

Report of the Kaipara District Council Review Team

17 August 2012

**Greg Gent
Leigh Auton
Peter Tennent**

Executive Summary

1. This report sets out the findings and recommendations of the Kaipara District Council Review Team that was appointed by the Minister of Local Government to review the Council's governance processes and financial management. At an early point in its investigation the Review Team came to the view that the problems facing the Council were of such significance that it should report earlier than in October 2012, as specified in its terms of reference.
2. The key finding of the Review Team is that the challenges facing the Council are beyond the current Councillors' ability to resolve. This is compounded by a lack of appropriate capability within the Council organisation. The Review Team therefore recommend that commissioners should be appointed to perform the functions and powers of the Council. This recommendation was discussed with the Kaipara District Council Mayor and Councillors on 13 August 2012. In response the Council passed a resolution inviting the Minister of Local Government to appoint commissioners under the Local Government Act 2002. The Review Team accordingly recommends that the Minister appoints commissioners as soon as practicable.
3. The Kaipara District Council requires a shift in its culture that will only happen with strong leadership and the reinforcement of governance and management practices. The Review Team believe that commissioners would be best placed to lead this change.
4. In addition to the appointment of commissioners the Review Team makes a number of recommendations relating to the Council's relationship with its community, financial management, service delivery and asset management. A focus on these issues will increase the capability of the Council staff and organisation so as to better support Councillors, improve systems and services, and realise efficiencies.
5. Many of the problems faced by the Kaipara District Council are likely to be shared by other small, predominantly rural territorial authorities. Their small scale often makes it unaffordable to employ specialist staff, and where such staff are sought, attracting and retaining them can be hard. This makes the funding and delivery of quality services difficult. Although the Review Team's terms of reference specifically precluded it from considering the amalgamation of Kaipara District Council with other local authorities, the Review Team believes there is potential for sharing services with neighbouring councils and council-controlled organisations across a range of utilities and services.
6. The Review Team considers the Council's financial position is weak. It has high debt, significant contingent liabilities and reduced cash flow due to problems with current and past rates. However, it is important that the Council adopt its long term plan for 2012–2022 before commissioners are appointed so rates for this financial year can be set. The Review Team also recommends that work begins immediately on any necessary amendments to critical areas of the long term plan to establish a more sustainable and equitable funding base for the district.
7. An issue that was raised with the Review Team was why the Councillors' auditors did not highlight many of the problems that have recently come to light in auditing its long term plans and annual reports. The Review Team recommends that commissioners seek legal advice on the perceived failures of the auditors.

8. Electing to report early means that the Review Team has not had the opportunity to fully investigate all matters before it. The Review Team recommends that commissioners, if appointed, continue to inquire into these matters and explore potential solutions.
9. In conclusion, the Review Team is convinced that the best thing for the Kaipara district is to appoint commissioners as soon as possible and for them to begin the task of rebuilding community confidence in the Council and addressing the problems it faces.

10. Introduction

11. In June 2012, at the request of the Kaipara District Council, the Minister of Local Government appointed a review team to inquire into the Council's governance processes and financial management.¹ The request was made amidst significant community concerns about rates increases proposed in the Council's draft 2012–2022 long term plan and the Mangawhai Community Wastewater Scheme. The Review Team comprised Greg Gent (chair), Leigh Auton and Peter Tennent.

Background

12. Over recent years ratepayers in the Kaipara district have become increasingly concerned about the costs of the Mangawhai Community Wastewater Scheme (the Mangawhai Scheme) and the legality of the Council's rating practices. In April 2012 the Kaipara District Council (the Council) released its draft long term plan for 2012–22. It proposed an average 31 per cent rate increase for the 2012–13 financial year – a significant part of which was related to the Mangawhai Scheme. The proposed increase caused considerable alarm among ratepayers. The debt incurred by the Council to fund the Mangawhai Scheme and other capital works make it one of the most indebted councils in New Zealand on a per capita basis.²
13. In September 2011 the then Minister of Local Government met with the Council in response to public concerns about its financial management and decision-making, especially in relation to the Mangawhai Scheme. Following the meeting he wrote to the Mayor effectively putting the Council on watch and asked it to report back to him by 30 April 2012 on progress the Council had made on:
 - improving its financial reporting and debt management;
 - explaining the funding proposals for the Mangawhai Scheme;
 - how risks associated with funding the Mangawhai Scheme would be managed; and
 - resolving its invalid rating practices.

The Council reported back to the Minister in April 2012. Progress had been made on many of the matters identified. The Review Team understands that a significant factor in this progress was that the Council had appointed a new chief executive in November 2011.

¹ The Kaipara District Council Review Team's terms of reference are attached as **Appendix 1**.

