

NORTHLAND REGIONAL COUNCIL Agenda

For a Special Meeting of the Council to be held in the Council Chambers,
Northland Regional Council, 36 Water Street, Whangarei,
on Wednesday, 28 January 2009 commencing at 10 am

File 105.2

Opening Prayer

Apologies

Declaration of Conflicts of Interest

OPEN MEETING

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CONFIDENTIAL MEETING

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Events Centre Update

File 160.13.1

Report from Chief Executive Officer Ken Paterson dated 21 January 2009.

INTRODUCTION

As Councillors will be aware, the Events Centre project has progressed through the Expressions of Interest, Request for Proposal and selection of preferred tenderer (to finalise the proposal for the construction of the Northland Events Centre) stages.

RECOMMENDED CONTRACTOR

We have now reached the point where I am happy to recommend to the Council that the contract for the design, construction and completion of the new Northland Events Centre is formally awarded to **Argon Construction**.

PROJECT REQUIREMENTS MET

Our legal adviser has confirmed that the project requirements formulated by the Northland Regional Council and the Whangarei District Council will be met, namely that the Events Centre will:

- be constructed strictly within the overall project budget of \$16 million, which includes consultant costs
- provide a venue for sports events (rugby, rugby league, football and field hockey), cultural events, community events, and a convention centre with a minimum 200 seats
- meet the requirements of the New Zealand Rugby Union for the Northland rugby team, *Taniwha*, to continue to participate in the Air New Zealand Championship
- a regional asset capable of being operated without further demand on the Northland Regional Council rate-payers
- if practicable, capitalise on the Rugby World Cup in 2011 by hosting an international team and/or being a venue for practice or games.

Plans will be available to Councillors at the Council meeting.

SPECIFIC ITEMS OF INTEREST TO THE COUNCIL AND PUBLIC INCLUDE

1. The Project Budget and Form of Contract

The overall project budget is \$16 million, made up of contributions from the Regional Council (\$13 million) and Whangarei District Council (\$3 million). This includes fees for Council's consultants (for project management and legal services).

Our legal adviser confirms that the proposed contract, an adapted Institution of Civil Engineers Engineering and Construction Contract (NEC3), is appropriate for work of this nature and has been used for similar projects overseas such as the construction of facilities for the 2012 Olympics in London. It is a lump sum contract and is highly focussed on risk management and active project management. It also ensures (as far as it can) that the work is carried out in accordance with the agreed design and payment reflects the progress of work.

2. Argon's proposal

Argon's proposal has been reviewed by independent consultants with local and international experience. Their conservative advice was that Argon's proposed design could be operated on a cost neutral basis, or at a small return. We are also advised that Argon have built in a realistic contingency.

3. Operation

It is proposed that the completed Northland Events Centre will be handed over to a charitable trust for ownership and operation, with the assistance of the Whangarei District Council.

4. Multi-use Centre

The design meets the requirements of the Council's Long Term Council Community Plan for a multi-use events centre. It also meets Whangarei District Council's convention centre requirements (at least 200 seats).

5. New Zealand Rugby Union/Northland Rugby Union requirements and World Cup

There has been extensive dialogue with the Northland Rugby Union (NRU) on the design and accommodation of requirements for hosting NPC games.

The draft contract provides for the early hand over of the pitch, the refurbished north stand and the completed embankments by 14 August 2009 to allow the NRU to meet New Zealand Rugby Union requirements to host night games at Okara Park from that date.

Under the draft contract the balance of the site (for example the new south stand and convention centre) is to be handed over in late May 2010.

The respective Council Chief Executives are also arranging a meeting with NRU and Rugby World Cup 2011 (New Zealand) representatives to explore securing an international team and/or being a venue for practice or games.

CONCLUSION

Argon Construction has demonstrated that their design and construction proposal meets the Regional Council and Whangarei District Council requirements. Therefore it is recommended that, in agreement with the Whangarei District Council, the Council formally award the contract for the design, construction and completion of the Northland Events Centre to Argon Construction and that the Chief Executive Officer be delegated authority to sign that contract on behalf of the Council after this Council meeting.

Recommendation

That, subject to Whangarei District Council agreeing (by Council resolution) that Argon Construction should be awarded the construction contract and that they (Whangarei District Council) will be ultimately responsible for the ongoing operation of the Northland Events Centre, Argon Construction be formally awarded the contract for the design, construction and completion of the Northland Events Centre and the Chief Executive Officer be delegated authority to sign that contract on behalf of the Council.

