equality of votes. Any individual member (including the Mayor) has no authority to act on behalf of Council unless the Council has expressly delegated such authority.

### **Mayor**

The Mayor is one of the Elected Members and shares the same responsibilities as other Members of council. In addition to this the Mayor has the following roles as a:

- presiding member at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (as determined in Standing Orders)
- leader of the community. This role may involve acting as a community advocate, promoting the attributes of the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council.
- Justice of the Peace (while the Mayor holds office).

None of the above roles authorises a Mayor to:

- make public statements that contradict previously adopted council policy without clarifying that they are personal views
- commit Council to a particular course of action unless acting under a proper delegation of authority from the Council.

### **Deputy Mayor**

The Deputy Mayor is elected by the Members of Council, at the first meeting of the Council. The Deputy Mayor exercises the same roles as other Elected Members, and in the event of the absence or incapacitation of the Mayor, will act as the presiding member and community leader in the manner described above.

### **Chief Executive**

The Chief Executive is responsible for the implementation and management of the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 28 of the Local Government Act 2002, the responsibilities of the Chief Executive are:

- (a) implementing the decisions of the Council
- (b) providing advice to Elected Members
- (c) ensuring that all functions, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- (d) ensuring the effective, efficient and economic management of the activities and planning of the local authority.

The Chief Executive is also responsible for the employment of all other staff of the Council i.e. under section 28 of the Local Government Act 2002 the Chief Executive is the only person *directly* employed by the Council itself.

### **Part Three: Relationships and Behaviours**

This part of the Code sets out the Council's agreed standards of behaviour. Some of the matters described in this part of the Code reflect other legislation such as the Members Interests Act. The majority of the Code, however, is material that has been agreed by the Council.

#### **Relationships With Other Members**

Without successful teamwork any democratically elected organization will have trouble succeeding. No team will be effective unless mutual respect exists between leaders and members. With this in mind Elected Members will conduct their dealings with each other in ways that:

- maintain the respect and dignity of the office to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct
- recognise and respect individual strengths and weaknesses.

#### **Relationships with Staff**

The effective performance of Council also requires a high level of cooperation and mutual respect between Elected Members and Council staff. To ensure that level of cooperation and trust is maintained, Elected Members will:

- recognise that the Chief Executive is the employer of Council employees, and as such only the Chief Executive may lawfully instruct an employee
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
- observe any guidelines that the Chief Executive puts in place regarding dealings with employees
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee

- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee
- only raise concerns about employees with the Chief Executive, and to only raise concerns about the Chief Executive with the Mayor.

Elected Members should be aware that failure to observe this portion of the Code of Conduct may compromise the Council's obligations to act as a good employer and may expose the Council to Audit sanctions and civil litigation.

Members should also note that the Court of Appeal decision in *Vickery vs. McLean and Others (2000)* holds that local authority employees are not political figures and that there is no qualified privilege on public statements about employees that are false and damaging. In other words Elected Members may be sued for defamatory statements made about employees.

### **Contact with the Media**

The media have an important part to play in the process of local democracy. In order to fulfill this role the media needs access to accurate, timely information about the affairs of Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of Council, or as an Elected Member in their own right. This part of the Code deals with the rights and duties of Councillors when speaking to the media on behalf of Council, or in their own right.

The following rules apply for official media contact *on behalf of Council*:

- the Mayor is the first point of contact for the official view on any issue. Where the Mayor is absent any matters will be referred to the Deputy Mayor
- the Mayor, or in his absence, the Deputy Mayor, may refer any matter to the relevant Committee Chairperson or to the Chief Executive for their comment
- no other member may comment on behalf of Council without having first obtained the approval of the Mayor.

Elected Members are free to express a *personal view in the media*, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of Council
- where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the Member must make it clear that his or her statements represent a minority view

- media comments must observe the other requirements of the Code of Conduct e.g. not disclose confidential information, or compromise the impartiality or integrity of staff etc.

In support of the above provisions Elected Members undertake not to use the Council logo or any other Council branding without first obtaining approval from the Mayor or the Chief Executive. This approval will *not* be granted in cases where the material is for campaign purposes or for the advancement of personal views.

### **Confidential Information**

In the course of their duties Members will occasionally receive information that may need to be handled in a confidential manner. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Accordingly, Members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Elected Member.

Requests for information under the Local Government Official Information and Meetings Act 1987 must be passed to the Chief Executive, who will ensure that the request is responded to.

Elected Members should be aware that failure to observe these provisions will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council (especially that of suppliers or potential suppliers such as engineering or consulting firms). Failure to observe these provisions may also expose Council to prosecution under the Privacy Act and/or civil litigation.

