

Report to:	Council Public Excluded
Date:	30 November 2022
Subject:	Appointment of Directors for Innovative Waste Kaikōura (IWK)
Prepared by:	Will Doughty – Chief Executive Officer
Input sought from:	Councillor Robby Roche - Chair: Kaikōura Enhancement Trust
Authorised by:	Will Doughty – Chief Executive Officer

1. PURPOSE

To appoint two Directors to the board of Innovative Waste Kaikoura (IWK).

Attachment 1: Council Policy - Appointment of Directors of Innovative Waste

Attachment 2: Diane Brandish application and resume – **Redacted Attachment, Section 7(2)(a) applies**

2. RECOMMENDATION

That the Council:

- a) Supports the recommendation of the Kaikōura Enhancement Trust (KET) to appoint Diane Brandish and Craig Mackle as Directors to the IWK Board.
- b) Gives notice to the company of appointment of the Directors at the upcoming Annual General Meeting (AGM).
- c) Notes that Council will at the first practical opportunity, publicly notify the appointments.

3. BACKGROUND

With the resignation of Neil Pablecheque from the board in October 2022, there is a need to appoint a new Director under urgency to the IWK board. The Annual General Meeting (AGM) for IWK is scheduled for the 15th December 2022.

Under Clause 5.4.4 of the Council Policy for Appointment of Directors to Innovative Waste (included in attachment one) Council has the ability to appoint Directors without advertising the position if there is urgency or any other reason it may consider warrants such a course of action.

The KET trustees met on the 23rd November 2022 to consider two nominations for Directors under urgency. The first being Dianne Brandish and the second being Craig Mackle. The application from Diane Brandish and supporting resume is included in attachment two. Craig Mackle has recently been reappointed as Mayor of Kaikōura and is keen to provide Council continuity on the board of IWK.

In considering the two nominations the KET trustees felt that IWK would benefit from having two additional Directors appointed to the Board to allow for future succession planning of the Board as well as the contribution both could bring in terms of skills, knowledge and experience. It was noted from the trustees that the proposed board members bring strong financial and commercial acumen as well as wider experience from a range of sectors. It was highlighted that neither nomination has extensive waste management experience, but this could be a conversation with eh IWK Board Chair around a requirement

It is the recommendation of the KET trustees that Council approves the appointment of Diane Brandish and Craig Mackle as Directors to the IWK Board

4. FINANCIAL IMPLICATIONS AND RISKS

None – expenditure remains within budgets

5. COMMUNITY OUTCOMES SUPPORTED



Community

We communicate, engage and inform our community



Development

We promote and support the development of our economy



Services

Our services and infrastructure are cost effective, efficient and fit-for-purpose



Environment

We value and protect our environment



Future

We work with our community and our partners to create a better place for future generations

ATTACHMENT 1 - COUNCIL POLICY - APPOINTMENT OF DIRECTORS OF INNOVATIVE WASTE

Date of Adoption 15 March 2017

1. Policy

Objective

To ensure an objective and transparent selection and appointment process for the:

- Identification and consideration of the skills, knowledge and experience required of directors of a council organisation; and
- Selection and appointment of directors of a council organisation; and
- Agree remuneration of directors of a council organisation (if any).

2.

Principles

Council recognises that:

- Appointment of directors should be based on merit.
- Directors should possess the appropriate level of skills, knowledge and/or experience to guide the council organisation and contribute to the achievement of its objectives
- Directors of council controlled organisations should be appointed on the basis of the contribution they can make to the organisation, and not on the basis of representation; and
- through a formal, objective and transparent process.

3.

Definitions

Candidate is a person who has submitted a written application for a director's position or has formally agreed to be considered for such a position.

Council Controlled Organisation (CCO) is defined in Section 6 of the Local Government Act 2002. It is a CO in which one or more local authorities control, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors.

Council Controlled Trading Organisation (CCTO) is defined in Section 6 of the Local Government Act 2002. It is a CCO that operates a trading undertaking for the purposes of making a profit.

Directors include trustees, managers or office holders (however described in that organisation).

4.

Background

Section 57 of the Local Government Act (2002) requires Council to adopt a policy that sets out an objective and transparent process for—

- a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and
- b) the appointment of directors to a council organisation; and
- c) the remuneration of directors of a council organisation.

