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Future for Local Government Review Panel
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Submission on He mata whāriki he matawhānui: the Future for Local Government draft report

The Institute of Directors (IoD) appreciates the opportunity to comment on He mata whāriki he matawhānui: the Future for Local Government draft report released October 2022.

We support the work being undertaken in this area, particularly in relation to improving governance capability and decision-making of local authorities. Good governance in local authorities is essential to the delivery of effective services and outcomes that benefit all New Zealanders.

The report acknowledges the critical role local government plays in New Zealand's governance and in building strong, healthy and prosperous communities. Of importance, it differentiates local government – the local authority structures established by statute – from local governance – the system by which communities are governed – in essence, who makes decisions, how they are made, and who the decision-makers are accountable to. In any place or community, local governance can involve many decision-makers including central government, local authorities, hapū/iwi and Māori organisations, business and community organisations, and others.

We note that this is not a 'draft' of the Panel's final report, rather a prompt for further discussion and consideration. Accordingly, we wish to draw attention to the value of governance skills and best practice governance and the role of directors in local decision-making as critical elements of local governance.

About the Institute of Directors

The Institute of Directors (IoD) is New Zealand's pre-eminent organisation for directors, and is at the heart of the governance community. We have over 10,500 members connected through our regional branch network and national headquarters. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, council organisations, councils, small and medium enterprises, not-for-profit organisations and charities. Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

Key points

There are four key points we wish to make in our submission, namely:

- The critical roles council-controlled organisations and non-elected directors play in local governance
- System agility is facilitated by board/governance agility
- Support for enhanced support and professional development of elected members as well as independent members and directors appointed by local authorities
- Support for a four-year electoral term (consistent with central government)

The role of directors and council-controlled organisations/port companies

Directors play a key role in local governance and local government. Directors make decisions around board tables of family businesses, trusts, not-for-profits, council organisations, port companies, council-controlled organisations (CCOs), council-controlled trading organisations (CCTOs) and more. The importance of non-elected directors and their impact on local governance and strategic decision-making for communities was not overtly discussed in the draft report. The role of CCOs, CCTOs and port companies was similarly omitted from critical discussion with regards to their roles in local governance and local government. These are important areas that need to be included in the final report.

Council-controlled organisations

Most local authorities use holding companies, subsidiary companies or other entities such as trusts to conduct commercial and non-commercial activities on their behalf. The Local Government Act 2002 (the Act) introduced the term 'council-controlled organisation' to describe these entities.

The Act defines council organisations, CCOs, and CCTOs as:

- A council organisation is the broadest category. It is an entity that a local authority has any ownership interest in.
- A CCO is an entity in which one or more local authorities control 50% or more of the voting rights or appoint 50% or more of the members of the governing body. A CCO can be a company, trust, partnership, incorporated society, joint venture, or other similar profit-sharing arrangement.
- A CCO that operates a trading undertaking for the purpose of making a profit is referred to as a CCTO. Not-for-profit entities are CCOs.
- The definition of CCO excludes port companies, energy companies, electricity lines businesses and their parent trusts, and several other named entities.

A local authority might set up a CCO for a range of purposes. There is no 'perfect model'. The preferable form for a CCO, its directors, and its monitoring and accountability will depend on the local authority's purpose for the CCO. A CCO set up to manage a community asset such as a museum is likely to look different from a CCTO that manages a business such as an airport. Local authorities may choose to appoint all independent members or a mix of elected and non-elected members as CCO directors.

The Office of the Auditor General's report on [Governance and accountability of council-controlled organisations](#) noted that, as of September 2015, the Auditor-General was currently the auditor of 124 council-controlled trading organisations (CCTOs) and 74 non-profit CCOs. The Auditor-General also audits another 95 organisations that are related to local authorities but are not CCOs.

Directors of CCOs and Port Companies

The governance framework in New Zealand under the Companies Act 1993 is based on a board of directors managing a company on behalf of its owners, the shareholders. In many countries, corporate governance frameworks comprise a variety of sources including law, codes, rules and behaviours (such as good faith, ethics and board culture). All good corporate governance codes and guides are underpinned by common principles and values. Chief among these are the RAFT principles: responsibility, accountability, fairness and transparency.

High-performing boards with sound governance practices are better placed to respond effectively to ensure the long-term sustainability of their organisations. To support the governance community, the IoD has prepared *The Four Pillars of Governance Best Practice for New Zealand Directors*. The *Four Pillars* focuses on the role of directors in defining purpose and setting strategic direction, leading an effective culture, holding management to account and ensuring effective compliance. We also provide training, support, research, advocacy, advice and best practice on a broad range of governance and related matters.