### **Conflicts of Interest**

Elected Members must be careful that they maintain a clear separation between their personal interests and their duties as an Elected Members. Members therefore undertake to familiarise themselves with the provisions of the Local Authority (Members' Interests) Act 1968.

Members shall annually make a written declaration of interest. The declaration shall notify of:

- a) any employment, trade or profession carried on by the Member for profit or gain.
- b) any company or trust for which the Member is a Director or Trustee.

- c) the address of any land in which the Member has a beneficial interest and which is in the area of the Waitakere City Council.
- d) the address of any land where the landlord is the Waitakere City Council and the tenant is a firm in which the Member is a partner, a company of which the Member is a Director or a Trust of which the Member is a Trustee.
- e) any other matters which the public might reasonably regard as likely to influence the member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive)

If the Member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the Member should seek guidance from the Chief Executive *immediately*.

Failure to observe the requirements of this section of the Code could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe this section of the Code could also leave the Elected Member open to prosecution under the Local Authority (Members' Interests) Act 1968. In the event of a conviction Elected Members can be ousted from office.

### **Standing Orders**

Elected Members shall adhere to any Standing Orders adopted by Council under the Local Government Act 2002. These Standing Orders are subject to the same legal requirements as a Code of Conduct with regard to their adoption and amendment.

### **Ethics**

Waitakere City Council seeks to promote the highest standards of ethical conduct amongst its Elected Members. According Elected Members will:

- only claim for legitimate expenses as laid down by any determination of the Higher Salaries Commission then in force, and any lawful policy of Council developed in accordance with that determination
- not influence, or attempt, to influence any Council employee to take actions that may benefit the Member, or the Member's family or business interests
- avoid the use of Council resources for personal business (including campaigning)
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are offered. Where a gift to the value of \$80 or more is offered to a Member, that Member must immediately disclose this to the Chief Executive for inclusion in a publicly available register. Donation of the gift to the Council collection negates the need for disclosure.

Failure to observe the requirements of this part of the Code could potentially leave the member open to prosecution under the Secret Commissions Act 1908, the Members Interests Act, or the Crimes Act.

### **Disclosure of Changes in Circumstances**

Elected Members are automatically ousted from office if they are convicted of a crime punishable by two or more years imprisonment. In the event an Elected Member is charged with a criminal offence, the Member will notify the Chief Executive as soon as practicable after indictment.

Under the Local Government Act, local authorities must state whether or not they will require Members to declare when they become an undischarged bankrupt. This Council believes that bankruptcy does raise questions about the soundness of a person's financial management skills and their judgment in general. The Council therefore requires Elected Members who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt.

## **Part Four: Compliance and Review**

This part deals with the mechanisms for ensuring that Elected Members adhere to the Code of Conduct and mechanisms for the review of the Code of Conduct.

### **Compliance**

Elected Members must note that they are bound to comply with the provisions of this Code of Conduct (Local Government Act 2002, Schedule 5, section 14(4)) *regardless of whether or not the member has signed the acknowledgement below.*

Members undertake to familiarise themselves with the provisions of this Code, Standing Orders, the Local Government Act, the Members' Interests Act, and the Secret Commissions Act.

All alleged breaches of the Code will be reported to the Chief Executive, or the Mayor where the circumstances of the breach involve the Chief Executive. The alleged breach will be investigated and a report prepared for the consideration of Council.

All reports will be considered in open meeting of Council, except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of a member of staff or of the general public.

Members should be aware that one or more of the following sanctions may be applied in the event of a breach of the Code of Conduct:

1. censure
2. refusal or removal of "privileges" e.g. attendance at Conferences, removal of cell phones or computers where the Council provides these
3. removal of the Elected Member from Council Committees and/or other representative type bodies
4. dismissal of the Elected Member from a position as Deputy Mayor or Chair of a Committee
5. prosecution under section 200 of the Local Government Act, which leaves a Member liable for a fine of up to \$20,000 on conviction
6. prosecution under the provisions of the Local Government (Members Interests) Act (Note: the decision on prosecution under this Act is made by the Auditor-General)
7. inviting the Auditor-General to prepare a report on any financial loss or damage suffered by the Council as the result of the breach (which could potentially lead to the Member having to personally make good the loss or damage).

A decision to apply one or more of the first five sanctions shall require a Council resolution to that effect.

The sixth and seventh involve processes where any member of the public may seek redress against the Council. The Council may also invite the Auditor-General to investigate of its own initiative by passing a resolution to that effect.

**Review**

Once adopted a Code of Conduct continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code. Once adopted, amendments to the Code of the conduct require a resolution supported by 75 percent of the Members of the Council.

Council will formally review the Code as soon as practicable the beginning of each triennium. The results of that review will be presented to Council for their consideration and vote.

