

MEMORANDUM

Date: 14 June 2022
To: Meaghan Miller
From: Alice Balme, Wynn Williams

Queenstown Airport Corporation

1. You have sought our advice on the roles and responsibilities of Queenstown Lakes District Council (**QLDC** or **Council**) with respect to Queenstown Airport Corporation (**QAC**), a Council Controlled Trading Organisation (**CCTO**).
2. This advice is intended to be an overview of the legislative requirements and we are available to talk to any of these points or provide further detailed advice on any aspect if required.

Introduction

3. The Local Government Act 2002 (**LGA**) defines Council Controlled Organisations (CCOs) and CCTOs. They are 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. Where a CCO operates a trading undertaking for the purpose of making a profit, it is referred to as a CCTO.
4. CCTOs provide both opportunities and challenges. They give Council the opportunity to engage people with the right skills and experience to focus on operating a business or other undertaking on its behalf. The challenge is that Council remains accountable to its community for the CCTO's performance.
5. CCTOs are most successful where the Council seeks to influence rather than control the CCTO. This is because, CCTOs operate in a complex environment. Unlike a privately owned entity, a CCTO must meet the expectations of both its shareholders and its community. It operates in a political environment and is accountable to its community for its use and stewardship of community assets and/or ratepayer funds.
6. It is important for the board and the shareholders to understand their respective roles and obligations. With this understanding, an effective working relationship between the Council and the CCTO based on mutual respect and trust can be formed and will be critical to the success of a CCTO. That relationship needs to be close enough for the Council to know how the CCTO is performing but still allow the CCTO to operate at arm's length.

Role of the Council

7. The Council has two roles in respect of QAC. It is both the territorial authority responsible for the establishment and continued monitoring of QAC and a shareholder in the company. These roles inevitably overlap, and it is important that the Council complies with its obligations under the Local Government Act 2002 (LGA) at all times.
8. There are certain functions that the Council must fulfil that are distinct from its role as a shareholder of a CCTO. It is the role of the Council as territorial authority to decide whether to establish a CCTO (subject to carrying out a special consultative process with the community). Having decided to establish a CCTO, the Council must adopt a policy that sets out an objective and transparent process for identification and

consideration of the skills, knowledge and experience required of directors of the CCTO, the appointment of directors and their remuneration. ¹

9. The Council must set out the significant policies and objectives in relation to ownership and control of the organisation. It will also specify the nature and scope of activities to be provided by the CCTO and the key performance targets and other measures by which the company performance will be judged.² The Council does this through its Long-Term Plan process. The current LTP adopts the objectives for QAC set out in the statement of intent (**SOI**) and that reflect the Council's statement of expectations.
10. Council must also regularly undertake performance monitoring of the CCTO to evaluate its contribution to the achievement of:
 - a. Council's objectives for the CCTO;
 - b. (if applicable) the desired results, as set out in the organisation's SOI; and
 - c. the overall aims and outcomes of the local authority.
11. In addition to monitoring, there are a number of reporting obligations set out in the LGA for CCTO's to ensure the operation of the company is transparent.
12. Finally, Council is also required to agree a SOI that is delivered to it, or otherwise take steps to require the SOI to be modified. This process is discussed in more detail below.

Council as shareholder

13. In addition to the above, the Council is also the majority shareholder in QAC with a 75.1% shareholding.
14. There are certain powers that are reserved by the shareholders of a company (and therefore that the Board cannot exercise). These powers are specified in the Companies Act 1993 and include adopting, altering or revoking a constitution, altering shareholder rights, approving a major financial transaction, appointing and removing directors, approving an amalgamation and putting the company into liquidation.
15. As set out in more detail below, the Council, as a shareholder, also has an important role to play in the preparation of a statement of expectations (**SOE**) for the company and in providing feedback on the draft **SOI**.

Role of the Board

16. The LGA sets out that the role of a director of a CCTO is to assist the organisation to meet its objectives and any other requirements in its SOI. Directors must also comply with their obligations under the Companies Act.
17. Together the Board of Directors must achieve the principal objectives of a CCTO being to:
 - a. Achieve the objectives of the shareholders, both commercial and non-commercial, as specified in the SOI;
 - b. Be a good employer;

¹ LGA, s 57(1).

² LGA, Cl 7, Sch 10.

- c. Exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and
 - d. Conduct the affairs of the company in accordance with sound business practice.
18. The Board of directors are primarily responsible for the management of the company. They are afforded all the powers necessary for directing and supervising the management of the business and affairs of the company.
 19. The Board employs a chief executive who is accountable to the Board and responsible for the day to day running of the company.
 20. Ultimately, it is the role of QAC to deliver airport services to the Queenstown Lakes District community and in doing so, implement the direction set by the Council as its shareholder.
 21. As QAC is an airport company the Board it also has obligations under the Airport Authorities Act, the Civil Aviation Act, the Resource Management Act and it is a lifeline utility under the Civil Defence Emergency Act. It is the responsibility of the Board to ensure that the Company is complying at all times with this legislation while implementing the Council's objectives. Any failure to comply with this legislation could result in liability for the company or the directors. It is for this reason that Council appoints a board with the right skills and experience to deliver the services of the company. It must then establish a trusting relationship to allow the board to operate at arm's length and to run the company in a way that achieves Council's objectives while achieving compliance with the many legislative instruments.