In their capacity as directors of port companies, CCOs and CCTOs (hereafter referred to collectively as CCOs), critical decisions are being made on behalf of local authorities and their communities in relation to a wide range of infrastructure and services such as airports, museums, ports, economic development, tourism, events and housing. Good governance, whether of a CCO or any other organisation, is reliant on many factors. Among the most important are an organisation's purpose (so a board can put in place a relevant strategic plan), the character of the directors (ethical, intelligent, diverse and collaborative directors positively influence the best boards), and the quality of the relationships between board and management; and board and stakeholders or shareholders (for CCOs that is the local authority/ies and their communities).

At the IoD, we firmly believe in the power of governance to create a strong, fair and sustainable future for New Zealand. Good directors deliver great value for their organisations – be they commercial, not-for-profit, social enterprise or anything in-between. CCOs are a living proof of concept. They operate with a mix of commercial discipline, community purpose, elected oversight and a desire to make their communities better, stronger and more sustainable. When they deliver, they make New Zealand a better place to live.

Elected members' role in CCOs

The opposite side of the coin is the role that elected members play with regards to CCOs and/or holding companies. Elected members play a key oversight and accountability role as well as selection and appointment of directors. Councils and CCO boards must maintain a high level of trust and transparency to continue to deliver on the council's aspirations, while the CCO's goals, budgets and even existence are debated around the council table (and, by extension, publicly). The Statement of Intent is a key document which needs to align with the priorities of the shareholders, however the three-yearly electoral term (refer also to comments below on electoral term) can make long-term planning and financial confidence problematic. While this is recognised as the shareholder's legitimate prerogative to require a different direction from their CCOs, nonetheless, balance is needed between the governance role that appointed directors have and their ability to make strategic long-term decisions to best meet their communities' needs. Elected members need to be cognisant of the different role and responsibilities that CCO directors have and how they can best work together to maximise outcomes.

Depending upon the makeup of the CCO, elected members may also be directors of companies, undertaking a quite different role to that of an elected member, with different guiding legislation (The Companies Act) and differing accountabilities and liabilities. It is critical that elected members both

understand the different role they are playing if appointed as a director of a CCO, but also are supported and provided training (refer to *Enhancing Capability* section below).

System and board agility

To be 'fit for the future', the future system of local governance is required to be agile. Considerable emphasis was placed on the need for a strong and adaptive system of local governance to face the many challenges ahead. However, system agility does not occur in a vacuum. System agility requires governing bodies to be agile. Board agility and the need to be innovative and responsive is one of our [Top 5 issues for directors](#) in 2023.

Board Agility

In 2021, leading international management consulting firm Oliver Wyman provided an analysis of board agility pointing to four characteristics:

1. They are 'hybrid', meaning they work in a digital environment and not all meetings are 'face to face'. Changes in virtual and altered reality seem likely to reinforce this trend.
2. They anticipate and confront challenges with virtual board meetings, including considering better tools to support decision-making. In this setting, board chairs take additional steps to ensure minority views are heard and represented.
3. They seek a variety of external expertise. This includes new sources of information and greater use of outside expertise in scenario planning, strategy and risk management, all of which will be essential for new climate change reporting requirements. This needs to be accompanied by improved information tools and objective analysis.
4. They are in continuous learning mode. This means transforming from 'know-it-all' boards to becoming 'learn-it-all' boards. Such a transformation is essential given the increasing complexity of the environment in which boards and their organisations are operating. Around 60% of New Zealand directors believe their board's skills and experience are increasing to meet increasing business complexity and risk.

These considerations are equally relevant for all partners and governing bodies in the local governance and local government sphere. As we've seen over the past few years, change needs to be lead with a clear vision and communicated well because change can be unsettling and, if not lead up well, strongly resisted. To implement any major changes to local government or local governance will require directors (and all community leaders) to buy in to both the function and the form.

To implement sustainable change, directors and boards need to be supported to make the change through transition periods and a clear roadmap so that the goals and outcomes are clearly defined.

Structure of Local Government

The term 'form follows function' was originally coined to describe architecture design but it has since been adopted and adapted for organisational structure and design. Form follows function, or structure follows strategy – essentially the structure (form or governance) needs to reflect and enable the strategy (function or purpose) – of the organisation. However, form and function are inextricably interconnected and work best when joined as one. If you develop a strong, well-designed strategy first, then structure your organisation accordingly, you will have a productive, efficient, aligned organisation that benefits

shareholders and stakeholders alike. What this means for local government and local governance is, you need to determine the purpose and functions first, and then design the structure to enable the strategy to be delivered.