**Acknowledgement**

I, ....., of the Waitakere City Council hereby declare that I have read the Code of Conduct adopted by Council on ..... and that I agree to abide by the provisions therein.

Signed: .....

Witnessed by: .....

Date: .....

Date: .....

DRAFT I

***“Getting the Best From Your Council  
Controlled Organisations”***

**A Guide to Working With Council  
Controlled Organisations Under the Local  
Government Act 2003**

## Introduction

Part 4 (and schedules 6 and 7) of the Local Government Act 2003 deals with the creation, governance and performance monitoring of Council controlled organisations. The stated objective of these is to *“provide a code for the governance of Council controlled organisations and for the monitoring and reporting of their performance.”*

The Act makes significant changes to the provisions regarding Council controlled organisations ranging from the amalgamation of various types of organisation (LATES, trusts etc) into a single catchall category (“Council Controlled Organisations” or “CCOs”), to the extension of the “official information” provisions of the Local Government Official Information and Meetings Act to the activities of all CCOs.

This paper describes the key changes that have been made in the Act and what they mean for those Councils that have formed CCOs. As its title implies, this paper promotes good practice in the formation, governance, and performance monitoring of Council controlled organisations.

This paper is the third of five products produced by the Good Governance Project Team. It follows the papers *“Working Together for the Community: A Guide to the Preparation of Codes of Conduct”*, and *“Governance Statements”*. That team is:

Mary Bourke, Mayor, South Taranaki District Council (Chair)  
Cr Sue Piper, Councillor, Wellington City Council  
Barry Harris, Chief Executive, Environment Waikato  
Darryl Griffin, Manager Democracy and Support Services, Waitakere City Council  
Christine Jones, Corporate Services Manager, Tauranga District Council  
Roger Matthews, Manager Strategic Projects, Auckland City Council  
Ann Webster, Sector Manager, Office of the Auditor-General  
Gavin Beattie, Senior Policy Analyst, Department of Internal Affairs  
Robert McShane, Senior Policy Analyst, Department of Internal Affairs  
Carl Hansen, Partner, Buddle Findlay (Legal Advisor)

## What is a Council Controlled Organisation ?

### Definition

The Local Government Act 2003 (“the Act”) consolidates a number of different types of organisation into a single type of organisation known as a Council controlled organisation (or CCO).

A Council controlled organisation includes the following:

- a company in which 50 percent of the voting rights at any shareholders meeting are held or controlled (whether directly or indirectly) by 1 or more local authorities or where the local authority has the right, whether directly or indirectly to appoint 50 percent of the directors<sup>2</sup> or
- an organisation where 1 or more local authorities have control of 50 percent or more of the votes at any meeting of the members or controlling body of the organisation or the right to appoint 50 percent or more of the directors of the organisation. The term “organisation” means any partnership, trust, arrangement for the sharing of profit, joint venture, but does not include a company (included elsewhere in the definition), or Council committee or joint committee.

The Act specifically excludes port companies and any subsidiary of a port company; as well as *Local Government New Zealand* and any organisation which is controlled by *Local Government New Zealand*.

This definition of Council controlled organisation is significantly wider than that which applied under the Local Government Act 1974. The definition now includes all organisations that meet the above criteria regardless of their structure, and whether or not they operate as a trading undertaking, unless the Act specifically excludes them. The definition also includes some quite small entities such as a Hall Management Committee or a Santa Parade Trust.

The requirements regarding the appointment of directors and performance monitoring also apply to certain organisations (if they do not meet the definition of a CCO). These organisations include the following:

- a related company of a CCO (the definition of a related company is contained in sections 2 (3) and 2(4) of the Companies Act 1993<sup>3</sup>)
- a company that consists substantially of the same shareholders as the CCO or that is under the control of the same people..

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<sup>2</sup> This paper will use the term “directors” to describe the trustees, directors, or office holders of the organisation regardless of the term used by the individual CCO.

<sup>3</sup> The Companies Act holds that a company is related to another if the other company is its holding company or subsidiary, or holds more than half its shares (or more than half of the shares are held by the members of the other company, or there is another company to which both companies are related, or the businesses of the companies have been carried out in such a way that the separate business of each is not readily identifiable.

## **Types of CCO**

The definition of CCO is an all-encompassing one which takes in organisations of all types; both corporate (e.g. LATES) and non-corporate (e.g. trusts).

The exact type of CCO formed will depend on the nature of the objectives that the shareholding local authorities wish to achieve (should the CCO operate with the intent of making a surplus, or some other non-profit objective in mind).

## **Companies**

These are the equivalent of Local Authority Trading Enterprises under the Local Government Act 1974 and would now operate as companies under the Companies Act 1993. These CCOs operate with the primary objective of making a surplus for return to their shareholders.

