

## 11. Council-controlled Organisations

### 11.1 What are Council Organisations (COs) and Council-controlled Organisations?

- a. Council-controlled Organisations (CCOs) perform a vital role in helping the council achieve its strategic goals, delivering a range of services to residents and visitors on behalf of the **council**. Taken together, their activities make a significant contribution to community wellbeing. The council has a collaborative and cooperative relationship with its CCOs, and views its CCOs as partners in the delivery of the council's objectives and priorities for Auckland. Councils in New Zealand can provide services to their communities in a number of different ways:
  - via their own in-house staff and operations
  - by contracting a third party or organisation
  - through an entity that is council-controlled but is governed, managed and operated at arm's-length through an independent board of directors.
  - Councils can hold or control any proportion of rights to appoint directors in a range of organisations [1], including:
- b. **Definition of Council Organisation (COs) and Council-controlled Organisations (CCOs)** - An entity is a CO when the council has the right to appoint fewer than 50 per cent of its directors [2]. Currently, Auckland Council has more than 70 COs. Entities in which the council has the right to appoint 50 percent or more of the directors are CCOs.
- c. **Substantive CCOs** - Substantive CCOs are wholly-owned council entities responsible for delivering a significant service or activity on behalf of the council or owning or managing assets with a value of more than \$10 million [3].
- d. **Council-controlled Trading Organisations** -The council can also have a stake in organisations which trade with the purpose of making a profit. These CCOs are known as Council-controlled Trading Organisations (CCTO). Auckland Council currently has only one CCTO, a joint venture called Waste Disposal Services.

## 11.2 Purpose of Council-controlled Organisations

- a. A CCO's main purpose is to help achieve the council's objectives. When a council decides to deliver public services through a CCO, **it effectively transfers responsibility to a board of directors or trustees**. This is common practice internationally and is often referred to as delivering services at arm's-length.
- b. Auckland Council reviewed its substantive CCOs in 2015 and developed criteria for deciding whether or not to deliver public services through this mechanism. These include:

- **Commercial focus** – arm's-length entities have the ability to act commercially and, in certain circumstances, can be more effective at growing external revenue streams, leveraging private investment or driving lower operating costs.
- **Efficiency** – arm's-length delivery can be more efficient where there are benefits from grouping related activities. Operational efficiencies may also be achieved by enabling a CCO to focus on delivering a discrete service (e.g. water).
- **Flexibility** - arm's-length delivery can be helpful for services that benefit from the ability to respond quickly. CCOs operate outside council processes and can make rapid decisions when needed.
- **Specialist skills** - oversight by a board of directors with specialist skills and knowledge is an advantage for some services.
- **Accountability for ratepayer funding** - when CCOs deliver services that require high levels of ratepayer funding, particularly where this is the primary source of funding, the relationship with the council is more complex, due to the council's accountability to the public for rating revenue. Retaining transparency and accountability of CCOs has transaction costs (e.g. performance monitoring).
- **Stakeholder, iwi and political interest in decision-making** - CCO boards are accountable to the governing body rather than directly to the public or other stakeholders. Services where the majority of decisions require a high level of engagement with the public, iwi, local boards and/or the IMSB can be more difficult to deliver through CCOs as it can be difficult for the council to monitor the effectiveness of engagement before decisions are made.

- **Integration** - services that are highly connected to other council activities or contribute to multiple strategic outcomes can be less suited to delivery through a CCO because of difficulties in achieving effective integration.

### 11.3 Auckland Council COs and CCOs

Auckland Council provides a range of services and programmes to the region through six substantive CCOs and nine other CCOs which are smaller in scale and budgets. All CCOs participate in, and contribute to council plans, as well as managing services, such as transport. The Long Term Plan contains information on the activities of Auckland CCOs and COs.

