
Appointments to the Auckland Transport Board - Accountability of Auckland Council Controlled Organisations

File No.: CP2016/22376

Purpose

1. To agree to a process for the appointment of directors to the board of Auckland Transport (AT) in the 2016-2019 electoral term, in the context of the accountability framework that applies to substantive Council Controlled Organisations (CCOs).

Executive summary

2. This report responds to a requirement that the process for the appointment of elected members to Auckland Transport must be determined following each triennial election (section 4.5.3 of Governance Manual for Substantive CCOs). The proposal is considered in the context of the Governing Body's oversight of all substantive CCOs, including other CCOs delivering critical services such as Watercare.
3. The report draws attention to the suite of mechanisms available to the Governing Body which can increase the accountability and responsiveness of its substantive CCOs and deliver better outcomes for the city. Simply focusing on the appointment of councillors to the AT board may have unwittingly contributed to the underinvestment in the use of other tools to drive the accountability and responsiveness of the organisation. These tools include:
 - establishing Operating Rules by which AT must follow in relation to its governance;
 - the power the council has to require a CCO to modify its Statement of Intent to ensure alignment with Council strategic direction (via a shareholder's resolution);
 - the Accountability Policy that applies to all its CCOs to ensure alignment with Council objectives and priorities (both in the short and long term); and
 - appointing directors with not only governance and financial skills, but with an awareness of the accountability expectations of the sole shareholder.
4. With regard to the appointment to the current vacancies on the AT board, this proposal recommends that all AT board appointments – whether external directors or councillors – should be based solely on merit, and should follow an open, transparent and competitive process consistent with the Appointment and Remuneration Policy for Board Members of Council Organisations. It is important that the best qualified candidates are appointed to the AT board, and that we draw from the broadest pool of talent as possible.

Recommendations

That the Governing Body:

- a) **Note** that the appointment of councillors to the AT board of directors sits within a wider suite of accountability tools that apply to AT specifically and CCOs generally, as outlined in **Appendix A**;
- b) **Note** that greater investment in using the suite of accountability tools available to council has the potential to provide stronger accountability and responsiveness from AT than the appointment of a minority of councillors to a board of eight directors;
- c) **Request** that a report is brought to the Appointments and Performance Review Committee with an assessment of the opportunities to improve the strategic alignment, accountability and responsiveness of CCOs using the current suite of accountability tools;
- d) **Note** that there are currently three vacancies on the AT board of directors;

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- e) **Agree** that the primary consideration in filling the vacancies on the AT board will be the quality of the skills, knowledge and experience candidates bring to the directorships;
 - f) **Agree** to appoint up to three directors to the AT board using an open, transparent, and competitive process consistent with the Appointment and Remuneration Policy for Board Members of Council Organisations;
 - g) **Agree** that both external candidates and councillors will be eligible to be nominated for appointment to the vacancies, subject to any restrictions imposed by statute and the Appointment and Remuneration Policy for Board Members of Council Organisations;
 - h) **Agree** that the detail of the competitive appointment process be agreed through the Appointments and Performance Review Committee, including the confirmation of the directors skills matrix for the appointments, the process for candidate long-listing and short-listing, and the appointment of the preferred candidates;

Background

Formal accountability of Auckland CCOs

5. The *Local Government (Auckland Council) Act 2009* (the “LGACA”) and the *Local Government Act 2002* (the “LGA”) provide the statutory basis for the accountability of Auckland CCOs.
6. A high level summary of the statutory accountability tools, and the capacity to amend them or use them in a different way for the purpose of increasing performance and accountability is set out in **Appendix A**.

Informal accountability

7. In addition to legislative and formal mechanisms for accountability, there is an important day-to-day relationship between Auckland Council and its CCOs. To get the best out of the CCO model, it is important the council and CCOs work as a group towards common outcomes. To achieve this, respect for each other’s role and expertise is necessary.
8. In previous terms, council has sought to build a close relationship with CCOs through additional mechanisms, such as councillor-board workshops and collaborative decision-making groups. These non-legislative accountability instruments are also outlined in **Appendix A**.
9. **Appendix A** is high-level information, provided as a foundation for any future discussion regarding the accountability framework for Auckland CCOs. Amendments could be made to all or some of these tools to provide stronger transparency, accountability and control of CCOs, at the direction of council.