For profit CCOs will tend to be a more effective form of organisation for a CCO where:

- the CCO has some clearly defined, quantifiable, objective product or service to trade (thus a for profit CCO might be an appropriate form for a CCO created to undertake the management of a road network or a library – but might not necessarily be the best form for managing economic development)
- the relationship between the CCO and its “customers” is that of a supplier-purchaser at an individual level
- the shareholding local authorities wish the CCO to focus on generating a return with the resulting drive to earn profits through maximizing revenue and minimising costs
- there is, or could be, competition for the supply of the goods or services to the customer, thus providing better incentives to keep costs down, and to provide a basis to benchmark performance against

The main advantages to such an organisational form are:

- companies under the Companies Act are “limited liability” i.e. in most cases the members of the company are liable only to the extent of their shareholding
- company structures are particularly flexible in that new shareholders can be added, new share capital issued
- companies have perpetual succession i.e. once established the company continues in existence until it is wound up

Some of the potential disadvantages of companies are:

- all of the income received from a CCO will be subject to income tax at the Corporate Tax Rate of 33 percent . CCOs will also have to register for GST purposes if they have an annual income of \$30K or more
- a commercial CCO is an inherently risky operation and the CCO may find itself paying a premium on its debt (although the prohibition on borrowing to on-lend to CCOs has now been removed)
- in addition to the requirements of the Local Government Act, companies are subject to other requirements under taxation and company law (e.g annual returns)
- losses cannot be carried over for tax purposes by shareholders
- conflicts of interest can arise because the Companies Act 1993 is quite clear that the primary duty of the board of directors is to act in the interests of the company rather than the interests of shareholders .

## **Trusts**

Trusts are a holding of assets for the purposes of applying those assets, the proceeds or the income derived from them, to other people (referred to as the beneficiaries of the trust). The directors are legally referred to as “trustees”. The trustees acquire the assets by gift or purchase and do not own them except for the purposes imposed on them by the conditions of the gift or sale. Typically those conditions are specified in a document known as a trust deed.

Some of the advantages of trusts in the local government context are

- can provide for the disposal of assets while retaining some control (through the trust deed)
- the existence of the beneficiaries need not be disclosed to third parties

Some of the disadvantages are:

- trusts cannot have perpetual existence – (limited to 80 years or 21 years plus the life of the asset)
- once executed it can be difficult for the settlor (the party selling or gifting the asset to the trustee) to change the terms of the trust deed
- trustees have a high standard of duty (to act in the best interests of the beneficiaries, to act impartially between beneficiaries, and to take advice all while exercising the same degree of diligence and skill as a prudent person of business)
- trustees have potential conflicts of interest in that the interests of the beneficiary cannot conflict with the personal interests of the trustee
- trustees first duty is to the beneficiary rather than the settlor
- trustees are personally liable for the debts, contracts etc they enter into but this can be limited by using a corporation limited by shares.

### **Joint Ventures**

A joint venture normally consists of two or more entities (Councils in this case) that have decided to combine resources for a specified purpose, usually for a specified duration. These are based on an agreement that sets out contributions, liabilities and legal status of the parties.

This form tends to work best where there are a small number of local authorities that share a common interest or objective and see benefits (economies of scale, minimization of risk, resource requirements) in pursuing that objective jointly.

These can take a variety of forms either incorporated or unincorporated. The form will depend on a variety of considerations such as tax issues (the “owners” would be liable for the tax and liabilities of an unincorporated society, whereas the venture would be liable if it were incorporated).

Joint ventures have the following advantages:

- flexibility – these can be formed in a number of ways
- builds strategic alliances between local authorities and enable for a degree of pooling of resources
- exit is comparatively easy
- enables the spreading of risk.

Some of the potential disadvantages of joint ventures are:

- the “fusion” of separate cultures in the shareholders can be difficult to manage
- governance issues must be clearly defined as there is no “off the shelf” legislative joint venture model
- the comparative ease of dissolution means there will always be a degree of uncertainty in the model (which may feed through into higher costs of debt etc).

### **Incorporated Societies**

An incorporated society is a CCO that would operate under the Incorporated Societies Act 1908.

### **“Hybrid” CCOs**

It is possible to design organisational forms that fit somewhere between the two extremes. For example, an organisation might be created that is registered as a company under the Companies Act, but for which the shareholders do not expect a return.

Care should be taken in designing these sorts of organisational forms that the incentives on the CCO will actually generate the results the shareholders are trying to achieve. In the example in the preceding paragraph, the shareholders have decided the company should run efficiently but that they do not wish a return. The incentives on this CCO will primarily centre around the minimisation of costs.