#### 11.3.1 Substantive CCO services and activities

- Auckland Transport (AT)** was established as a statutory entity [1], a fact that restricts the level of change the council can make to its structure without a change to the legislation. AT's purpose is "to contribute to an efficient, effective and safe Auckland land transport system in the public interest" [2]. AT operates under the Local Government (Auckland Council) Act 2009 [3], and is also subject to the Land Transport Management Act.
- Auckland Council Investments Ltd (ACIL)** was established by an Order in Council in 2010 to bring a strong commercial focus to the ownership and governance of the council's major investment assets. The ACIL board has three directors. The company manages shares in the Ports of Auckland Limited (100%), Auckland International Airport Limited (22.4%, held by two subsidiary companies) and Auckland Film Studios Limited (100%).
- Auckland Tourism Events and Economic Development** was established by an Order in Council in 2010 to lift Auckland's economic wellbeing, support and enhance the region's contribution to the NZ economy and help Auckland compete internationally as a desirable place to visit, live, work, invest and do business.
- Development Auckland Ltd (Panuku Development Auckland)** was established by council resolution in 2015 following the completion of the governing body's CCO review. Panuku is an amalgamation of two former council CCOs - Auckland Council Property Ltd and Auckland Waterfront Development Agency. Its purpose is to contribute to the Auckland Plan's implementation and encourage economic development by facilitating urban redevelopment that optimises and integrates good public transport outcomes, efficient and sustainable infrastructure and quality public services and amenities. Panuku Development Auckland is also responsible for managing the council's non-service property portfolio and provides strategic advice

on other property portfolios, such as recycling or redeveloping sub-optimal or underutilised council assets to balance commercial and strategic outcomes.

- e. **Regional Facilities Auckland (RFA)** was established by an Order in Council in 2010. It provides a regional approach to Auckland's arts, culture and heritage, sport and leisure sector. RFA manages more than \$1 billion worth of major facilities and landmark venues across the region, including the ANZ Viaduct Events Centre, Aotea Centre, Aotea Square, Auckland Art Gallery Toi o Tamaki, Auckland Town Hall, Auckland Zoo, Bruce Mason Centre, Mt Smart Stadium, The Civic, QBE Stadium and Western Springs Stadium.
- f. **The CCO RFA** is a charitable trust but is governed by a corporate trustee RFA Ltd which is a company that has a Board of up to 9 directors. RFA's objectives are to support Auckland as a vibrant city that attracts world class events and promotes the wellbeing of the communities of Auckland by engaging those communities and visitors in arts, culture, heritage, leisure, sport and entertainment venues. It is also tasked with continuing to develop, from a regional perspective, world class arts, culture, heritage, leisure, sport and entertainment venues as well as working with central government to integrate and review legislation associated with regional entities.
- g. **Watercare Services Ltd** provided bulk water and wastewater services prior to Auckland's 2010 local government reorganisation. Under the amalgamation legislation, Watercare was named as the Auckland water organisation until 1 July 2015 [4]. During the 2014/2015 CCO review, the council confirmed the continuation of Watercare in that role. Watercare is governed by the Local Government (Auckland Council) Act 2009 [5], and must manage its operations efficiently, with a view to keeping the costs of water and wastewater supply at minimum levels while maintaining the assets' long-term integrity [6]. Watercare is prevented from paying a dividend or distributing any surplus to the council as owner [7].

### 11.3.2 Smaller CCOs and Cos

- a. The council has a further nine CCOs that are smaller in scale and budgets than the substantive CCOs. These entities provide services to a range of stakeholders and also contribute to delivering council programmes and services. The following CCOs are required to meet governance requirements such as half-year and annual reports and Statements of Intent
  - **Community Education Trust Auckland (COMET)** - promotes and supports education and training opportunities, especially among communities with high educational needs

- **Contemporary Art Foundation** - promotes the arts through ownership and management of the Te Tuhi Centre for the Arts, a public gallery in Pakuranga which hosts local, national and international art exhibitions
- **Māngere Mountain Education Trust (MMET)** - the trust administers the Māngere Mountain Education Centre which provides educational opportunities for Aucklanders of all ages to learn about Māngere Mountain and its people.

b. The following CCOs are exempt from the above requirements:

- **Arts Regional Trust (ART)** - aims to grow entrepreneurship in the Auckland's arts, culture and creative sectors to generate cultural, creative and economic outcomes that benefit the region
- **Highbrook Park Trust** - manages Highbrook Estate, including 40 hectares of public parkland
- **Manukau Beautification Charitable Trust** - promotes, supports and undertakes programmes, actions and initiatives to beautify Auckland
- **Mount Albert Grammar School Community Swimming Pool Trust** - supports the Mt Albert Aquatic Centre, a local community pool
- **Te Motu a Hiaroa (Puketutu Island) Governance Trust** - Watercare established this trust to oversee and hold the fund for developing, managing, maintaining and operating Puketutu Island. The trust works with the council and iwi to transform the island into a regional park, after the deposition of biosolids in an excavated site
- **Te Puru Community Charitable Trust** - manages the community centre at Te Puru Park and supports sports, leisure, community and cultural groups in the Beachlands, Maraetai and Whitford areas.