² The debt per capita in the Kaipara District for the 2010–11 financial year was \$4,436, compared to a national average of \$1,296 (excluding Auckland councils). The average for rural councils was \$1,042. (source: Statistics NZ Local Authority Financial Statistics 2011 and population estimates for the relevant year)

14. However, further developments revealed a number of other serious financial management issues within the Council. Some of these related to the Mangawhai Scheme and led to the Council requesting the Auditor-General undertake an inquiry into the Council's management of the Mangawhai Scheme from its conception. The Auditor-General agreed and terms of reference for this inquiry were issued on 16 March 2012.³
15. Other financial management issues the Council was facing included that:
- it had not adopted its annual report for 2010–11;
 - it had received legal advice that some previous years' rates were invalid (estimated quantum of \$9.5 million); and
 - in response to concerns about the Mangawhai Scheme, slow progress in resolving the invalid rates and the proposed rates increases, a rates strike began gaining momentum.
16. It had also become apparent that the Council had borrowed money to meet operating costs. Some of this was for the Mangawhai Scheme and was planned. However, some appears to have occurred because of poor budgeting practices. Generally, borrowing to meet operating costs is regarded as financially imprudent.

Approach to the review

17. The Review Team began its inquiry on 22 June 2012 under terms of reference issued by the Minister of Local Government. The Review Team has held meetings with the Kaipara District Council Mayor and Councillors, the Council's Chief Executive, ratepayer and resident associations, various interest groups, representatives of neighbouring local authorities, New Zealand Transport Agency, WaterCare Services Limited, a representative of Te Roroa⁴, and various interest groups.⁵ The review has also been informed by reports commissioned by the Kaipara District Council on service delivery and financial management, and submissions on the Council's draft long term plan.
18. The Review Team was required to provide a progress report to Council and the Minister by 17 August 2012 with a final report due by 31 October 2012. However, following its first round of meetings the Review Team formed a view that the issues faced by the Council were so significant and in urgent need of resolution that it decided to report its key findings to the Minister and Council by 17 August to enable the Government to take urgent action.
19. On 13 August the Review Team met with the Mayor and Councillors to discuss with them its proposed recommendations – in particular that the Minister of Local Government appoint commissioners to perform and exercise the Council's powers and duties. The Council resolved at this meeting to invite the Minister to appoint commissioners under the Local Government Act 2002. The Review Team commends the Mayor and Councillors for taking this step which in its view is in the best interests of the Kaipara district.
20. By electing to report early the Review Team has necessarily had to constrain the breadth and depth of its investigation and report. This is justified in terms of the urgent need for

³ The terms of reference for the Auditor General's inquiry are attached as **Appendix 2**.

⁴ Tangata whenua in the Dargaville-Waipoua area.

⁵ A list of all groups and individuals the Review Team met with is attached as **Appendix 3**.

action. It is intended that if the Minister agrees to the request of the Council to appoint commissioners, the commissioners continue to investigate some of the matters that the Review Team was unable to in the time available.

21. Under its terms of reference the Review Team was precluded from investigating matters subject to the Auditor-General's inquiry into the Mangawhai Scheme. Once the Auditor-General's inquiry is complete, the commissioners (if appointed) should consider and, if appropriate, take action in relation to the Auditor-General's findings and recommendations.
22. The Review Team would like to thank all those who met with it to discuss their views of the problems and challenges faced by the Council. All persons it met had in common a great love for the Kaipara district and an aspiration to see it governed in the best interests of its community. It is with this in mind that the Review Team has undertaken its review and made this report to the Minister of Local Government and Kaipara District Council.

Governance

Introduction

23. The governance model under the Local Government Act 2002 is one of representative democracy. The community elects representatives to make decisions on their behalf in order to promote community well-being. This is complemented through strong elements of community participation under the Act.
24. A fundamental element of the governance responsibilities of a Council is to set policy. In this regard a council's role is to decide what it should be doing. At the heart of this is the dichotomy between governance and management. The elected members set the policy and this is implemented by the Council's employees, led by its chief executive. While management provides advice and makes recommendations to elected representatives, it is the councillors' responsibility to make decisions and to test the veracity of advice it is receiving. If decisions are made based on flawed advice, the elected members are still responsible for that decision.

Governance of the Kaipara District Council

25. The Review Team's investigations have led us to the view that there has been a failure of governance within the Kaipara District Council.
26. At the heart of this failure there appears to be a poor understanding amongst councillors of what the governance role of elected representatives is. Councillors spoke to the Review Team about not having received governance training (although there is evidence that some has been provided). Others spoke about not fully understanding their governance role. It is the responsibility of the leadership of the elected representatives – the Mayor and Deputy Mayor – to ensure all councillors understand the nature of their role and that the opportunity for training is provided.
27. It is apparent that the Council's elected representatives have relied heavily on the advice and direction of the Council's Chief Executive. The Review Team has been told that the previous Chief Executive was very judicious in what information he presented to the elected representatives and that in many instances they were making decisions based on

inadequate information. However, an elected representative is obliged to ensure they have sufficient information to make informed decisions, and as the employer of the Chief Executive can direct him/her in this regard.