## **Establishing a CCO**

### **Consultative Requirements**

The Local Government Act 1974 contains a quite detailed process for the establishment of a LATE.

The only procedural requirement in the 2003 Act is that the Council must consult using the special consultative procedure before establishing or becoming a shareholder in a CCO (this requirement therefore includes the purchase of shares in a CCO). In other words the decision to establish a CCO or purchase shares has an equivalent status to that of a “significant proposal”.

This consultation can be undertaken as part of consultation on another procedure, or as part of the consultation on an annual plan, and the long term Council community plan. So for example, a local authority deciding to form a trust to manage its libraries might elect to jointly consult on a proposal to transfer library assets to a CCO.

Where a local authority is proposing to establishing a CCO that proposal must include:

- the reasons for the proposal
- the proposed objectives for the organisation
- the nature and scope of the activities that the organisation is to undertake
- the expected impact of those activities on the community outcomes and priorities
- the expected impact of the proposal on the local authority's overall operations
- the expected impact of the proposal on the social, economic, environmental and cultural wellbeing of the community.

In addition to these requirements there will be other requirements if (as will usually be the case on establishment of a CCO) the Council is making a significant change to the delivery of a particular activity, or is transferring or divesting assets to the CCO.

### **Establishment “Plans”**

Unlike the Local Government Act 1974 there are no requirements to form establishment units, develop establishment plans etc. This means that local authorities can tailor their establishment procedures to the size of the CCO and its significance for the overall operation of the local authority and the achievement of its objectives. This also gives local authorities some flexibility when creating CCOs in the event that changes need to be made to their plans.

Regardless of the requirements of the Act there are certain steps that have to be taken before a CCO can be established. Thus some type of formal process is probably necessary. Some of the steps that are needed include

- the appointment of an initial board of directors
- the preparation of a constitution or memorandum of association, and articles of association for the CCO
- an assessment of the resource needs of the CCO

- procedures for the transfer of assets/undertakings from the local authority to the CCO or the acquisition of assets by the CCO (or both) and the negotiation of the compensation for the assets from the CCO to the local authority
- notification to debtors of any liabilities that are to be transferred to the CCO
- procedures for the appointment of a Chief Executive for the CCO and for the transfer of staff from the local authority or the hiring of other staff (or both)
- registration of the CCO (if a company) or lodgement of the Deed of Trust etc.

### **Transfers of Undertakings**

Schedule 7 of the Act sets out a series of regulations with regards to transfers of undertakings to CCOs. There is no definition of the term “undertaking” in the Act.

Transfers of undertakings in this way do not constitute a breach of contract, or give rise to terminate a contract or require that the performance or any obligation be accelerated or release any person from an obligation.

Once an undertaking is transferred to a CCO, all references to the local authority in an enactment or instrument (e.g. a contract or licence) relating to the undertaking should be read as a reference to the CCO. This does not apply to any liabilities, except in the circumstances below.

### **Transfers of Land**

Simply put a local authority can transfer any land it owns to any CCO *in which it owns equity securities* (i.e. the Council may transfer land to its own CCOs but not to a CCO in which it holds no shares). For the purposes of these provisions “land” also includes any property that is fixed, under or over that land.

When land is transferred in this way it is not regarded as a disposal of the land for the purposes of section 40 of the Public Works Act 1981, thus there is no obligation to offer any land transferred to a CCO back to its original owners. Land transferred to a CCO is still subject to section 40 in that a CCO wanting to dispose of such land must first offer it back to the original owner.

## **Transfers of Liabilities**

Local authorities may transfer liabilities to a CCO. This requires the written agreement of the authority and:

- the CCO
- the creditor(s)
- any guarantor(s).

On establishment of the CCO the local authority and creditors must identify any liabilities of the local authority that relate to the CCO. If they cannot agree then the matter has to go to arbitration (as defined in the Arbitration Act 1996), with one arbitrator appointed by the Council, one by the creditors and an umpire to be appointed by the arbitrators.

## **Constitution**

A CCO constitution will consist of two parts. The first is a Memorandum of Association which will set out the fundamental purposes for which the CCO has been established and the powers that the CCO will have e.g. acquire and dispose of property, borrow money, hire staff etc.

The Articles of Association provide more detail on the internal regulations of the CCO. Some of the matters that these will deal with include:

- the distribution of voting rights
- the powers and duties of directors
- the appointment and removal of directors (including the appointment of a Chairperson of the Board of Directors)
- provisions as to the interests of directors and conflicts of interest
- the powers of the Board and provisions for the delegation of those powers
- provisions regarding shareholders meetings (e.g. an Annual General Meeting and or Special General Meetings)
- provisions regarding the conduct of meetings of Boards of Directors (e.g. quorum, the use of alternates, abilities to form Committees or Sub-Committees)
- procedures for dealing with potential divestment of shares
- provisions for the winding up of the CCO.

