

QUEENSTOWN LAKES DISTRICT COUNCIL

Council-Controlled Organisation / Council-Controlled Trading Organisation Guidance

DECEMBER 2022

QUEENSTOWN LAKES DISTRICT COUNCIL CCO/CCTO GUIDANCE

1. INTRODUCTION

- 1.1 The purpose of this document is to provide guidance to Queenstown Lakes District Council (QLDC) on the relationship between the Council and its Council Controlled Organisations (CCOs) or its Council Controlled Trading Organisations (CCTOs) (together referred to as CCOs).
- 1.2 Council has the ability to create CCO's under the Local Government Act 2002 (LGA). They enable Council to engage people with the skills and experience necessary to operate a business or undertaking on the Council's behalf.
- 1.3 CCO's are companies and must therefore operate as commercial entities and must exercise commercial judgement and business expertise. they also exist to provide services to those who partly or wholly fund them. CCTO's have the additional requirement to carry out the business with the purpose of making a profit. As a result, they must be conscious of community expectations and appropriately balance commercial and public interests but as outlined, operate in a profit-making manner.
- 1.4 The LGA is the framework within which CCOs operate and provides the mechanisms to ensure the appropriate balance is struck between community interests and the commercial operations of a CCO.¹
- 1.5 This guidance document will explain the various interactions required between Council as territorial authority and shareholder in a CCO, and the entity itself under the LGA framework. It is also intended as a reference document to offer the community transparency over Council's adherence to good governance.
- 1.6 This guidance has been prepared so that it can apply to any existing or future CCO or CCTO of the Council.

2. CURRENT COUNCIL CCOS

- 2.1 The Council currently has one CCTO, Queenstown Airport Corporation (**QAC**). QLDC is the majority shareholder of QAC, holding 75.01% of shares. Auckland International Airport holds the remaining 24.99%.
- 2.2 Information specific to QAC is contained in Appendix 1.

¹ LGA, Part 5.

ROLES AND RESPONSIBILITIES

3. ESTABLISHING A CCO

3.1 The LGA empowers local authorities to establish CCOs.²

CCOs should generally be established to conduct a business that comes within the purpose of local government; to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future as well as enable democratic, local decision-making and action by, and on behalf of communities.

3.2 A **CCO**³ is defined as a not-for-profit entity that a local authority:

- Controls 50% or more of the voting rights; or
- Appoints 50% or more of the board members.

3.3 A **CCTO**⁴ is a CCO that, in addition to all the requirements of a CCO addressed in this guidance, is also trading to make a profit (making a profit can enable a CCTO to pay a dividend to the community).

3.4 A CCO does not have to be a company. It can be established as a trust, partnership, incorporated society, or other similar profit-sharing arrangement. This guidance document addresses CCOs that are established as companies.

3.5 In establishing a CCO that is a company, Council will prepare the CCO's constitution. The constitution is a means by which the Council can specify the rights, powers and duties of the company, the board, each director and each shareholder.

Formal documents such as the constitution and the statement of intent, and non statutory measures such as a letter of expectations, play an important role in ensuring that the purpose and role of the CCO is clearly understood.

3.6 Where powers are reserved for shareholders (such as amendments to the constitution), the shareholders will be required to vote on these matters from time to time.

² LGA, s 55.

³ LGA, s 6.