No requirement to consult shareholders or community

22. The QAC Board is empowered to do all things necessary to run the company (subject to the exceptions outlined above where certain powers are reserved for the shareholders). It is a separate legal entity from the Council and provided it is acting in accordance with its legislative requirements and the current SOI, it is not required to consult the Council as a shareholder or the community in its day to day operations.
23. The only exception to this is where the Council sets out in its statement of expectations that QAC is required to engage with the community on certain matters.³ Importantly however, QLDC cannot step into the role of the company and consult or engage on its behalf.
24. QAC has committed to a "no surprises" relationship with its shareholders. In order to achieve this and maintain an open and collaborative relationship, QAC meets regularly with the Council. The SOI prescribes the following interactions that occur:
 - a. Bi-monthly Chief Executive/Chief Executive (CEO) meetings;
 - b. Quarterly Mayor and CEO/ QAC Chair and CEO meetings;
 - c. Regular QLDC/QAC Climate Action Plan progress meetings;
 - d. Annual meetings with the QAC board, QLDC councillors and Wānaka Community Board to discuss business performance, vision and direction; and

³ LGA, s64B(2).

- e. Meetings of the QLDC/ QAC joint steering group to guide the development of the SOI through its key milestones held as required.
25. QAC also maintains regular engagement with Auckland International Airport Limited (**AIAL**). Annual meetings are held between QAC's Chair and CEO and AIAL's Chair and CEO.
 26. As QAC must also have regard to the interests of the community in which it operates,⁴ QAC has also committed to consult with the community as an integral part of the strategic planning for the organisation. This consultation is not a legislative requirement and while QAC must have regard to and endeavour to accommodate community interests or views, it is not obligated to adopt them. Any strategic planning document must satisfy the range of legislative requirements imposed on QAC as an airport company and on the directors of the company. It is therefore important that the strategic planning process is lead and implemented by QAC with input from the shareholders as key stakeholders.

Statement of Intent

27. QAC's SOI provides the Council's primary opportunity to influence the direction of the company. Every CCO / CCTO is required to prepare and adopt a SOI in accordance with Part 1 of Schedule 8 of the LGA. The SOI process occurs annually and relates to a three year period.
28. The SOI must include:
 - a. The objectives of QAC;
 - b. A statement of the Board's approach to governance of QAC;
 - c. The nature and scope of activities undertaken by QAC;
 - d. The non-financial performance targets and other measures by which performance of QAC may be judged in relation to its objectives; and
 - e. Any additional information.
29. In addition to the above, as QAC is a CCTO it must also include the information required by clause 9 of Schedule 8.
30. Once adopted by the Board and agreed by the Council, the SOI becomes an important document and the LGA requires that all decisions relating to the operation of the company must be made in accordance with the SOI.
31. The process for preparation of a SOI is detailed below.

⁴ LGA, s59(1)(c).

Purpose of the statement of intent:	
<p>a) State publicly the activities and intentions of the CCTO for the year and the objectives to which those activities will contribute; and</p> <p>b) Provide an opportunity for shareholders to influence the direction of the company; and</p> <p>c) Provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.</p>	
LGA Requirement	Timing
<p>The shareholders in a CCTO <u>may</u> prepare a statement of expectations that (s 64B(1)):</p> <ul style="list-style-type: none"> • specifies how the organisation is to conduct its relationship with shareholding local authorities and their communities and iwi, hapū, and other Māori organisations; and • requires the organisation to act consistently with the statutory obligations of the shareholding local authorities and the shareholders' obligations pursuant to agreements with third parties. <p>Other shareholder expectations in statement may be included such as expectations in relation to community engagement and collaboration with shareholders and others in the delivery of services (s 64B(2)).</p>	<p>There is no requirement in the LGA for timing of an SOE. However, logically it must be prepared by the shareholders and provided to the Company in sufficient time for the SOE to inform the draft SOI.</p>
<p>Publication of statement of expectations (s 64B(3)): must be published on an Internet site maintained by or on behalf of each local authority that is a shareholder of the organisation.</p>	<p>As soon as practicable after the SOE is provided to the Company.</p>
<p>Draft Statement of Intent (Cl 1, Sch 8): The board must deliver the draft statement of intent to its shareholders (QLDC and AIAL).</p>	<p>On or before 1 March in the year preceding the financial year to which the draft SOI relates.</p>
<p>Opportunity for shareholder comments: The Council as a shareholder in QAC has an opportunity to provide comments on the draft SOI. Any comments made by the Council must be arrived at in a manner that complies with the requirements of the LGA.</p>	<p>There is no requirement in the LGA for timing of comments on the SOI. However, they must be provided in sufficient time to allow the board to consider the comments in accordance with Cl 2, Sch 8.</p>
<p>Consideration of shareholder comments (Cl 2, Sch 8): The board must consider any comments on the draft statement of intent that are made by the shareholders.</p>	<p>On or before 1 May in the year preceding the year to which the draft statement relates.</p>
<p>Opportunity for board to make changes to the SOI to reflect the comments made by Shareholders.</p>	