COMPLIANCE WITH DECISION MAKING

The receiving of this report is provided for in the Council's 2006-2016 Long Term Council Community Plan, and as such is in accordance with the Council's decision making process and sections 76-82 of the LGA 2002.

Infrastructure Development Authority

File 150.1

Report from the Projects and Information Manager, Linda Stansfield dated 19 January 2009.

The Council amended its Community Plan in 2007 to establish an Infrastructure Development Authority (IDA) as a Council Controlled Organisation (CCO). The IDA will be a separate legal entity whose primary focus is to facilitate infrastructure development projects, including the sourcing of internal and/or external funds to contribute to the region's infrastructure needs. In order to progress this project, the Council needs to develop a Constitution and Statement of Intent.

The content of the Statement of Intent is largely dictated by the requirements of Schedule 8 of the Local Government Act (LGA) 2002. In accordance with Schedule 8(2) of the LGA 2002, the board of a CCO must deliver to its shareholders a draft Statement of Intent on or before 1 March each year. Attached is an outline of a Draft Statement of Intent. The Constitution generally sets out the granting of powers of the entity within certain parameters. Also attached is an outline for developing a draft Constitution.

It is proposed that a Working Party be formed to finalise the contents of these documents with the intention of presenting the Constitution to the February meeting of the Council.

Recommendations

1. That the report from the Projects and Information Manager dated 19 January 2009 be received.
2. That a Working Party consisting of the Chief Executive and Councillors Farnsworth, Walker and Jensen be formed to finalise the Constitution and Draft Statement of Intent.

COMPLIANCE WITH DECISION MAKING PROCESS

The activities and recommendations detailed in this report are provided for in the Council's 2006-2016 Long Term Council Community Plan and are in accordance with the Council's decision making process and sections 76-82 of the Local Government Act 2002.



APPENDIX E

AN OUTLINE CONSTITUTION FOR A COUNCIL-CONTROLLED ORGANISATION

WARNING

This is a generic outline of matters to be included in a CCO constitution. It is designed to apply primarily to CCOs that are established as companies under the Companies Act 1993. Different types of CCO may have requirements and restrictions that apply specifically to that particular type of CCO. Legal advice should be sought when drafting constitutions.

OBJECTIVES

The objective or objectives of the council-controlled organisation (CCO) should be stated at the head of the constitution. These are important because, in a dispute, these objectives provide guidance on whether or not a CCO may engage in particular activities. The form the objectives take will depend on the shareholder's intention. A CCO set up for a very specific purpose (such as a museum trust) will have quite narrowly defined objectives; a CCO like a works business would probably have a very generic statement of objectives.

A constitution should also refer to the relevant legislative vehicle that the CCO is created under, e.g. Companies Act 1993, Trustee Act 1956.

POWERS

This part of the constitution sets out the acts or transactions that the CCO may enter into, and specifies things that the CCO may not do. Common powers include the powers to employ staff, acquire property, borrow on resolution of the Board of Directors. These will largely depend on the type of CCO and the nature of its objectives (e.g. a company has most of the powers of a natural person unless otherwise restricted by its shareholders). Often it may be easier to specify the things that a CCO may not do rather than trying to specify the things a CCO may do.

SHAREHOLDING

Types of shares

Set out the types of shares that are issued in the CCO and any rights that attach to the ownership of those shares (e.g. rights to vote at an annual general meeting). Shares can confer full voting rights, limited rights, or can confer preferential rights to distributions of capital or income. If no rights are specified then the 'default' provisions of the relevant Act will apply (usually this means that shareholders are entitled to vote on one vote per share basis, have an equal share in dividends, or distribution of capital or income).

Dividends

CCOs operating on a 'for-profit' basis will need provisions dealing with the procedures for declaring and paying a dividend to the shareholders.

Restrictions on disposal of shares



Often CCOs that are companies will have provisions that limit whom shares can be sold or transferred to (especially those where the initial owner is a single local authority). These provisions will set out the limits and any procedures that shareholders are expected to follow before disposing of shares, e.g. giving other shareholders a right of first refusal. This is important as sale of shares that result in less than 50 per cent of the shareholding will cause a change in legal status from a CCO to a council organisation.

Creation of new shares

Include procedures for issuing new shares, e.g. if the CCO needs additional capital, or if a new partner is added to a partnership or joint venture. Without restrictions, the assumption in law is that any shares are fully and freely transferable.