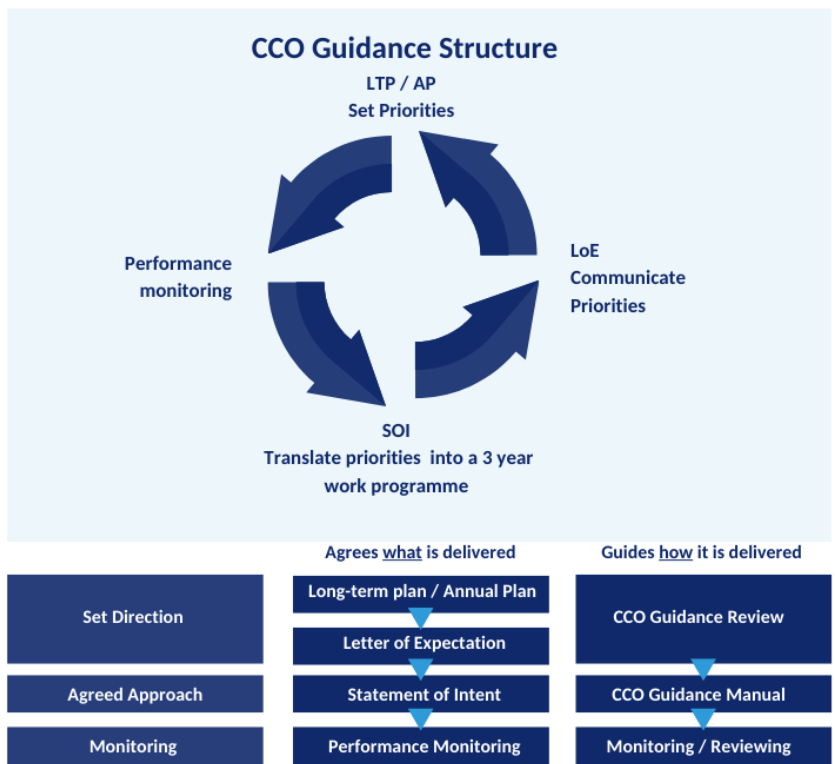
⁴ LGA, s 6.

3.7 In practice, where the Council is required to vote on matters, it will require a resolution of the Council confirming the vote the Council intends to place. This can be done at a shareholder meeting, or via written resolution in lieu of a meeting. Voting may be done by way of a proxy at a meeting. A proxy is a person appointed by Council resolution to vote at a shareholder meeting on behalf of the Council.

A Special Resolution means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

An Ordinary Resolution is a resolution of Shareholders approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

A Written Resolution requires 75% of the shareholders entitled to vote to sign the resolution.



4. QLDC ROLES IN A CCO

4.1 The Council has two roles in respect of its CCOs:

- 1) Establish and continued monitoring of the CCO; and
- 2) Shareholder in the company.

Council as Territorial Authority	Council as Shareholder
Responsible for establishing a CCO utilising the special consultative procedure. ⁵	Owner of the business
Set out the significant policies and objectives for ownership and control of the CCO in the LTP ⁶	Exercise powers reserved for shareholders under the companies Act: ⁷ <ol style="list-style-type: none"> a. Adopting, altering, or revoking a constitution; b. Altering shareholder rights; c. Approving a major financial transaction; d. Appointing and removing directors; e. Approving an amalgamation; f. Putting the company into liquidation.
Specify the nature and scope of activities to be provided by the CCO ⁸	Prepare statement of expectations (optional) ⁹
Identify key performance targets and other measures by which the CCO's performance will be judged ¹⁰	Provide input into statement of intent ¹¹
Adopt a policy for the appointment and remuneration of directors ¹²	Appoint directors to the board
Review the cost-effectiveness of a CCO's provision of local infrastructure, local public services, or regulatory functions ¹³	May require a CCO to prepare: ¹⁴ <ol style="list-style-type: none"> a. An asset management plan b. A long term plan c. One or more thematic plans such as acclimate change mitigation plan.

⁵ LGA, s 56.

⁶ LGA, Schedule 8, clause 7.

⁷ Companies Act 1993, Part 7.

⁸ LGA, Schedule 8, clause 7.

⁹ LGA, s 64B.

¹⁰ LGA, Schedule 8, clause 7.

¹¹ Schedule 8, clause 2.

¹² LGA, s 57.

¹³ LGA, s 17A.

¹⁴ LGA, s 64A.

- 4.2 These roles inevitably overlap, and it is important that the Council also complies with its obligations under the LGA at all times.
- 4.3 Having made a decision to establish a CCO, and appointed a board to run the company, the Council must carry out its defined roles whilst also empowering the board to run the business in line with its statement of intent (SOI).¹⁵ This is particularly important where the CCO operates a business in a regulated environment where compliance with multiple legal instruments is required.