While there aren't wholesale structural changes proposed, there are some structural changes suggested which are hard to comment on in light of the lack of clarity around the proposed key purpose and functions of local authorities. In light of the proposed changes to the Resource Management Act (RMA) and Three Waters among others, as clearly set out in the Terms of Reference for the review, it is anticipated that the functions may change considerably. Who they are, what they do and why they do it, are critical questions that need to be answered in the final report to set the vision for change.

Enhancing capability

One of the key recommendations is that local government develops a mandatory professional development and support programme for elected members. Alongside that was also a question in relation to capability-based appointments to supplement elected members.

Professional Development

Following extensive engagement with all councils and stakeholders through 2020-2021, the Local Government Commission (LGC) provided a report on Codes of Conduct to the Minister of Local Government in September 2021. In response, the Minister supported the Commission's recommendation to [establish an education working group](#) "that will work to identify a sector specific governance education framework". The Minister considered it timely for the LGC to engage with stakeholders involved in all stages of the electoral process, from pre-candidacy to the induction of a new council, through to experienced elected members, and staff.

The relevant recommendations from the LGC, as subsequently approved by the Minister of Local Government, are as follows:

The Commission recommends that the Minister of Local Government:

- i) *tasks the Local Government Commission to establish and lead a working group to identify a sector specific education framework, giving consideration to:*
 - a) *membership that includes diverse representation from the sector and stakeholders, either as members or independent observers, including the OAG, the Ombudsman, Taituarā, LGNZ and its Te Maruata committee*
 - b) *undertaking a needs analysis of the education and professional development of diverse election candidates, first term members, experienced members, mayors and chairs, and the staff who support them*
 - c) *developing an education programme that covers pre-candidacy, candidacy, induction and ongoing professional development for members, mayors and chairs*
 - d) *developing an education programme for staff who support members through the various stages of their governance development*
 - e) *accessible and cost-effective education delivery methods*
 - f) *options for resourcing the development and delivery of governance education*

The LGC established a working group September 2022. In accordance with the Minister's recommendations, a report is to be produced in the first half of 2023 to be considered along with the Future for Local Government review findings.

As the draft report was released October 2022, there may have been an overlap and the Panel may not have been aware of the LGC working party. Nonetheless, it will be important for the Panel to consider the report based on the education working party's work and for the findings and recommendations to be included in the final report.

The role of elected members is exceedingly diverse, from that of community board members and councillors on small rural councils to unitary councillors, regional council chairs, and Mayors of large metropolitan areas. Within that diversity, like company or trust directors, is a range of core skills, knowledge and experience that they all need to undertake their role, as well as a range of other skills, knowledge and experience that are particular to their region, their local government sector, or their communities.

Taituarā and Local Government New Zealand (LGNZ) provide professional development and training for local government staff and elected members respectively, and have both extended their programmes recently. Nonetheless, there are a range of core and specialist skill areas that are provided by a number of other organisations for elected members and staff that were not identified within the report, such as the Making Good Decisions Programme – certification for RMA decision makers run by the Ministry for the Environment, the International Association for Public Participation Certificate in Engagement, the Officer Development Programme run by the Government Health and Safety Lead in conjunction with the IoD for public service senior leaders, and in-situ marae training.

IoD Governance Development

The Institute of Directors has a long history of working with LGNZ and local government to provide governance training to elected members. Most recently, we have been working with some councils on the delivery of Governance Essentials workshops. Governance Essentials is part of our essentials suite, which also includes Strategy, Finance and Risk Essentials.

This learning is based on the Four Pillars of Governance Best Practice, which are entirely relevant in a local government context. These are:

- Determining purpose, including strategy and goals;
- An effective governance culture – directors lead through standards of ethical behaviour;
- Holding to account – including effective performance oversight; and
- Effective compliance – ensuring the probity of financial reports and processes.

Governance essentials also provides learners with the opportunity to understand:

- The difference between governance and management;
- Different governance settings;
- Roles in the boardroom;
- Effective board meetings; and
- Effective board documentation and processes.

This content can be tailored to a local government context, but councils generally request the generic governance learning to support elected members with skills that will be applicable beyond their immediate elected local government roles.

In the New Zealand Productivity Commission's 2019 report [Local government funding and financing](#), the Commission highlighted that the IoD provides a range of resources (a lot of which is freely available on our website) that councils can draw on.

They go on to note that:

Support for governance and the financial capability of elected members includes induction and other courses run by EquiP (LGNZ's Centre of Excellence), and governance training by the Institute of Directors (including a module about financial governance, and a short course about Audit and Risk Committees).

