
FEES TO COUNCILLORS ON THE BOARDS OF COUNCIL CONTROLLED ORGANISATIONS

1. Purpose of Report

To report back to the Council in compliance with its resolution of 5 November 2004 that officers should investigate whether it can elect to pay councillors who are appointed to the boards of its council controlled organisations (CCOs) at a different rate to that paid to external board members.

2. Executive Summary

There are no statutory or common law impediments to the Council making a decision to pay councillor-directors (for the purpose of this report this description also covers councillors who have been appointed to CCOs as trustees) lower fees than those paid to external board members. However, there are issues of principle to be considered before any decision to pay a different rate is taken. On balance, and assuming it remains the Council's wish for councillors to continue to play a role in the governance of its CCOs, officers believe that the status quo should be retained.

Should the Council nevertheless decide to pay councillors at a lower rate (or even a nil rate), there is no logical basis under the present fee structure for differentiating between CCOs regarding the level of reduction ie. it would be recommended that the same arrangement should apply to all CCOs.

3. Recommendations

It is recommended that the Council:

- 1. Receive the information.*
- 2. Agree that councillors who are appointed to the boards of council controlled organisations continue to receive the full amount of fees that the Council has previously approved as being commensurate with the responsibilities and workload commitment of board members, at the rates determined by the Institute of Directors following the independent review undertaken in 2004.*

4. Background

The current fees for board members of council controlled organisations (CCOs) were confirmed by the Council last year (see Table 1 below). These were set following an independent review undertaken by the Institute of Directors (IoD).

In accordance with the Council’s current Section 57 policy¹ “councillors will be entitled to collect board fees as payable under each separate appointment to a CO, CCO or CCTO.” Consistent with the Remuneration Authority’s most recent determination, these fees are in addition to the remuneration councillors receive as elected representatives.

Table 1:

CCO	Annual fee
Capacity (Wellington Water Management Ltd) Positively Wellington Business (Wellington Regional Economic Development Trust) Positively Wellington Tourism (Partnership Wellington Trust) St James Theatre Trust Wellington Museums Trust Wellington Zoo Trust	\$10,000
Westpac Stadium (Wellington Regional Stadium Trust)	\$12,000
Positively Wellington Waterfront (Wellington Waterfront Ltd)	\$25,000

During the Council debate on the 5 November 2004 report by officers regarding councillor appointments to CCOs, concern was voiced about the level of fees to be paid to them, in particular the fee to be paid to the councillor to be appointed to the board of Wellington Waterfront Ltd. This resulted in the Council passing a resolution asking officers to report back on whether it is possible for the Council to pay councillor-directors at a different rate to that paid to other (external) board members. This report is submitted in compliance with that resolution.

While the resolution focused on whether the Council *can* pay councillor-directors at a different rate to external board members, this report also discusses whether the Council *should* do this.

5 Discussion

5.1 Can the Council pay a different rate to councillor-directors?

The straightforward answer appears to be yes. An opinion has been sought from the Council’s solicitors, Phillips Fox, requesting clarification of any statutory or common law impediments to the Council making a decision to differentiate between councillors and external members when it comes to the payment of fees to board members on its CCOs. This opinion is attached as Appendix 1.

While the opinion concludes that there are currently no statutory or common law impediments to paying different or even no fees to councillor-directors, it contains a couple of caveats and canvasses a number of additional issues the Council should properly consider before making a decision on this matter. The caveats relate to the possibility that the basis of the Remuneration Authority’s determination may change in

¹ Under Section 57 of the Local Government Act 2002, the Council is required to “adopt a policy that sets out an objective and transparent process for...the remuneration of directors of a council organisation.” The Council adopted its Section 57 policy in June 2003.

the future and to the need for compliance with the requirements of each CCO's trust deed or company constitution.

The trust deed/company constitution caveat and some of the issues raised, as well as others not covered by Phillips Fox, are discussed further below.