5. ROLE OF THE BOARD OF A CCO

- 5.1 The LGA sets out that the role of a director of a CCO is to assist the CCO to meet its objectives and any other requirements in its SOI¹⁶ (SOI's are discussed in more detail below). Directors must also comply with their obligations under the Companies Act 1993.
- 5.2 Together, the Board of Directors (**the Board**) of a CCO must achieve the principal objectives of a CCO, being to:¹⁷
- a. Achieve the objectives of the shareholders, both commercial and non-commercial, as specified in the SOI;
 - b. Be a good employer;
 - 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.
- 5.3 The Board is 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. They are also responsible for ensuring the CCO complies with its legal obligations.
- 5.4 The Board of a CCO also employs a Chief Executive who is accountable to the Board and responsible for the day to day running of the company.
- 5.5 All decisions relating to the operation of a CCO must be made by, or under the authority of the board in accordance with the SOI and the company constitution.

Appointment and Remuneration of Directors

- 5.6 Council has a policy for the appointment and remuneration of directors of its CCOs. It is available at this link: [\[insert Link\]](#)
- 5.7 The policy requires the Governance Subcommittee (comprising the Mayor, CEO and an appointed Councillor) to select, interview and evaluate candidates and to make a recommendation to Council on the appointment of a director. The ultimate decision is made by the full Council.

¹⁵ LGA, s 64 and Schedule 8.

¹⁶ LGA, s 58.

¹⁷ LGA, s 59.

- 5.8 The policy also specifies the required skills, knowledge and experience for directors. Candidates are evaluated by the Governance Subcommittee against the listed criteria.
- 5.9 The policy also deals with tenure, reappointment, appointment of the chairperson and removal of directors.
- 5.10 Board members are remunerated in line with market expectations. The Governance Subcommittee is responsible for reviewing the level of remuneration for the board periodically, having regard to the matters listed in the policy. The ultimate decision on Remuneration sits with the full Council.
- 5.11 Any change to the Policy must be made by resolution of the full Council.

LGOIMA Responsibilities

- 5.12 Every CCO is subject to the requirements of the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- 5.13 Section 74 of the LGA provides that Parts 1 to 6 of the LGOIMA apply to CCOs. This means that while CCOs are not subject to the meetings provisions of LGOIMA they must receive and respond to requests for information in accordance with the requirements of LGOIMA.
- 5.14 Requests may also be transferred from the Council to the CCO if they are directly related to the CCO.

REQUIREMENT TO PREPARE A STATEMENT OF INTENT

6. STATEMENT OF INTENT

- 6.1 Every CCO is required to “prepare and adopt” a statement of intent.¹⁸ The purpose of the SOI is to:
- a. State publicly the activities and intentions of the CCTO for the year and the objectives to which those activities will contribute; and
 - b. Provide an opportunity for shareholders to influence the direction of the company; and
 - c. Provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.
- 6.2 The SOI is a document owned by the Board that the Shareholders have input into.
- 6.3 The process to prepare and adopt an SOI is set out in Schedule 8 of the LGA. This process occurs annually and relates to a three year period.
- 6.4 There are two core parts to an SOI: Information setting out the strategic priorities and operational aspects of the CCO and information relating to financial performance of the CCO. Both aspects are important and should be consistent with the direction set by the shareholders.
- 6.5 Every SOI is required to include:¹⁹
- a. The objectives of the CCO;
 - b. A statement of the Board’s approach to governance of the CCO;
 - c. The non-financial performance targets and other measures the CCO is judged against with respect to its objectives; and
 - d. Any additional information.
- 6.6 SOI for CCOs (but not CCTOs) must also include the major accounting policies of the CCO and the forecast financial statements for a three year period.²⁰
- 6.7 SOI for CCTOs, must include major accounting policies for the CCTO, the ratio of consolidated shareholders’ funds to total assets, estimated profits and capital reserves intended to be distributed to shareholders and the boards estimate of the commercial value of the shareholders’ investment in the CCO (Clause 9 Schedule 8 LGA).