5. Policy Statement

5.1. The Role of a Council Controlled Organisation Director

The role of a council appointed director is to assist the organisation to meet its objectives and any other requirements in its statement of intent.

5.2. Identification of Skills, Knowledge and Experience Required

The skills, knowledge, experience and any other attributes required of a director of a CCO will be identified and documented, prior to the appointment process commencing.

- The ability to guide the organisation, given the nature and scope of its activities,

- the ability to contribute to the achievement of the objectives of the organisation will form the basis of the skills, knowledge, or experience required.
- In general terms, the following skills and attributes are sought in directors of a council controlled organisation:
 - Intellectual ability coupled with common sense; and
 - Strategic vision; and
 - An understanding of governance issues; and
 - Either business experience or other experience that is relevant to the activities of the organisation(or both) ; and
 - Sound judgment; and
 - A high standard of personal integrity; and
 - The ability to work collaboratively and cooperatively within the team; and
 - Understanding of the wider interests of the publicly-accountable shareholder.
 - Experience in business/ industry
- The mix of skills and experience on the CCO board will be taken into account, and consideration given to complementing and reinforcing existing skills and reducing known weaknesses where necessary.
- It is expected that all appointees to CCO boards will undergo, or already have undergone, formal corporate governance training, or have the requisite experience in this area.

5.3. Eligible Candidates

Appropriately qualified external applicants are eligible as candidates for director positions to IWK.

5.3.1. Mandatory disclosures

As part of an application a candidate is required to disclose whether he or she:

- Has been convicted of an offence for which the maximum available sentence is imprisonment of two years or more (noting that required disclosures are subject to the provisions of the Criminal Records (Clean Slate) Act 2004), or
- Has been declared bankrupt at any point in time or been the director of a company at the time it was placed in receivership or involuntary liquidation.
- Any disclosures under the above clause will be taken into consideration by Council but will not automatically preclude the candidate's appointment as a director.

5.4. Director Appointment Process

5.4.1. Appointment Panel Composition

- The Council will comprise the appointment panel
- Any conflicted Councillors may not be involved in the appointment process
- A Council employee may be appointed as an advisor as necessary.
- The Chair does not have a casting vote

5.4.3. Appointment Panel Responsibilities

Council will be responsible for:

- Approving the list of skills, knowledge and/or experience and any other attributes required; and
- Approving the criteria against which applications will be assessed; and
- Approving an independent recruitment consultant to assist the Council with the selection process, if it decides it is warranted; and
- Establishing a short-list of candidates to interview; and
- Establish a panel to interview short-listed candidates and evaluating them against the approved criteria; and
- Reporting on its assessment of each candidate against its criteria and recommending appointments of directors to Council.

5.4.4. Advertisement of a Council-Appointed Director's Position

In most instances Council will seek expressions of interest in the position by way of a public advertisement.

Council may decide not to advertise the position if there is urgency (e.g. a council organisation that is without a quorum and cannot hold board meetings) or any other reason it may consider warrants such a course of action.

Where the Council decides not to advertise a particular position, they will:

- At the first practical opportunity, publicly notify its intention and reasons for doing so; and
- Identify a shortlist of prospective candidates whom it considers meets its criteria; and
- Ascertain if the prospective candidates are interested in being considered; and
- Apply the same selection process to those who are interested as it would to any other candidate.

5.4.5. Appointment

Council is to make its final decision in confidential committee (thus protecting the privacy of natural persons). A public announcement of the appointment will be made as soon as practicable after Council has made its decision and received confirmation of acceptance from the candidate/s.

5.4.6. Conflict of Interest

Council expects that applicants would not be considered for a director's position if it is likely that the applicant would, if successfully appointed, have a significant conflict of interest.

Elected Members appointing directors will need to assess whether they have a conflict of interest. Councillors with any potential conflicts should not participate in the appointment process.

5.5. Appointment Term and Reappointment

A director to a CCO will normally be appointed for a period of 3 years. The appointment period will expire on 30 April. If a director has been in office for more than 2 ½ years at 30 April, then his/her 3 year term will be deemed to have expired.