ANNUAL GENERAL MEETING

Most types of CCO will have requirements to hold an annual general meeting (or AGM) of shareholders. This part of the constitution would contain provisions governing the conduct of the AGM.

Chair

State who chairs the AGM (usually it is the chairperson of the board).

Notice requirements

Set out the period of notice which must be given and any particular issues as to the form or content of the notice.

Voting

State any particulars as to methods of voting on business at AGMs, and rights to demand a poll.

Quorum

Usually a quorum is present if the owners of more than half the shares are present.

Proxies

Set out provisions which enable shareholders to empower other shareholders to vote on their behalf at an AGM or over a specified period.

Special general meetings

Set out provisions regarding the calling of a special general meeting such as how these may be triggered (usually a resolution of directors or a request by a specified number of shareholders, e.g. one third of shareholders), how notice should be given and the required period of notice.

Minutes

The board is responsible for ensuring that minutes are kept of the proceedings of any AGM or any special general meeting.

DIRECTORS

**Number of directors**

This is where the shareholders specify the number of directors including the chairperson, and deputy chairperson (if any).

Procedures for appointment of directors

How directors are appointed to the board. The shareholders appoint directors following the procedures laid down in their respective policies for appointing directors. If the CCO is owned by more than one party then rights of each shareholder with respect to the appointment of directors would be specified. (Note, however, some types of CCO specifically require that directors be appointed by election). If there are restrictions on eligibility to serve as a director (other than non-statutory ones such as bankruptcy) then these should be specified.

Appointments of alternates (optional)

Some boards allow the appointment of alternates to act temporarily as directors in the event that a director is unable to fulfil duties for some reason (e.g. serious illness). Where this is allowed, the shareholders will generally reserve the power to appoint alternates, and there are usually provisions that limit the power of alternates to act.

Term of appointment

A common term of appointment is three years (many local authorities review their appointments after each triennial election). A three year term allows directors sufficient time to implement changes and see those changes come to fruition and avoids the upheaval that a shorter term brings. Policies on rotation of directors should also be included here. Some companies have policies where not all directorships come up for appointment at the same time. This allows for continuity between old and new boards and can provide more transparency than other methods.

Removal (optional)

Some shareholders insist on provisions that enable them to remove a director at any time, for any reason. Although such provisions do provide local authorities with greater control over the activities of directors, they should be used with caution as they may severely curtail the number and quality of people who wish to be directors of CCOs. These removal provisions also fail to recognise that there will be instances where the directors may be obliged to act in ways that are contrary to the local authority's desired course of action.

Retirement (optional)

If the shareholder wishes to set an age at which directors must retire or limit the number of terms a director can serve, this is where it should be stated.

Disqualification (optional)

Many constitutions allow for automatic dismissal of directors who fail to attend a specified number of meetings (e.g. missing three meetings without a special leave of absence) or, less commonly, for other reasons (e.g. where an elected member was appointed to a board and ceases to be an elected member).

Remuneration



This provision sets out procedures for determining remuneration (including honoraria, salaries and expenses). Typically, the board will be given the power to set its own remuneration by resolution. Occasionally the shareholders will either place limits on the remuneration or even reserve the power to set directors' remuneration. The Act also requires local authorities to adopt a policy on remuneration.

Other interests

Any limitations on other interests that directors may be involved in, e.g. a director of a works CCO might have to disqualify themselves from being a director or employee or shareholder in any other engineering or consultancy business.

Indemnity

A standard provision in most contracts provides directors with indemnity against loss or damage arising from the actions of the CCO. Those that don't give indemnity usually require directors to take out personal liability insurance. This is the CCO itself granting indemnity to directors of the CCO; local authorities themselves cannot indemnify directors.

MEETINGS OF DIRECTORS

Chairperson and Deputy Chairperson

Procedures for the appointment of a director to act as a chairperson. In many CCOs, the shareholders reserve the right to appoint the chairperson of the board. Otherwise the board may appoint its own chairperson by election. If the shareholders have a preferred method of voting then it should be specified here. Most boards of directors also have a deputy chairperson, who acts as the chairperson in the absence of that person.

Notice of Meeting

Requirements for the giving of notice, such as the form of the notice (e.g. requirements that notice be in writing and state the date, time and place of the meeting), and procedures for calling ordinary meetings and extraordinary meetings.