Agreement on the statement of intent ensures that the CCO is operating within broad parameters approved by the shareholders. By facilitating an effective and robust process, with councillors who are engaged, and a CCO that is responsive and committed to working with its shareholder, the Council will ensure that the agreed statement of intent is a document that provides clarity and direction for all parties.

¹⁸ LGA, Schedule 8, Part 1.

¹⁹ LGA, Schedule 8, Part 2.

²⁰ LGA, Schedule 8, Part 3.

7. PREPARING A STATEMENT OF INTENT

Making a Statement of Expectations & Statement of Intent	
LGA Requirement	Timing
<p>The shareholders in a CCTO <u>may</u> prepare a statement of expectations (SOE) 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, 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>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 SOE (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 (SOI) (Cl 1, Sch 8): The Board must deliver the draft SOI to its shareholders.</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 the CCO 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 SOI 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 the shareholders.</p>	
<p>Final SOI (Cl 3, Sch 8): The Board must deliver the completed SOI to the shareholders.</p>	<p>Before the commencement of the financial year, 30 June, to which it relates.</p>

<p>Council must agree the SOI 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 SOI (s 64B(9)): Each shareholding Council must publish the adopted SOI on an internet site maintained by or on behalf of the Council.</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 pf Sch 8 for a period not exceeding 1 calendar month.</p>	
<p>Changes to the SOI (outside the annual process):</p> <ol style="list-style-type: none"> 1. The Board may, by giving written notice, modify a SOI at any time if the Board has given written notice to the shareholders and considered any comments within 1 month after giving notice or a shorter period agreed by the shareholders (Cl 5, Sch 8). 2. Shareholders of a CCO may by resolution, require the Board to modify the SOI in the manner specified in the resolution. This can be done at any time, and shareholders must take all practicable steps to do so if an SOI is not able to be agreed in accordance with s 65(2) of the LGA. 	

ACCOUNTABILITY AND MONITORING

8. REPORTING OBLIGATIONS ON THE CCO

- 8.1 A CCO is required to prepare and publish the SOI, an annual report and half yearly reports.²¹
- 8.2 The annual report will include:²²
- a. Any information required by the SOI;
 - b. A comparison of the performance of the CCO against the SOI and explanation of any material variances;
 - c. The dividend, if any, authorised to be paid or the maximum dividend proposed to be paid for the relevant financial year; and
 - d. Financial statements and auditor's report on the financial statements and performance targets.
- 8.3 The LGA requires the annual report to contain the information that is necessary to enable an informed assessment of the operations of that organisation.
- 8.4 In addition to the annual report, the CCO must also provide half-yearly reports:²³
- a. A half-yearly report must be delivered within 2 months after the end of the first half of each financial year to its shareholders;
 - b. Each report must include the information required to be included by the CCO's SOI;
 - c. The local authority must publish the report on their Internet site within 1 month of receiving it.
- 8.5 Council, as a shareholder, can notify the CCO that it requires quarterly reporting, which must then also be delivered within 2 months after the end of the first and third quarters of each financial year.²⁴ QLDC does not currently require quarterly reporting of its CCOs.

²¹ LGA, s 66 – s 67.