<p>Final statement of intent (Cl 3, Sch 8): The board must deliver the completed statement of intent to the shareholders .</p>	<p>Before the commencement of the financial year, 30 June, to which it relates.</p>
<p>Council must agree the statement of intent or if it does not agree, require modifications under the process set out in the LGA.</p>	<p>As soon as reasonably practicable after the final SOI is delivered to it.</p>
<p>Publication of Statement of Intent (s64B(9)): Each shareholding local authority must publish the adopted statement of intent on an Internet site maintained by or on behalf of the local authority.</p>	<p>Must be published within 1 month of adopting the SOI, and must maintain the statement on the website for a period of no less than 7 years.</p>
<p>Council may extend deadlines (Cl 4, Sch 8): Council can, by written notice, extend a deadline specified in clause 1(2), 2, or 3 for a period not exceeding in total 1 calendar month.</p>	
<p>Changes to the SOI (outside of the annual SOI process)</p>	
<p>Modifications of statements of intent (Cl 5, Sch 8): the board may, by giving written notice, modify a statement of intent at any time if the board has:</p> <ul style="list-style-type: none"> • Given notice to the shareholders of the proposed modification; and • Considered any comments within 1 month after giving notice or a shorter period agreed by the shareholders. 	<p>The Board may modify its SOI at any time.</p>
<p>Modifications of statements of intent by resolution of shareholders (Cl 6, Sch 8): the shareholders of a CCTO may by resolution require the board to modify the statement of intent in the manner specified in the resolution.</p>	<p>Shareholders may resolve to require modifications to the SOI at any time and must take all practical steps to do so if an SOI is not able to be agreed in accordance with section 65(2) of the LGA.</p>

LGA requirements

32. In addition to the specific requirements relating to CCO's and the SOI process, the Council is required to conduct itself in accordance with the general requirements of the LGA and always act in the interest of the community as a whole.
33. Part 2, section 14, of the LGA includes a series of principles local authorities must act in accordance with. These principles are intended to govern the overall actions of local authorities, and include principles relating to the conduct of business in an open and transparent manner; making itself aware of community views; providing opportunities for Māori to participate in decision-making processes; collaborating and cooperating with other local authorities as appropriate; ensuring prudent stewardship of resources; and taking a sustainable development approach.
34. Part 6 of the LGA sets out the obligations of Council in relation to decision making and consultation. In particular, every decision made by a local authority, including

decisions relating to a CCTO must be made in accordance the relevant provisions of the LGA.

35. We have not set out these requirements in detail. However, we have flagged them for the purpose of this advice as the Council should always be cognisant of its LGA responsibility in making decisions.
36. In practice, the Council sets the significant policies and objectives in relation to ownership and control of QAC, the nature and scope of activities to be provided by QAC and the key performance targets and other measures by which QAC performance will be judged through its LTP. As these decisions for part of the LTP process they are consulted on using the special consultative procedure – and therefore comply with the LGA requirements.
37. Provided any subsequent decision made by the Council is for the purpose of achieving the direction already set in the LTP(i.e. feedback on SOIs etc) then there is unlikely to be a need to consult on subsequent decisions. However, Council must still comply with the principles set out in the LGA and the requirements for decision making i.e. having regard to views of those who might be affected by a decision and considering reasonably practical alternative options.
38. If at any point the Council decided to make a decision in relation to the ownership and control of QAC that was not consistent with its LTP, or a decision that was considered to be a significant decision in accordance with its significance and engagement policy, it would need to consult the community on that decision. This should logically occur through the annual plan process, and the timing of the SOI process was designed to allow this consultation to occur before an SOI was required to be finalised. However, it may also occur as part of a discrete consultation process targeted at operation of the company.

Conclusion

39. The process followed by QLDC and QAC for the adoption of the SOI is robust in our opinion. The Council has provided QAC with a statement of expectations for the 2023 SOI. We have reviewed the SOE and it accords with the requirements of s 64B of the LGA. We also note that the SOE is published on the internet in compliance with s 64B(3).
40. In response to this SOE, QAC has provided QLDC with a draft SOI for the 2023 year. We understand that the Council has considered that draft SOI and provided feedback to QAC on its content. QAC will now consider that feedback and produce a final SOI to the Council for it to agree (or otherwise seek to modify) under s 65(2) of the LGA. The Board will inevitably need to balance the Councils feedback with its many legislative responsibilities. This will result in the production of a final SOI that achieves Councils objectives while ensuring compliance with the Law and the responsibilities or duties of the directors.
41. The constructive working relationship between the Council and the Board. This is evident from the draft SOI which goes beyond the minimum requirements of the LGA in terms of the interactions between the company and its shareholders and the community. It is also a detailed document that meets the requirements for an SOI as set out in the LGA.

It is important that this relationship is maintained particularly with a new Council being elected in October. Induction for new elected members should include a briefing about QAC and how Council manages the relationship with the company and the requirements of the LGA in respect of CCTO's.