Governance of Auckland Transport

10. AT is a statutory body with special provisions which relate to its governance. Section 43 of the LGACA provides that:
 - The Auckland Council appoints the board of AT, its chairperson and deputy chairperson.
 - The board:
 - will have a minimum of six and a maximum of eight voting directors;
 - may have up to two voting directors who are members of the governing body of Auckland Council;

- can have one non-voting director who is nominated by New Zealand Transport Agency (NZTA) - this director can be staff of NZTA or independent.
 - Auckland Council cannot appoint councillors to the chair or deputy chair positions.¹
11. The legislation therefore permits the appointment of councillors to the board of AT, and it is a political decision whether to make these appointments. The appointment of councillors to all other substantive CCO boards of directors is prohibited under section 93 of the LGACA.
 12. In both previous terms, the Mayor recommended the appointment of Councillors Mike Lee and Christine Fletcher to the board of AT. Council's board appointment and remuneration policy recommends a maximum of two three-year terms for directors unless extraordinary circumstances apply. Councillors Mike Lee and Christine Fletcher and have served two three-year terms, and I would like to put on the record my thanks for the valuable contribution they have made to the governance of AT over the last six years.
 13. When Cabinet agreed to establish AT in August 2009, it made provision for up to two councillors to be appointed as directors. The rationale stated at the time was "to recognise the significance of transport issues in Auckland" [CAB Min (09) 30/10 recommendation 8].

Councillor-director feedback

14. I have had the benefit of receiving written feedback from the two councillors who have served on the AT board, and this is appended to the report (**Appendices B & C**).

Comment

The pros and cons of councillor-directors

15. A September 2015 report from Office of the Auditor General (OAG) canvasses, amongst other things, the advantages and disadvantages of councillor-director appointments to CCOs. The OAG report's coverage is national, reflecting the fact other local authorities have greater freedom to appoint councillors to CCOs than Auckland Council. The report incorporates the views of both elected members and CCO chairs and directors.
16. The advantages of councillor-directors outlined in the OAG report include:

"Elected members say that councillor-directors

 - *are likely to have a good knowledge and understanding of local government and of the local community;*
 - *contribute valuable "political nous" to a CCO board;*
 - *provide an extra layer of assurance that the subsidiary will be kept in touch with the "mood" of the Council;*
 - *add value by managing matters about the CCO that are before the Council;*
 - *contribute to the diversity of the board; and*
 - *can act as a representative for their community's interests."*
17. The disadvantages recorded in the report include:
 - *"councillor-directors often lack the skills to perform well as a director;*
 - *there is an inherent conflict between a councillor-director's obligations to the Council and their community and their obligations to the subsidiary; and*
 - *councillor-directors are more likely to be subjected to, and swayed by, pressure from community groups, so that it may be more difficult for a councillor-director to maintain confidentiality of commercial or other information about CCO business."*

¹ Local Government (Auckland Council) Act 2009, s 43

18. The OAG report concludes that:

“.....effective monitoring and oversight, including setting clear expectations about the CCO’s purpose and strategic alignment, should obviate any need for councillor-directors to provide an additional layer of oversight.”

19. Consistent with the OAG’s conclusion, I’m not satisfied the appointment of councillors to the AT board has been effective in strengthening the transparency, accountability and responsiveness of AT to the council.
20. Despite the talents of our two appointees, they have never “had the numbers” in a board of eight directors. After six years the community’s disquiet with AT’s governance and responsiveness persists, notwithstanding AT’s achievements. We need the entire AT Board to be responsive to the strategic directions set by Council, not just two directors.
21. We should not treat AT as an “exceptional” CCO due to its size, complexity or its sources of revenue. Watercare is another large Auckland CCO running a complex business of critical importance to Aucklanders. The fact it is funded by water charges doesn’t diminish Watercare’s significance to Auckland Council. Watercare’s board is comprised entirely of external directors. We therefore need effective accountability mechanisms which apply to all substantive CCOs.
22. I have received feedback from a number of councillors that the councillor-director appointments did not result in an improved flow of information to council that wasn’t already being provided through AT’s quarterly reporting. There was also concern about the inequity created by the councillors appointed to AT being remunerated.