5.2 Putting the issue of remuneration into context

5.2.1 Relevance of the Remuneration Authority's determination

As with all other local authorities, the Remuneration Authority's most recent determination for Wellington elected members specifically excludes payment of fees to councillor-directors. This is because the Remuneration Authority recognises that many councils either do not have CCOs or have policies of not appointing councillors to their CCOs, and that involvement in the governance activities of CCOs is not a common activity on the part of elected members.

Accordingly, the Remuneration Authority's method of calculation of remuneration pools is based on the lowest common denominator across all councils, which is the *core* service provided by a typical elected representative. It follows that the Authority's presumption is that each Council will, as it sees fit, make separate arrangements to compensate councillors for the provision of *non-core* services such as involvement in CCO governance activities.

Officers have researched the city councils that make up the Metro Sector to establish their practice in regard to the remuneration of councillor-directors. This research has identified the following:

- One council (Rodney) has no CCOs
- For four councils (Auckland, Dunedin, Manukau, Waitakere) remuneration is not an issue because they either have a policy of not appointing councillors to the boards of their CCOs or have not appointed any
- One council (Tauranga) appoints councillor-directors on the understanding that any remuneration to which they are entitled will revert to the Council.
- The remainder (Christchurch, Hamilton, Hutt, North Shore, Porirua) make no distinction in levels of remuneration between councillor-directors and external board members.

If it is accepted that involvement on the board of a CCO adds significantly to the core workload of a "typical" councillor then Tauranga appears to be the only metro sector local authority that is currently acting inconsistently with the logic behind the Remuneration Authority's determination. All the other metro sector local authorities appear to have recognized that being a councillor-director represents an additional workload not covered by the Remuneration Authority's determination and warrants separate remuneration. All recognize there is no difference in workload and therefore entitlement to the agreed remuneration as between a councillor-director and an external board member.

Wellington City Council would therefore be the exception among the metro sector local authorities if it decided to adopt a policy of paying councillor-directors at a different rate to external board members.

5.2.2 Applicability of trust deeds or company constitutions

Phillips Fox's opinion assumes that none of the CCO trust deeds or company constitutions explicitly prohibits councillor-directors from receiving different remuneration to that paid to external board members. Officers have confirmed that none of the relevant trust deeds and company constitutions contains such a prohibition. Trustees and directors may pay themselves but subject to settlor or shareholder approval. In practice, the Council determines what it deems to be an acceptable level of remuneration and advises the trustees and directors that this is what they should pay themselves.

There is nothing to prevent the Council (where it is the 100% shareholder) deciding councillor-directors will be paid nothing or be paid at a lower rate. It would advise the CCOs accordingly, without needing to make any change to trust deeds or company constitutions. This would in effect be exercising its right of approval. The situation may be more complex where the Council is not the only local authority shareholder, as would be the case with Capacity and the Regional Stadium Trust.

5.2.3 Compliance with Section 57 of the LGA 2002

Section 57(1) requires the Council to "adopt a policy that sets out an objective and transparent process for...the remuneration of directors of a council organisation." Section 57(2) states "...a local authority may appoint a person to be a director of a council organisation only if the person has, in the opinion of the local authority, the skills, knowledge, or experience to-

- (a) guide the organisation, given the nature and scope of its activities; and
- (b) contribute to the achievement of the objectives of the organisation."

It is appropriate to consider these two requirements. It also worth reiterating the Council's approach to the calculation of directors' remuneration.

Officers interpret "objective" in the context of process as meaning that the Council should be able to demonstrate a reasonable, sensible and justifiable approach to the determination of remuneration. Currently, the Council's adopted Section 57 policy makes no distinction between councillor-directors and external board members in terms of their level of remuneration. This is consistent with the concept that if they are good enough to be appointed to the board of a CCO ie. they have the prerequisite skills, knowledge or experience per Section 57 (2) then councillors are entitled to receive the same level of remuneration as an external board member. This represents an entirely reasonable, sensible and justifiable approach.