Quorum

The minimum number of directors who need to be present for the board to make binding decisions. This is usually a majority of the directors, i.e. two directors if the board has a membership of four; four directors if the board has a membership of seven etc. If the board has the power to appoint committees then it may be wise to set a quorum for committees, which is usually a majority of the member of committees with a minimum of two.

Voting

This is how the CCO agrees to do business. Decisions are made by majority vote. Provisions governing the case of equality of votes are required (these are usually resolved by giving the chairperson a casting vote). Directors are usually permitted to abstain from voting.

Conflicts of interest

Provisions governing what constitutes a conflict of interest, disqualifying people from voting or discussing matters where are conflicts of interest, disqualifying members with interests from counting as part of a quorum on a particular matter.

Powers to form committees



If the shareholders wish to give boards the power to form committees (usually for boards that have significant workloads) then include provisions about their size, chairmanship, and the powers that the board may and may not delegate to a committee. Any power to delegate should be accompanied by a caution to the effect that delegation of power does not absolve the board as a whole from responsibility for its exercise.

Minutes

A requirement for meetings of Boards of Directors to keep written records and any requirements that the shareholders have for information they wish recorded (e.g. the names of directors present, sustainment of apologies for absences).



APPENDIX F

AN OUTLINE STATEMENT OF INTENT FOR A COUNCIL-CONTROLLED ORGANISATION

WARNING

This a generic outline designed to apply to all CCOs. Different types of CCO may have requirements that apply specifically to that particular type of CCO. Legal and financial advice should be sought when drafting statements of intent. Also note that some of this material is not required by legislation but may be necessary to give shareholders and other interested parties a full indication of the operations of the CCO. Such items are presented in italics.

1. INTRODUCTION

The name of the CCO, the location of the registered office of the CCO, contact details for the chairperson and the Chief Executive of the CCO (other directors and/or officers of the company may be included if desired).

A list of the subsidiaries of the CCO (if any).

A statement that the CCO is a council-controlled organisation for the purposes of the Local Government Act 2002 and of the legislation under which the CCO operates (e.g. Companies Act 1993, Trustee Act 1956). A statement of whether or not the CCO is a for-profit CCO or a not-for-profit CCO.

The year covered for which the statement of intent (and the 'out years' – at least one for a not-for-profit CCO and two for a for-profit CCO).

The objectives(s) of the CCO and subsidiaries as stated in the company constitution.

2. NATURE AND SCOPE OF ACTIVITIES

A list of the activities that the CCO will engage in, and for each:

- a description of the activity
- its expected contribution to the overall objective(s) of the CCO or other reason for engaging in the activity
- the performance targets and other measures by which the activity may be judged in relation to its objectives.

3. FINANCIAL DISCLOSURE

The ratio of consolidated shareholders funds to total assets (and the definitions of those terms).

The accounting policies of the group (e.g. a definition of the accounting entity, revenue recognition, depreciation, cost of capital, asset valuation procedures).

The procedures to be followed before any member of the group subscribes for, purchases or otherwise acquires shares in any company or other organisation.

Any activities for which the directors seek compensation from any local authority. (Not required for a not-for-profit CCO.)

The directors estimate of the commercial value of the shareholders investment in the group and the manner in which, and the times at which, that value will be reassessed.



An estimate of the amount or proportion of accumulated profits and capital reserves that it is intended to be distributed to shareholders, i.e. dividend policy. (Not required for a not-for-profit CCO.)

Larger CCOs (and especially the for-profit CCOs) should consider including full forecast financial statements, including statements of financial performance, statements of financial position, and statements of cash flow. (Some of the other items will require that the CCO have prepared this information, and in any case some of the information will be required by other legislation especially for companies.)

Any particular financial constraints imposed on the CCO by shareholders and not disclosed elsewhere, e.g. debt:equity ratios should be no more than x.

4. OTHER DISCLOSURE

Other matters that the directors and shareholders have agreed to include in the statement, or which the shareholders have resolved should be included in the statement.

The kind of information to be provided to the shareholders by the group during those financial years, including the information included in any half-yearly report (including what prospective financial information is required and how it will be presented).

5. GOVERNANCE STATEMENTS

Information on:

- **structure, function and obligations of the board** including such information as the role, the size of the board, any committees and delegations to those committees, executive and non-executive directors, obligations of the board in relation to statements of intent and reporting
- **guidance and resources provided to directors** including ongoing training, succession planning, a code of conduct, performance evaluation procedures for the board
- **significant policies in place for accountability** including policies for communication with stakeholders and other shareholders, risk management policies and procedures, selection procedures for a Chief Executive.