Other accountability tools

23. The councillor appointments to the AT board may have unwittingly contributed to an underinvestment in using the other tools in the council’s accountability toolkit. These wider tools have potentially greater capacity to control and influence the operations of AT and other CCOs, and we need to invest in them as a priority.
24. There are three tools, in particular, I would draw councillors attention to:
- Section 49 of the LGACA provides a power for the council to make rules by which Auckland Transport must operate, including rules in relation to AT governance, the appointment and employment of staff, and how it acquires and disposes of significant assets. This power has never been exercised.
 - Schedule 8 of the LGA provides for the shareholders of a CCO, by resolution, to require a CCO board to modify their Statement of Intent. This has only been used narrowly by council to date, but has considerable potential to ensure AT acts in alignment with the council’s strategic direction.
 - Section 90 of the LGACA requires the council to have an accountability policy for its substantive CCOs. The policy must, amongst other things, include a statement of the council’s expectations in respect of each CCO’s contributions to, and alignment with, the council’s objectives and priorities. In light of the council’s experience over the last six years the accountability policy warrants a comprehensive review.
25. I propose that a report is brought to the Appointments and Performance Review Committee with an assessment of the opportunities to improve the strategic alignment, accountability and responsiveness of CCOs using the current suite of accountability tools, including the introduction of Operating Rules for AT.

Approach to AT board appointments

26. Section 57(1) of the LGA requires council to have a robust and transparent policy for the appointment of directors to CCOs. The Auckland Council board appointment and remuneration policy was updated in 2015 as part of the council approval of the Substantive CCO Governance Manual. The new policy includes direction that the process for the appointment of councillors to the board of AT should be agreed by the governing body and initiated at the beginning of each new triennium.
27. I accept there may be occasions when elected members can bring unique skills, knowledge and experience to the governance of AT. I acknowledge councillors Christine Fletcher and Mike Lee brought relevant experience to the AT board.
28. Given the talent on both the current and future councils I propose that elected members be eligible to be nominated to the AT board. I do not support a model of councillors being appointed to the board as of right, with no regard to the skills, knowledge and experience they would bring to the board. Merit needs to be the primary consideration. On this point, the OAG report states:

“If local authorities wish to appoint elected members to their subsidiary boards, then the appointment should be open and transparent, and subject to the same selection criteria as for independent directors.”

29. I concur with the OAG’s advice, and therefore propose that the governing body agree:
- to appoint directors to all three vacancies on the AT board using an open, transparent and contestable process this is consistent with the Appointment and Remuneration Policy for Board Members of Council Organisations;
 - that both external candidates and councillors will be eligible to be nominated for appointment to the vacancies, subject to any of the restrictions imposed by statute and the Appointment and Remuneration Policy for Board Members of Council Organisations.

Remuneration

30. Remuneration of councillor-directors was not covered in the 2009 Cabinet paper or the Auckland legislation, nor has it been agreed at a council committee meeting or through the council board appointment and remuneration policy². Councillor remuneration is set by the Remuneration Authority on the basis that roles are full-time. Whilst the Remuneration Authority has not sought to limit payment of additional directors’ fees, it is understood that they may consider changes on this matter in future.
31. If it is agreed the council is prepared to entertain the appointment of councillor-directors through a contestable process I propose that the Appointments and Review Committee should agree to adopt a policy on remuneration in the event a councillor is selected to one or two of the three vacancies. This policy may need to be reviewed in light of subsequent advice from the Remuneration Authority.

Consideration

Local board views and implications

32. The views of local boards have not been sought in relation to this advice on the accountability framework for substantive CCOs or on the composition of the board of AT. LGACA states that the governance of CCOs is the responsibility of the governing body.
33. Local board members cannot be appointed to the board of AT, however, the activities of AT significantly affect all local boards. Recent investigations have concluded that there is scope for AT to be more responsive to local boards who want different service delivery options.

² The council’s board appointment and remuneration policy covers remuneration of non-councillor directors only.

The composition of the board can have implications for the responsiveness of AT to political direction at the local level.

Māori impact statement

34. The activities of CCOs affect Māori, however, the decision whether or not to appoint councillors to the board of AT has no particular impacts on Māori which are different from general users of the AT's services.
35. There is more potential for a director with experience in service delivery for Māori, or a Māori director to be recruited as an external director than through a councillor-director.

Implementation

36. Subject to the agreement of the governing board, the process for filling the three vacancies on the AT board will be considered at the 23 November 2106 meeting of the Appointments and Review Committee.

Attachments

Appendix A: Legislative and other accountability mechanisms for substantive Auckland CCOs

Appendix B: Communication from Councillor Christine Fletcher

Appendix C: Communication from Councillor Mike Lee