This approach is backed up by an equally objective and independent method of calculating the level of remuneration that uses the same criteria and a common methodology across all CCOs. The IoD's methodology allocates remuneration levels according to the workload of directors and trustees of each CCO, taking account also of

its risk profile and after discounting market rates by approximately 28% for a “public good” component.

Against this background, and in the absence of known significant changes in the underlying workload and risk data used by the IoD to establish the relative pay scales for each CCO, any “tweaking” of the Council’s current remuneration structure would be arbitrary and inequitable. For example, a decision to reduce the fee paid to the councillor-director of Wellington Waterfront Ltd because the Council is not comfortable with the answer that the IoD methodology has produced risks drawing into question the objectivity of the Council’s Section 57 remuneration process. This would be particularly true if the Council were to continue to use the results of the IoD review to set equal pay for councillor-directors and external board members for all other CCOs.

If it were of this mind, the Council would be better to adopt some other basis, unconnected with workload and/or risk profile, for approving an amendment to its current practice. It could, for example, adopt a practice that relies on the view that involvement in the governance activities of CCOs is fulfilling an obligation that flows from being an elected representative and that the fees to *all* councillor-directors should therefore be discounted by, say, 50%. Arguably, the same effect (ie. a differential scheme) could just as easily be achieved by paying external board members at market rather than public good rates and leaving councillor-director rates at the current level.

To summarise, on the face of it there would be no requirement to amend the Section 57 policy should the Council decide on a differential pay structure. The Council would simply decide the level of remuneration to be paid and advise each CCO accordingly. However, to comply with the word and the spirit of Section 57, the desired change should arguably be backed up by a rationale for making it that is then, for the sake of clarity, incorporated into the policy. Any amendment to the policy would need to be formally adopted by the Council.

5.2.4 Impact of a differential pay structure

With one exception (Wellington Cable Car Ltd), it is stipulated in the relevant trust deed or company constitution that the Council has the right to appoint at least one councillor to the board of each of its CCOs. It has steadfastly pursued a policy of making appointments to these positions. For this policy to be effective, councillors who have in accordance with Section 57(2) “the skills, knowledge and experience required of directors” have to be willing to put themselves forward for appointment.

If the Council elects to pay councillor-directors at a lower rate, councillors who otherwise meet the requirements may not in future put themselves forward for appointment (there is the additional prospect that those currently appointed would step down) because they do not consider that the remuneration is sufficient to compensate them for the workload, responsibilities and/or statutory obligations that come with being a trustee or director. This would mean the Council:

- a) may have to coerce appropriately qualified but unwilling candidates to apply for positions, which is unprofessional and hardly represents good practice, or
- b) may have to appoint willing councillors whom it does not consider have the requisite skills, knowledge or experience in contravention of Section 57, or

- c) may have to accept that it will no longer be able to meet its obligations and no longer appoint councillors to the boards of its CCOs.

5.3 Consideration of options

5.3.1 The range of options

Put simply, and assuming it is not the Council’s intention with this report to consider increasing the pay to councillor-directors relative to external board members, there are four possible outcomes of this discussion. They are:

- Option 1 - retain the status quo
- Option 2 - pay all councillor-directors nothing
- Option 3 - pay a lower rate to all councillor-directors, relative to that for external board members
- Option 4 - use a combination of some or all of the above ie. adopt a “horses for courses” approach to each CCO.

It is appropriate to consider each from the perspective of the Remuneration Authority’s determination, the Council’s current director remuneration calculation process and the fit with the practice of other local authorities. Issues of equity and willingness to serve are also relevant.

The following table uses the criteria canvassed in the preceding paragraphs to compare and contrast the four options.

Table 2:

Criterion	Option			
	1	2	3	4
Is consistent with Remuneration Authority determination?	Yes	No	Yes	Not for any who receive no pay
Is consistent with metro sector practice?	Yes	No	No	No
Could be compatible with Council’s current director remuneration process?	Yes	Yes	Yes	No
Provides equitable treatment?	Yes	Yes	Yes	No
Has a positive impact on councillor willingness to serve on CCO boards?	Yes	No	Possibly not	Not in respect of CCOs where councillors would receive no or lower pay

5.3.2 Option 1 - Retain the status quo

On balance, this is the recommended option. It delivers a reasonable, sensible and justifiable outcome.