If a director has been in office for more than 2 years but less than 2 ½ years at 30 April, then he/she will be deemed to have one further year of the 3 year term remaining.

Notwithstanding the above, Council will seek to balance the expiry dates of directors' terms to ensure that approximately one third of directors retire or are required to seek reappointment in any year. This may require appointments to be made for a mix of one, two and three years.

Where a director's term of appointment has expired and that director is offering him/herself for reappointment, the Kaikoura District Council Chief Executive will, together with CCO on reappointment issues with members of the relevant board.

The consultation will have regard to:

- Whether the skills of the incumbent add value to the work of the board,
- Whether there are other skills which the board needs;
- Succession issues.

The Council CEO will report to Council to enable a decision on reappointment or replacement appointment to be made based on the:

- information arising from the consultation, and
- director's length of tenure.

Where a Council employee is appointed as a director, the appointment is deemed to be part of the staff member's normal duties and will lapse upon the completion of the individual's tenure of employment with the Council or earlier if specified by Council.

5.5.1. Maximum terms

Subject to a review of the director's performance after the first three year period, the normal tenure for a director will be six years.

Following six years of service, a director may be appointed for a further three years if the benefit of such an extension is considered to outweigh the potential advantages of seeking and appointing a new candidate.

A director cannot be re-appointed to the same board after nine years in service.

5.6. Termination of Appointment

Directors appointed to CCOs by Council are in the role at the pleasure of Council. A director's appointment may be terminated at any time by Council by way of written notice. There will be no compensation payable to directors for early termination.

5.7. Appointment of a Chairperson

It is the responsibility of the board of each Council Organisation to appoint its own Chairperson. However, normally the board will consult with the Council Mayor and Chief Executive on the person to be so appointed.

5.8. Conflict of Interest

Council expects that directors appointed under this policy will avoid situations where their actions could give rise to a conflict of interest.

5.9. Directors' professional standards

Directors appointed by Council will be required to follow the provisions of the New Zealand Institute of Directors' Code of Ethics and of Council's Code of Conduct for Directors Appointed by Council to Council Organisations.

Breach of either code may result in dismissal of a Council-appointed director.

5.10. Remuneration of Council Appointed Directors

5.10.1. Remuneration and Indemnification of Directors

The Council will decide whether directors on the IWK board are to be remunerated. The level of remuneration for directors will be established by the Chief Executive and Mayor and will be subject to approval by Council. Elected members and Council employees appointed as directors of a CCO will not be remunerated for that role unless provided for by specific Council resolution.

The Council supports the payments by IWK of directors' liability insurance and the indemnification of directors.

5.10.2. Level of Remuneration

Where directors are remunerated the level of remuneration will be set taking into account the following factors:

- The need to attract and retain appropriately qualified directors;
- The levels of remuneration paid by comparable organisations in New Zealand;
- The performance of the Council Controlled Organisation and any changes in the nature of its business;
- Any other relevant factors.

Remuneration of directors of all CCOs will be reviewed at least once per triennium.

CODE OF CONDUCT FOR DIRECTORS APPOINTED BY COUNCIL TO COUNCIL ORGANISATIONS

Introduction and Principles

The purpose of the Code is to provide guidance to persons appointed by Council as Directors to IWK and to assist them to carry out their duties and responsibilities effectively and in accordance with the highest professional standards.

Since Council Organisations include a diverse range of legal structures, the word “Director” where used in this code, refers not only to company Directors, but also to trustees, managers or office holders (however described) in the particular Council Organisation.

- The Code is not intended to be an exhaustive statement of a Director’s obligations. It should be read in conjunction with the law applying to Directors and the provisions contained in the constitution of the Council Organisation and in the Local Government Act 2002.
- The office of Director carries with it both legal and moral responsibilities. The Code offers guidance more on moral and ethical responsibilities than on those imposed by law. It applies equally to non-executive and executive directors.
- The principles upon which the Code is based include integrity and accountability. These qualities are prerequisites to maintaining confidence and trust in directors.

The reasons for adhering to the Code are twofold:

- First, a clear understanding of moral and ethical responsibilities, and strict observance of obligations will assist Directors in forming and winning support for their strategies. It will also assist to increase public confidence in how public entities are governed and managed.
- Second, if high standards of business conduct are not maintained, a greater degree of imposed regulation may result.