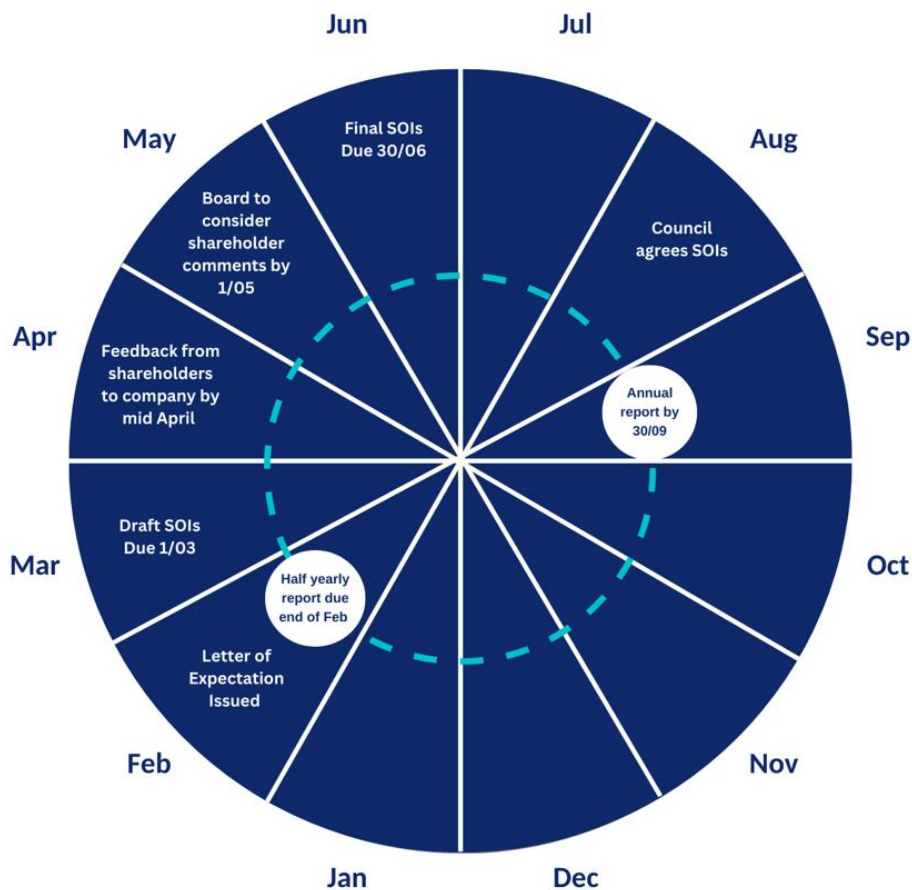
²² LGA, s 67 - 69.

²³ LGA, s 66.

²⁴ LGA, s 66(3)

9. TIMEFRAMES FOR REPORTING AND PREPARATION OF SOI

Statement of Intent and Reporting Timeline



Monitoring task	Timeframe for compliance
Prepare and adopt an SOI	On or before 30 June
Deliver annual report to shareholders	Within three months of the end of the financial year.
Half yearly report	Within 2 months after the end of the first half of each financial year
Quarterly report (Only if required by the shareholders)	Within 2 months after the end of the first and third quarters of each financial year

10. REPORTING OBLIGATIONS ON THE COUNCIL

- 10.1 The focus of QLDC's reporting obligations is on how the Council's significant policies and objectives for owning and controlling its CCOs have been met and on whether the CCO has delivered on planned achievements and results as set out in the long-term or annual plans. QLDC's reporting obligations include a requirement to:²⁵
- a. include its significant objectives and policies for ownership and control of CCOs in its long-term plan and signal any significant changes in its annual plans; and
 - b. include in its annual report a comparison of the CCO's actual performance with the intended performance set out in the local authority's long-term plan (or annual plan).
- 10.2 QLDC may also include forecast financial statements for its CCOs in its long term plans and annual plans.²⁶

11. COUNCIL MONITORING OF CCO

Monitoring is not a means for a local authority to control a CCO, but it is an opportunity to set its direction.

- 11.1 QLDC must undertake regular performance monitoring of its CCOs to evaluate the CCOs contribution to the achievement of:²⁷
- a. QLDC's objectives for the organisation; and
 - b. (if applicable) the desired results as set out in the SOI; and
 - c. The overall aims and outcomes of QLDC.
- 11.2 The LGA does not prescribe a specific method for monitoring CCOs. In the case of each CCO, the Council must determine its approach to monitoring. Expectations and the process for monitoring a CCO should be made clear as between the Council and the CCO.

Monitoring gives Council assurance that the CCO is meeting the objectives that it has set. Monitoring provides the basis for a constructive relationship between Council and CCO. An effective relationship is founded on mutual respect between Council and CCO for the role of the other. It needs to be close enough for the Council to know how the CCO is performing, but still leave the CCO space to operate at arm's length.

²⁵ LGA, Schedule 1, clause 7.