## Statements of Intent

Section 47 of the Act requires that CCOs that operate on a “for profit basis” must have a Statement of Corporate Intent unless the CCO is listed on the Stock Exchange. Section 48 requires that “not for profit” CCOs have a written performance agreement with the shareholding Council.

The purpose of having a performance statement is to:

- provide an opportunity for shareholders to influence the direction of the CCO
- provide basis for accountability of the directors of the CCO to the shareholders for the performance of the CCO
- state the activities that the CCO will engage in and the objectives to which they will contribute.

Procedures for the preparation of these documents, and the respective contents of each type of document are set out in Schedule 6 of the Act. The processes for the preparation and modification of each type of document are the same. However the required content of each is slightly different

## Contents of Performance Statements

There are few changes to the requirements of the Local Government Act. A *Statement of Corporate Intent* has to contain the following information for the current financial year and the following two financial years, and for the CCO and any subsidiaries<sup>4</sup>:

- the objectives of the group
- the nature and scope of the activities to be undertaken by the group
- the ratio of shareholders funds to assets (and definition of those terms)
- the accounting policies of the group
- the performance targets and other measures by which the performance of the group may be judged
- an estimate of the amount or proportion of accumulated profits and capital reserves that it is intended to be distributed to shareholders

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<sup>4</sup> The requirement is to show information for the group rather than individual entities.

- the kind of information to be provided to the shareholders by the group during the course of those financial years, including the information included in any half yearly report (including what information is required and how it will be presented)
- the procedures to be followed before any member of the group acquires shares in any company or other organisation
- any activities for which the directors seeks compensation from any local authority
- the directors estimate of the commercial value of the shareholders investment in the group and the manner in which that value will be reassessed
- and other matters that the directors and shareholders agree to include in the Statement or which the shareholders resolve should be included in the Statement.

The performance agreement for a not for profit CCOs has to include all of the above information and also has to include the performance indicators against which the group may be held accountable for the use of ratepayers funds.

### **Development of a Performance Statement**

The requirements for the development of the performance statements are the same for profit and not for profit organisations.

The process itself has not changed significantly from that in the Local Government Act 1974. What has changed is the timeframes. Under the 1974 Act a LATE has to prepare a draft statement within one month of the start of the relevant financial year (in practice by July 31).

Under the 2003 Act, the directors of the CCO must prepare a draft performance statement on or before the 1 March preceding the financial year for which the statement relates i.e. draft performance statements for the 2005/6 financial year must be prepared by 1 March 2005. Copies of that draft must be delivered to shareholders. If a CCO has shareholders other than local authorities then copies of the draft must also be given to those people or organisations.

The shareholders then have until 1 May to make comments on the draft. The directors of the CCO are obliged to consider any comments and then deliver a completed performance statement to the CCO on or before 1 July.

This change in timeframe allows local authorities a better opportunity to integrate the actions of the CCO with their own (the timeframe allows local authorities to consider what the CCO proposes to do while they are in the process of preparing their own annual plans), and to have more scope to influence the activities of the CCO prior to the start of the year (i.e. by requiring consultation well before the start of the financial year, any feelings that the direction of the CCO is a "fait accompli" are removed or reduced).

Of course, the procedure set down in the Act is only a statutory minimum. In many ways this process is similar to the process of adopting a long term Council community plan, annual plan, etc in that the statutory procedures for adopting a performance statement are not necessarily the best ways of consulting with the affected parties (in this case the shareholders). The process of preparing a performance statement will work best where:

- the shareholders are given regular briefings on the strategic outlook for the CCO and thus are able to understand the changing conditions under which the CCO operates
- the directors of the CCO undertake “pre-consultation” with the shareholders with initial proposals on objectives and priorities for the coming year
- shareholding local authorities brief and consult with the directors of the CCO during the development of the Long Term Council Community Plan (LTCCP) and the Annual Plan (thus giving the CCO a better understanding of the priorities of its shareholding local authorities). This is especially important where a local authority has identified that a CCO will play an important part in the achievement of one or more of the community outcomes specified in the LTCCP.

Copies of the performance statement must be made available to the public within one month of the completion of the statement. Similarly, modified statements must also be provided to the public within one month of the modification being agreed to.

### **Modification of a Performance Statement**

The Act sets out two processes for the modification of performance statements during the course of the year.

The first is where the directors wish to modify a statement. The directors must give their shareholders written notice of the proposed change, and then consider any comments on the modification. A shareholder has one month to comment on any proposed modification, unless the shareholders and directors agree on a shorter period (as might happen in “emergencies”).