### 11.3.3 Control and accountability of Auckland's substantive CCOs

a. The council is accountable for a CCO's actions and spending; it is, therefore, essential that a CCO's decisions align with the council's plans and policies. The council uses the following tools and processes to achieve this alignment and accountability:

- **Appointments to a CCO board of directors** – the council appoints all directors to the board of each substantive CCO and the majority of directors on a number of smaller CCOs. The council's approach to these appointments and directors' remuneration is outlined in its Board Appointment and

Remuneration Policy, included in the council's CCO Governance Manual. While the Companies Act 1993 requires the directors of CCOs that are companies (all but AT) to act in the CCOs' best interest, their constitutions also allow them to act in the best interests of the shareholder, the council.

- b. The council may also appoint up to two councillors onto the board of Auckland Transport [1].
  - **The annual Statement of Intent (SOI)** - each CCO must annually document strategic priorities in its SOI for the following three years and agree these with the council [2].
- c. The CCO Governance and External Partnerships team leads this process on behalf of the council.
  - **Reporting requirements** - Each CCO's SOI sets the performance measures for the three year period. Each CCO must provide the council with half-yearly and annual reports [3]. The council also requires all substantive CCOs to report on their performance at the end of the first and third quarters and explain if SOI performance measures have not been met.
- d. The chair and chief executive of each CCO are expected to appear before the relevant council committee when it meets to consider the CCO's performance reporting. For the 2016-2019 political term:
  - The Finance and Performance Committee will receive quarterly reports from the substantive CCOs against their SOI and will also decide on any matters relating to the exercise of shareholder responsibilities (e.g. Letters of Expectation, SOI, CCO governance policy).
  - Auckland Transport, Watercare and Panuku Development Auckland will report to the Planning Committee on planning matters
  - The Appointments and Performance Review Committee will receive reports relating to director appointments and any policy relating to director appointments.
  - RFA and ATEED will report to the Environment and Community Committee on economic development, tourism, events, cultural, venues, and other regional facilities issues.
- e. The council has also agreed in this political term to face-to-face performance discussions with CCO boards for the half-year reports (meeting held in March) and for the fourth quarter results (meeting held in September).

- **Strategic Alignment** – Each substantive CCO must give effect to the Long-term Plan and act consistently with any relevant aspect of council plans and strategies [4]. The overall direction for CCOs is also set in line with the Auckland Plan.
  - **The CCO Accountability Policy** - The council is required to have a policy on the accountability of its substantive CCOs [5]. This policy is set out in the council's Long-term Plan [6] and establishes the council's enduring expectations for each CCO. Two very important elements of the Accountability Policy are:
    - **Financial planning** - all substantive CCOs are required to provide asset management and activity plans, and supporting financial information to feed into the council's Long-term Plan and Annual Plan. Substantive CCOs are required to:
      - follow the council's asset management framework or obtain council approval for an alternative framework
      - use accounting standards that are consistent with the council's standards
      - follow any other requirements specified by the council and notified to CCOs
      - develop a Māori Responsiveness Plan.
    - **Major transactions relating to strategic assets** - the Accountability Policy identifies the strategic assets to be managed by each substantive CCO and sets out the requirements for managing them. In particular, CCOs may not undertake a major transaction (as defined in the CCO Accountability Policy) in relation to a strategic asset unless approved by the council or already provided for in the Long-term Plan. Certain transactions, such as a decision to transfer the ownership or control of a strategic asset to or from the local authority, must be provided for in the Long-term Plan [7], and may trigger consultation requirements [8]. The table in section 11.3.4 describes the Strategic Assets that are managed by Auckland CCOs.
- f. The council also has a range of informal mechanisms to achieve alignment and accountability, including:
- **The Governance Manual for Substantive CCOs (December 2015)** – Substantive CCOs must commit to acting consistently with the manual. The manual outlines other enduring governance expectations and conventions,