²⁶ LGA, Schedule 1, clause 12(2).

²⁷ LGA, s 65.

APPENDIX 1 -QUEENSTOWN AIRPORT CORPORATION

INTRODUCTION

1. Queenstown Airport Corporation is a CCTO.
2. QLDC is the majority shareholder of QAC, holding 75.01% of shares. Auckland International Airport holds the remaining 24.99%.
3. QAC is governed by a Board of 6 Directors.
4. When it was established, QAC adopted a constitution. The QAC constitution largely adopts the default provisions in the Companies Act 1993. It makes clear that:
 - a. The board cannot issue shares in the company without first obtaining an Ordinary Resolution of the shareholders, and provided the new shares are offered on a pre-emptive basis to the existing shareholders.
 - b. Shareholders cannot transfer their shares to a third party without first offering them to the other shareholder.
 - c. There must at all times be a minimum of three directors appointed to the board and one of those directors is to be appointed by Auckland Airport Holdings (No.2) Limited.
 - d. The Board cannot permit the company to enter into a major transaction (as defined in the Companies Act 1993) unless the transaction is approved by a Special Resolution or is contingent on a Special Resolution.
 - e. Changes to the constitution can only be made by Special Resolution of the shareholders.
5. The constitution was most recently reviewed and considered fit for purpose in 2021.

ROLES AND RESPONSIBILITIES

QLDC	QAC
<p>Majority shareholder</p> <ul style="list-style-type: none">- Sets direction of company through statement of expectations and Statement of intent process.- Receives a dividend.- Can exercise majority voting rights to make special resolutions at shareholder meetings.- Responsible for appointing board of directors.	<p>Exercise the powers necessary for directing and supervising the management of the business and the affairs of the Company.</p> <p>Ensure all decisions relating to the operation of QAC are in accordance with the SOI and the company constitution.</p> <p>Employ a team of staff to run the day to day business operations.</p>

<p>Territorial Authority</p> <ul style="list-style-type: none"> - Set out the significant policies and objectives for ownership and control of the CCO in the LTP - Undertake regular monitoring of QAC's performance 	<p>Prepare and adopt an SOI in accordance with the process outlined in this guidance document.</p>
<p>Territorial Authority – Regulator</p> <ul style="list-style-type: none"> - Ensure compliance by the QAC with the requirements of the RMA, the Building Act and any other legislation that the Council is responsible for. 	<p>Ensure compliance with all legislative requirements including (but not limited to):</p> <ul style="list-style-type: none"> - Airport Authorities Act 1966 – QAC is an Airport Authority under this Act. - Civil Aviation Act 1990 – QAC is an airport operator under Civil Aviation Rule 139 and the Act. - Resource Management Act 1991 – QAC is a requiring authority in respect of Queenstown Airport and is responsible for ensuring compliance with the Airport designations and the requirements of the District Plan. - Civil Defence Emergency Management Act 2002 – QAC is a lifeline utility under this Act.

ACCOUNTABILITY AND MONITORING

6. Council's Long Term Plan includes a detailed section on QAC. It sets out, the nature and scope of activities to be undertaken by the company, the purpose and objectives of the company, some of the key constraints that the company must operate within and the performance targets for the company.
7. The annual report also includes a section on QAC and includes an assessment of actual vs forecast financial performance.
8. The monitoring approach that QLDC has adopted in relation to QAC is as follows:
 - a. Holding regular meetings including
 - i. Bi-monthly Chief Executive/Chief Executive (CEO) meetings
 - ii. Quarterly Mayor and CEO/ QAC Chair and CEO meetings
 - iii. Regular QLDC/QAC Climate Action Plan progress meetings

- iv. Meeting annually with both the QAC board, QLDC councillors and Wānaka Community Board to discuss business performance, vision and direction
 - v. Joint steering group meetings, as required.
- b. Annually through the SOE and SOI processes and at Annual General Meetings.

LINKS TO KEY DOCUMENTS:

- Current statement of intent
- Current statement of expectations
- Company constitution
- Relevant Council Policies

DRAFT