Unfortunately, a large proportion of councils have limited or no training budget for elected members. Accordingly, induction training is often provided primarily by staff and related to local government processes, project updates, and legislative requirements. There may be additional training on use of IT systems, standing orders, communications and code of conduct. There is rarely, if ever, governance training by people who understand governance roles, responsibilities and their value. The importance of training and professional development needs to be recognised not just by elected members, but also the public who may regard this as frivolous or unnecessary expenditure, especially as the demands and capabilities of the role aren't well expressed.

Continuing Development

One of the Panel's recommendations is that local government develops a mandatory professional development and support programme for elected members. A personal commitment to continuing development can improve elected members' contributions and add value to local authorities and the communities they serve.

The IoD designs its courses based on the adult learning theories of Malcolm Knowles; adults learn if they are engaged in learning, integrating their own experiences into learning outcomes. According to Knowles (1990), adult learning is premised on five key assumptions: self-concept, adult learner experience, readiness to learn, orientation of learning, and motivation to learn. Adult learners require a rational justification for their learning before they embark on any learning process. They need to understand what they must learn and why and then identify the appropriate mechanism to achieve their learning outcomes.

Because adults desire to be in control of their own learning, they need to come to learning opportunities voluntarily. Voluntary participation motivates adult learners and they are likely to be more engaged in the learning experience because they "want to" participate, rather than if they "have to".

Capability-based appointments

In the draft report the "potential to augment elected membership with appointees who bring particular governance capabilities that would strengthen the overall council" was mooted. However, such appointments are already taking place around the country.

Firstly, the use of independent directors on CCOs can be seen as a mechanism to provide capability-based appointments to council governance. CCOs perform a vital role in helping councils achieve their strategic goals, and deliver a range of services to residents and visitors on behalf of councils. Taken together, their activities make a significant contribution to community wellbeing.

Similarly, in the Office of the Auditor General publication [Our 2018 work about local government](#), it was recommended that all audit (and risk) committees appoint an independent chair. They have subsequently produced resources and "principles that help an audit committee add value". One of those key principles is independence. Since those initial recommendations, most councils have both a separate audit committee and have an independent chair – a capability-based appointment.

Further, a number of councils have capability-based appointments on business units or committees such as commercial or forestry. An increasing number of councils also have iwi appointments on standing committees or sub-committees that bring both a te ao Māori perspective and specific governance and/or capability requirements, such as on audit committees or planning committees.

Any decisions in this area need to take into account what is already happening in the sector. Some of the key gaps typically identified on councils relate to diversity, rather than capability. Before progressing this line of enquiry, it will be important for the Panel to consider what are the critical skills for elected members, what skills can they learn on-the-job, and what skills can they gain from training before augmenting councils with capability-based appointments.

Electoral processes

Local electoral term

In 2022 the Independent Electoral Review Panel undertook community consultation with regards to possible changes to New Zealand's electoral system. The IoD made a [submission](#) supporting a move to a four year parliamentary electoral term with the expectation that it will support stronger governance and democracy. The principles of best practice governance and strategic, long-term thinking similarly apply to local government.

Best practice governance encourages governors to think longer term to support a sustainable future. This has always been the case, but recent engagement on issues such as climate change, appreciation of a long-term te ao Māori perspective, as well as a need for sustainable land-use and infrastructure has made long-term strategic thinking imperative. If we are to be successful as a nation at addressing the big issues that are so important to us, and bring about a better future for our mokopuna, it is important that there is enough time to run sound processes to consider different perspectives and a range of views. Any elected government needs sufficient time to tackle the important issues they have been elected to address, and for the term to be sufficiently long to allow for the development of good policy and law, to have it be challenged and refined as part of a robust parliamentary process, as well as being put into practice.

Aligning with our view on central government, we support a four-year local electoral term.

Conclusion

In the draft report, local governance is defined as the system by which communities are governed – in essence, who makes decisions, how they are made, and who the decision-makers are accountable to. The report identifies the need for training to undertake the role of a decision-maker, and the possible need to augment councils with capability-based appointments, but it doesn't fully identify governance as a skill in itself. The skills that are required by elected members need to be clarified, but while there may be different skills required depending upon the council (metropolitan, unitary, regional, rural), there are some overarching skills they all need, such as governance, finance and strategy. In order to identify the full breadth of skills required however, it is important to define the purpose of local government.

Equally, the role of independent directors on CCOs and that of appointed members, such as independent audit committee chairs, was not overtly expressed. It is important that the full governance picture is understood before making recommendations for change, such as capability-based appointments. Many of the key areas that local government is responsible for where specific capability-based skills are

considered important, such as tourism or economic development, have already been passed to CCOs to manage on their behalf.

Councils are undergoing significant reform change and facing an increasing number of issues including inflationary pressures, climate change impacts and demographic shifts. They will need support, time, and a clear vision if they are to undergo reform of any significance.

Ngā mihi nui



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