It is the intention of Council to regularly review the applicability of the Code and as necessary, to amend or add to it to reflect changes to practice and law.

DEFINITIONS

Accountability means having a duty to answer to another for what is done or not done within an area of responsibility.

Director includes all Directors whether executive directors or non-executive directors, however so named, as defined in Section 6 of the Local Government Act 2002.

Executive Director means a Director who is also an employee of the organisation

Independent is used in the sense of being self reliant and with objectivity unimpaired by outside interests.

Integrity means consistent honesty, sincerity and uprightness in all dealings.

Non-executive Director means a Director who is not an executive director

Organisation refers to Council Organisations including Council Controlled Organisations and Council Controlled Trading Organisations as defined in Section 6 of the Local Government Act 2002.

FUNDAMENTAL OBLIGATIONS

- Directors must act honestly and in good faith in what the Director believes to be in the best interest of the organisation.
- Directors must ensure that all shareholders, stakeholders or classes of shareholder or stakeholder are treated fairly according to their different rights.
- Directors must carry out their duties in a lawful manner and use all reasonable endeavours to ensure that the Organisation conducts its business in accordance with the law and with a high standard of commercial morality.
- Directors should refer to the Institute of Directors’ statements of best practice as part of their decision-making process.
- Directors must avoid conflicts of interest. Where a conflict or potential conflict arises, as a minimum, they must adhere scrupulously to the procedures provided by law and/or the constitution of the organisation for dealing with conflicts and with the position of Directors having an interest in a particular contract or issue. A Director who has a continuing conflict of interest of a material nature should consider resigning as a

Director of the Organisation, and should also consider the effects of that resignation on the remaining Directors and on shareholders or other stakeholders.

- Directors must be diligent, attend Directors' meetings and devote sufficient time to make and keep themselves familiar with the nature of the Organisation's business and environments (including political, legal and social environments) in which it operates. Directors should be aware of all statutory and regulatory requirements affecting their organisation including the content of its constitution, and see that such requirements are observed.
- Directors must observe the confidentiality of non-public information acquired by them as Directors and not disclose it to any other person without the authority of the Organisation.
- A Director who is nominated by, or has a special allegiance to, a particular shareholder or group of shareholders or other stakeholder, may only disclose confidential information to the nominated shareholder or other stakeholder with the authority of the Organisation and in strict compliance with any procedures prescribed by law of the constitution of the Organisation.
- Directors must act in accordance with their fiduciary duties. They must comply with the spirit as well as the letter of the law and remember that in addition to purely legal requirements, the proper discharge of the duties of a Director requires high ethical and moral standards of behaviour.

MEETINGS OF DIRECTORS

- The Directors must meet regularly to monitor and control the performance of management, to measure achievement of budget, policy and strategic objectives. Appropriate reporting systems must be put in place, and maintained to provide adequate and timely information to the Directors.
- There must be clearly accepted divisions of responsibility to ensure a balance of power and authority so that no one individual has unfettered powers of decision.
- The Directors must ensure that the views of independent Directors are given full and proper consideration and weight.
- The Directors must have a formal schedule of matters and authorities reserved to them for decision making to ensure that the direction and control of the Organisation is in their hands and in alignment with the Organisation's Statement of Intent or equivalent document.

REPORTING

- The Directors must present to shareholders or other stakeholders, a balanced and understandable assessment of the organisation's performance and position. Often this will involve the provision of information in addition to the minimum required by law. In case of doubt, substance and content should prevail over legal form. The need for reports and accounts to be understood readily means that a coherent narrative is necessary as well as figures.

CHAIRPERSON

- The Chairperson is responsible for the efficient functioning of the Directors as a Board. The Chairperson must ensure that all Directors are able, and encouraged, to play their full part at meetings of Directors and have adequate opportunities to express their views.
- The Chairperson has primary responsibility for ensuring that all Directors receive sufficient timely information to enable them to discharge their duties effectively.
- The Chairperson is the link between the Directors and the management of the Organisation. The Chairperson must, however, maintain a proper balance between any executive and independent views among the Directors.

ATTACHMENT 2 - Redacted, Section 7(2)(a) applies