Councillor Remuneration – Supplementary Item

File 100.1

Report from Local Government Senior Programme Manager Kathryn Ross dated 23 January 2009.

Amended paper in substitution of Item 3 dated 14 January 2009.

The Remuneration Authority has released pool totals for salaries to be paid to Regional Chairpersons and Councillors effective from 1 July 2009. The national base line figures have been increased by 3%.

The salary pool for this Council is as follows:

| | | |
|-------------|------------|---|
| Chairman | \$105,250* | (currently \$102,133*) *less deduction for car supplied |
| Councillors | \$364,416 | (currently \$352,947) |

The Northland Regional Council salary pool is currently equally divided between the seven Councillors as follows:

| | | |
|-----------------|----------|----------------------|
| Councillors (7) | \$50,421 | (equal distribution) |
|-----------------|----------|----------------------|

The current flat structure for Councillors was adopted in June 2007 by Council resolution. I have discussed with the Chairman continuing this practice and it is his view that the flat structure should continue for the 2009/10 period. He also considers given the current economic climate that it is inappropriate for him and Councillors to accept an increase in salary for the 2009/10 financial year. He considers that each Councillor's salary, including his own, should therefore remain the same as for the 2008/09 year.

The Remuneration Authority requires advice of the Council's recommended distribution of the pool no later than 1 April 2009 in order that the rates can be gazetted prior to the 1 July commencement date.

I also recommend that Council's rules for the recovery of expenses and allowances (attached at Appendix 1), approved by the Remuneration Authority and re-confirmed in 2008, should also remain in place.

Recommendation

1. That it be recommended to the Remuneration Authority that the net pool for the Northland Regional Council for the 2009/2010 financial year effective from 1 July 2009 remain the same as for the 2008/09 year, namely:

| | | |
|-----------------|-----------|-----------------------------------|
| Chairman | \$102,133 | (less deduction for car supplied) |
| Councillors (7) | \$50,421 | |

2. Councillors are unanimously agreed on this allocation of the determination.
3. That Council's rules for the recovery of expenses remain unchanged and are reconfirmed by the Council.

COMPLIANCE WITH DECISION MAKING PROCESS

The procedure for determination of Councillors' salary is specified in Schedule 7 to the Local Government Act 2002 and the report therefore meets the decision making requirements of sections 76-82 of that Act.

**NORTHLAND REGIONAL COUNCIL
RULES FOR THE RECOVERY OF EXPENSES**

1. Councillors or Committee members may claim reimbursement of travelling and accommodation expenses and cost of meals in attending meetings of the Council and its Committees or meetings of other organisations or conferences at which the Councillor represents the Council.
2. In order to be reimbursed for transport costs incurred in attending meetings with constituents, Councillors must first obtain the approval of the Chairman or the appropriate Committee Chairman and submit a report on the meeting to a subsequent meeting of the Council or Committee.
3. Attendance at Hui a Iwi and pre-hearing site inspections, qualify for payment of travelling and out of pocket expenses.
4. Claimants for payment of mileage allowances are to submit a claim on the form provided by the Council, certifying as to mileage undertaken in attending the meeting. Claims **must** be made monthly.
5. Claimants for reimbursement of actual and reasonable expenses incurred in attending meetings and conferences shall submit and sign a claim on the form provided by the Council and append receipts or other evidence of payment of the sums claimed.
6. Payment for mileage claimed and other expenses shall be paid monthly.
7. Payment of mileage will be paid at the rate determined by the Higher Salaries Commission (Remuneration Authority) from time to time.

Allowance Paid

Payment of a monthly allowance of \$125 including GST is paid to each Councillor to meet the costs in providing a computer, fax, phone and cellphone through which they can receive Council communications.

Business with the Public Excluded

File 105.2

Recommendation

That pursuant to the Local Government Official Information and Meetings Act 1987, the public be excluded from the remainder of the meeting to consider:

4. Northland Regional Council Community Trust – Selection of New Trustees
5. Ratification of the Marsden Point Rail Link Property Purchases

The reason for excluding the public in relation to item 4, is to protect the privacy of natural persons as protected by section 7(2)(a) and in relation to item 5 public conduct of the proceedings would be likely to result in disclosure of information, the withholding of which is necessary to allow the Council to conduct, without prejudice or disadvantage, commercial negotiations, pursuant to section 7(2)(h) of the said Act.