5.3.3 Option 2 - Pay all councillor-directors nothing

The most obvious rationale for implementing this option would be the belief that councillors' normal duties include playing a role in the governance of CCOs and that they are already adequately remunerated through the Remuneration Pool for taking on such a responsibility. It would therefore have to be applied uniformly across all CCOs.

Under this option the willingness of councillors to put time into fulfilling the duties and responsibilities of, and to carry the risk associated with being, a director or trustee is likely to be severely tested.

5.3.3 Option 3 - Pay all councillor-directors at a lower rate

This is the next preferred option. It could operate under an arrangement whereby a differential rate is applied across all CCOs using a common methodology for determining the lower rate.

The argument that could be advanced in support of this option is that councillors know they may be called upon to perform duties on behalf of the community outside of those associated with being an elected representative and should not expect to get paid at the same rate as that paid to external members. A simple discount could then be applied to the IoD rate to reflect the councillor public good element.

A complicating factor is that the public good element that may be considered to attach to the role of councillor-director, using such an argument, has already been factored into the remuneration of *all* trustees and directors. It may therefore seem more logical to pay external board members more rather than pay councillor-directors less.

5.3.4 Option 4 – combination of all or some of the above

While there is nothing to prevent the Council adopting such an approach, it is difficult to conceive of the rationale that could support paying the councillor-directors on one or more CCO boards nothing or at a lower rate while those on other boards receive the same pay that their external counterparts get. There appear to be no reasonable grounds on which to recommend this option.

6. Conflict of interest

Councillors should note that officers have sought advice from the Office of the Auditor-General regarding the ability of councillor-directors to take part in the debate on this report and to vote on its recommendations and on any motions and/or amendments that may arise during the debate. A copy of the Office's advice is attached as Appendix 1.

In summary, it is the Office's advice that all councillor-directors have a pecuniary interest in the outcome of the debate and would normally be expected to abstain from taking part in the debate or voting on the issues before the Council. However, recognizing that the removal of 9 out of 15 councillors from the debate would detract from good decision-making and impede the transaction of the business of the Council,

the Auditor-General has issued a declaration (set out in the advice) to enable all councillors to participate in the consideration of this report.

7. Conclusion

Officers have received legal advice that there are no statutory or common law impediments to the Council setting a different rate of pay for councillors who are appointed to the boards of CCOs to that for external board members. However, there are a range of issues of principle and implementation that need to be considered before the Council makes a decision to implement a differential pay structure.

After taking account of these other issues, officers believe any decision to pay a lower rate to councillors than that paid to fellow external board members would need to be consistent with the requirements of Section 57 of the Local Government Act 2002 ie. it would need to reflect the outcome of a reasoned, objective assessment across all CCOs and not discriminate on spurious, inequitable grounds.

On balance, officers believe the Council should stick with the status quo, which reflects the application of an objective and transparent remuneration process per its Section 57 policy on directors' and trustees' remuneration.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The Council's approval of a Section 57 policy is an administrative requirement of the Local Government Act 2002.

2) LTCCP/Annual Plan reference and long term financial impact

Should the Council approve lower remuneration for councillor-directors and – trustees, the savings would flow through as a reduction to the OPEX funding that it allocates to some of the CCOs.

3) Treaty of Waitangi considerations

Not applicable

4) Decision-Making

This is not a significant decision and the report canvasses a number of options that the Council could consider implementing without the need for further consultation.

5) Consultation

a) General Consultation

Other metro sector authorities have been consulted regarding the practices they have adopted in regard to the remuneration of councillors sitting on council controlled organisations.

b) Consultation with Maori

Not applicable.

6) Legal Implications

The Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report recommends the status quo, which is consistent with current Council policy and practice.