- such as:
  - **the 'No Surprises' protocol** – the council has a strong focus on getting all of the CCOs and itself to work well together. The key to this is a collaborative relationship built on strong, clear, regular communication. All council departments and CCOs should assess whether an issue is likely to attract public interest and ensure the mayor, councillors and/or local boards are briefed. This gives the council an opportunity to provide guidance on issues prior to decisions being made or any public release of information.
  - **Local Board Engagement Plans** - CCOs are accountable to the council through the governing body. They are required to proactively build relationships with local boards, as well as develop engagement plans with them. The requirements for local board engagement plans are set out in the Governance Manual.
- g. Panuku Development Auckland has a special requirement in its SOI to work closely with individual local boards whose town centres may be part of a large scale redevelopment 'transformation'.
- **Workshops** - the council piloted a programme of workshops with CCO boards in 2016 (two for Auckland Transport and Watercare and one each for the other substantive CCOs). These governance-to-governance workshops were not related to particular projects, focusing instead on discussions about opportunities and risks of a more long-term nature. These workshops will continue in the current term.

### 11.3.4 Strategic assets managed by Council-controlled Organisations

The table below describes the Strategic Assets that are managed by the council's substantive CCOs:

Council-controlled Organisation	Strategic assets owned and managed by the CCO
Auckland Council Investments Limited (ACIL)	<ul style="list-style-type: none"> <li>· 100% shareholding in Ports of Auckland Limited</li> <li>· shares held in Auckland International Airport Limited</li> <li>· freehold interests in waterfront land held by Ports of Auckland Limited</li> </ul>
Auckland Tourism, Events and Economic Development	<ul style="list-style-type: none"> <li>· None</li> </ul>
Auckland Transport	<ul style="list-style-type: none"> <li>· Public transport network including Britomart</li> <li>· Roothing network (Note – this asset is owned by the council and managed by Auckland Transport)</li> </ul>
Development Auckland Ltd (Panuku)	<ul style="list-style-type: none"> <li>· Freehold interests in Waterfront Land</li> </ul>
Regional Facilities Auckland	<ul style="list-style-type: none"> <li>· Auckland Art Gallery (including the arts collections owned by Regional Facilities Auckland)</li> <li>· Auckland Zoo</li> <li>· Aotea Centre</li> <li>· Civic Theatre</li> <li>· Viaduct Events Centre</li> <li>· Mt Smart</li> <li>· The council's contractual rights and interest in Auckland City Arena (known as Vector Arena)</li> </ul>
Watercare Services Ltd	<ul style="list-style-type: none"> <li>· wastewater network</li> <li>· water network</li> </ul>

## **11.4 Footnotes**

### **11.1 What are Council Organisations (COs) and Council-controlled Organisations?**

[1] This includes companies or any entities that are a partnership, trust, arrangement for the sharing of profits, union of interest, cooperation, joint venture, or other similar arrangement, set up with the intention of making a profit or with some other non-profit objective in mind.

[2] Local Government Act 2001, section 6(1).

[3] Local Government (Auckland Council) Act 2009, section 4(1).

#### **11.3.1 Substantive CCO services and activities**

[1] Local Government (Auckland Council) Act 2009, section 38

[2] Local Government (Auckland Council) Act 2009, section 39

[3] Sections 38 to 56

[4] Local Government (Auckland Council) Act 2009, section 4(1)

[5] Local Government (Auckland Council) Act 2009, Part 5

[6] Local Government (Auckland Council) Act 2009, section 57(1)(a)

[7] Local Government (Auckland Council) Act 2009, section 57(1)(b)

#### **11.3.3 Control and accountability of Auckland's substantive CCOs**

[1] Local Government (Auckland Council) Act 2009, section 43(2)(a)

[2] Local Government Act 2002, section 64

[3] Local Government Act 2002, sections 66 and 67

[4] Local Government (Auckland Council) Act 2009, section 92

[5] Local Government (Auckland Council) Act 2009, section 90(1)

[6] Long-term Plan, Volume 2, Part 4.4.

[7] Local Government Act 2002, section 97

[8] See the council's Significance and Engagement Policy, and Chapter 10.4.2.

## **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

**Standing Orders**