The second process is where the shareholders wish to make some modification to the statement. The shareholders can require a modification of any of the content of a performance statement by passing a resolution to make a modification and giving the directors notification of that resolution. Before giving notification the shareholders must have regard to the objectives they have for the organisation and consult the directors on the matters referred to in the notice.

This process is something that should be used infrequently. On the one hand frequent changes on the part of directors will not promote good relations with the shareholders and may lead to adverse performance reviews. On the other hand shareholding authorities that make frequent use of this process may, in the long run, find itself unable to recruit and retain competent people to serve as directors of CCOs.

## Directors

The Act makes several significant changes regarding the appointment of directors. The Local Government Act 1974 had a specific requirement that at least two of the directors of a LATE had to be people who are neither members nor authorities of any local authority.

### Appointment of Directors

Section 44 of the Act abolishes this restriction on membership and replaces it with a requirement that a local authority adopt a policy that sets out an “objective and transparent process” for identifying and considering the skills required of governors of a CCO and for appointing directors to a CCO. A local authority may appoint any person who has the skills, knowledge and experience to guide the organisation and contribute to the objectives of the organisation.

This means that local authorities may appoint as many Councillors to the governing bodies of CCO as they consider have the necessary skills.

Care should be taken when appointing Councillors or employees as directors of CCOs as:

- appointing Councillors or employees to boards of CCOs may create a conflict between their obligations to the CCO and their obligations to the Council
- community perceptions of such appointments are generally negative.

Appointments of Councillors to boards of directors tend to arise out of perceived lack of “control” over the activities of a CCO. The Office of the Auditor-General<sup>5</sup> considers that there are other ways of ensuring that CCOs are responsive to the concerns of the Council such as:

- selection and appointment processes that ensure that successful applicants both understand and accept the needs and priorities of the Council and of the community
- a clear statement of the Council’s expectation of the board
- regular discussion between the board and Council on the key issues and objectives
- a commitment from directors to a “no surprises” policy on matters which are likely to cause community concerns.

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<sup>5</sup> See Office of the Auditor-General (2001) *Local Authority Governance of Subsidiary Entities* pp15-16

In a similar vein, care should be taken when appointing Council employees as directors of CCOs. Council employees could also have a conflict of interest between obligations to the CCO and their duties to advise the Council on the performance of the CCO, and to follow the policies decided on by Council.

The exact mix of skills for a director of a CCO will vary depending on the structure of the CCO and its objectives. As a starting point the ideal director of a CCO would have:

- intellectual ability
- either business experience or experience in the “subject matter” of the CCO (or both)
- sound judgement
- a high standard of personal integrity
- and, most importantly of all, the ability to work as a member of a team.

The Act does not set any particular requirements for adopting the appointments policy, or what to do with a policy once it is adopted i.e. a local authority could adopt its policy by resolution and need not consider itself bound by any of the provisions of such a policy.

The objective of having such a policy is to ensure that the best people are appointed to the directorships of CCOs and that the public is aware of the processes that are used to appoint directors. With this objective in mind local authorities should consider the following:

- publication of the policies on appointment of directors in the Governance Statement
- adoption of the policy via special consultative procedure
- preparing an explanation of any departures from the policy if and when they occur
- advertisement of vacancies on boards of directors of the Council’s key CCOs.

The policy itself should contain:

- a statement setting out the skills and experience that the Council considers are necessary for directors of CCOs
- a statement setting out the procedures that the Council will follow when appointing the directors of CCOs
- policies on management of conflicts of interest
- a statement of the mechanisms by which the Council will communicate its expectations to, and manages the performance of directors of CCOs.

### **The Role of Directors**

The second change is a clarification that the role of the director is to ensure that the organisation meets its objectives and any other requirements in its statement of corporate intent or performance agreement.

This is important because it reinforces that the director's first duty is to ensure that the objectives of the CCO are met, and any requirements in the SCI. This requirement reinforces the need to pay close attention to the drafting of the SCI, the constitution of the organisation and to close involvement in the CCOs planning processes (both at strategic and annual levels).

### **Monitoring and Evaluation of Performance**

For the purposes of this section we view monitoring as an ongoing process that occurs throughout the financial year, and evaluation as a process that occurs more at the end of the year.

The bulk of the requirements for monitoring of performances of CCOs under the current law are not found in the Local Government Act 1974 but rather are found in the Companies Act and trustee law.

The 2003 Act contains a much more explicit performance monitoring regime for CCOs. It places obligations both on the shareholding local authorities and on the CCO.

## Obligations on the Local Authority

The local authority must have a process in place for the approval or endorsement of the directions, strategies, planned outcomes and activities, financial and non-financial outcomes and measures of that organisation. Local authorities are also required to regularly undertake performance monitoring of its CCOs to evaluate their contribution to the achievement of:

- the authority's objectives for the CCO
- the desired results as set out in the current performance statement
- the overall outcomes of the local authority.

Thus local authorities are expected to monitor the performance of the CCO in achieving the objectives the local authority has set for it, but also monitor how the CCO has otherwise contributed to the achievement of the overall aims and objectives of the local authority. These means that performance monitoring of CCOs is not just a job for the elected members and the finance staff but is a job for the whole Council.

For example, a local authority might have an outcome in its LTCCP "*a healthy district wide economy*" and create a CCO to undertake economic development activities and set up a statement that requires it create 1000 new jobs, or attract 50 new businesses to the city. The local authority must not only monitor whether or not these targets were met, but the contribution the CCO made against other objectives. Thus it may be that the CCO met the employment objectives but at the cost of additional pollution in a stream thus working against another outcome "*a sustainable environment*".

Ideally a local authority will have a set of specific procedures for monitoring the performance of CCOs. Having Councillors on the Board of Directors will not necessarily provide robust monitoring of performance of the CCO as the conflicts of interest described earlier will be present. These procedures should include:

- a statement of the information over and above the legal requirements that a local authority expects its CCO's to place in their half-yearly and annual reports e.g. a local authority that wishes to know what prices are being charged for a service provided by a CCO might ask the CCO to disclose this in their reports
- a clear statement in either the performance statement or in the CCO constitution as to the contribution that the CCO makes to the outcomes that the local authority has identified in its LTCCP
- regular meetings between representatives of the Council (not on the board of directors of the CCO) and the board of the CCO to discuss ongoing issues and give informal feedback on performance. The Auditor-General (1994) suggested that at a minimum a shareholding authority should receive quarterly reports regarding trading levels, revenue and expenditure, financial position, investments and divestments, and key non-financial performance indicators

- in addition to the monitoring of performance local authorities and their CCOs should agree upon a formal system for performance evaluation. In addition to highlighting areas of good/poor performance, such a system can highlight any special attributes and training needs/skill gaps and provide input into future appointments of directors.

### **Obligations on the CCO**

The CCO has to produce two reports for the local authority: a half yearly report (delivered not less than two months after the halfway point of the financial year)<sup>6</sup>; and an annual report (delivered within two months of the end of the financial year)<sup>7</sup>.

Each report must contain the information necessary to enable an informed assessment of the operations of the CCO including a comparison of the performance of the CCO against the objectives set out in the performance statement, and any variances between the two. Each report should also state what the maximum dividend for the year, if any, will be on the equity securities in the CCO.

In addition to this shareholding local authorities may specify other information that they require, as a part of the performance statement.

The Annual Reports of CCOs must also include audited consolidated financial statements including:

- a consolidated statement of financial position
- a consolidated operating statement
- a consolidated statement of cash flows
- an operating statement for each of the significant activities<sup>8</sup> of the CCO
- any other information which is necessary to reflect the financial position of the CCO and its subsidiaries e.g. statements of contingencies etc.

The Annual Report must also include an Auditor's<sup>9</sup> report on the financial statements and the performance targets and measures.

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<sup>6</sup> This replicates the requirements of section 594Z of the Local Government Act 1974.

<sup>7</sup> This largely replicates the requirements of section 594Z, although the deadline for delivery of the report has been advanced by a month i.e. most CCOs will have to report by 31 August instead of 30 September.

<sup>8</sup> There is no definition of the term "significant activity" anywhere in the Act.

<sup>9</sup> The Auditor-General is the Auditor of CCOs and their subsidiaries.

## **CCOS and “Official Information”**

The Act rolls over the provisions of the Local Government Amendment (Elected Members Remuneration and Trading Enterprises) Act 2001 which made LATES subject to the provisions of LGOIMA regarding the availability of information and the role of the Ombudsman. The Act however extends the coverage of these Acts to all CCOs (including bodies such as trusts).

This does not mean that it is “open slather” on information from CCOs (especially those operating in a commercial environment) as all of the grounds for refusal of access to information listed in LGOIMA are available to a CCO. These include the following:

- protecting the privacy of a member of the public (whether living or dead)
- protecting a trade secret or information that would otherwise prejudice the commercial position of the CCO
- protecting the health and safety of the public
- the avoidance of prejudice of measures that protect the public from material loss
- maintain the effective conduct of public affairs through the provision of free and frank advice or the protection of those giving advice from improper pressure and harassment
- maintain legal professional privilege
- enabling the conduct of commercial activities (including conducting negotiations)
- preventing the use of official information for improper gain or advantage.

The Act also has a specific provision which allows a CCO to avoid publication of information in performance agreements or annual reports which would not be available under one or more of these grounds.