28. An example of this is the financial information that has been provided to the elected representatives in the past. It is the view of the Review Team that it would not be possible for the elected representatives to discharge their fiduciary duty in relation to the Council's financial management with the information that they received. Or put another way, it would be impossible for the elected representatives to adequately exercise their duty of care to the ratepayers of Kaipara.
29. It is apparent that this situation has improved under the current Chief Executive who has implemented better internal processes, especially in relation to financial reporting to Council. However, it appears that through reluctance on the part of the elected representatives to front matters on behalf of the Council, he has found himself having to perform some governance roles such as representing the Council in public. As things have got tougher for the Council it appears that Councillors have become less inclined to engage with their community.
30. Over time it appears to the Review Team that as a consequence of the problems with the Mangawhai Scheme, the Council's financial position and its rating proposals, there has been a breakdown in trust between the Mayor and Councillors and the community. There is also a public perception that the Council ignored submissions on the draft long term plan and makes excessive use of resolutions to exclude the public from its meetings. When the Review Team first met with stakeholders in early July, many but not all, were calling for the Council to resign or be replaced by commissioners. However, since then opposition to the Council has increased and there seems to be agreement across the community that the elected representatives must be replaced. A common position expressed to the Review Team is that people cannot work with the current Mayor or Councillors.
31. The Review Team has formed the view that collectively the current Mayor and Councillors have insufficient experience and skills amongst to deal with the significant challenges the Council is facing. In light of this, and the lack of confidence in the Council amongst sectors of the community, the Review Team recommends that the Minister agrees with the Council's request to appoint commissioners under the Local Government Act.
32. The Review Team recommends that, in appointing commissioners, the Minister of Local Government ensures that collectively they are experienced and skilled in the areas of governance, local government management, financial management, local government infrastructure and community engagement. The Review Team also recommend that consideration is given to suspending the next local government election for the Kaipara District to allow enough time for the commissioners to address the issues they will face.
33. The Review Team considers that following the first election after the commissioners' term ends (if appointed), the Minister of Local Government should consider appointing a Crown observer to support and advise the newly elected Council. The new councillors should also receive comprehensive governance training through Local Government New Zealand's 'Know How' programme. The uptake of the training should be overseen by the Crown observer.

34. The Kaipara District Council requires a culture change that demands strong leadership and the reinforcement of governance and management practices. The Review Team believes that commissioners, supported by the current Chief Executive, would be best placed to lead this change.

Community

35. Effective local government requires communities being afforded opportunities to participate in Council processes and the decisions that most affect them. This relies on there being a level of trust and connectedness between the community and its Council – both its elected representatives and officers.
36. From the Review Team's meetings with interest groups and community representatives it concluded that in the Kaipara district there has been a fundamental breakdown in the relationship between the Council and the community it serves. A community member spoke of a 'festering climate of mistrust in both the governance arm and the management arm of the Kaipara District Council'. People spoke of a lack of transparency in the Council and said that they were not provided with timely or accurate information. The perceived failure of the Mayor, Deputy Mayor and Councillors to front meetings with the community was seen as a serious problem.
37. The Review Team acknowledges the efforts made by the Council's current Chief Executive in recent times in setting up a focus group to engage with the community around solutions to the invalid rates. However, it appears that the breakdown of the relationship with some individuals is so profound that they will not participate in such groups for fear that it be seen as an endorsement of the current Council.
38. Restoring this relationship between the Council and the community is fundamental to addressing the problems the Council is facing. It is arguable that no solutions to any of the Council's problems, regardless of how technically sound they are, will be tenable unless there is buy in from the community. Given the significant breakdown of trust and the Council's governance issues discussed above, the Review Team is convinced that the Council should be replaced by commissioners. The Review Team acknowledges the Council for resolving to invite the Minister of Local Government to appoint commissioners to perform the functions of the Council. The Review Team believes that with strong leadership from commissioners and increasing the capability of Council staff, confidence can also be restored in council staff.
39. The recommendation to appoint commissioners and remove from office democratically elected representatives is not something that has been arrived at lightly. The Review Team recommends that, if appointed, commissioners should quickly develop a plan to connect and rebuild trust with the communities of Kaipara. It recommends that this includes regular meetings with stakeholders and regular clinics at which stakeholders can discuss issues with the commissioners. The Review Team notes that it expects members of the community to engage in such processes, if established, in good faith, and approach them with a spirit of reciprocity and as an opportunity for a new beginning.
40. The Review Team also recommends that the commissioners, if appointed, consider securing the services of a dedicated communications adviser to assist the Council in better communicating and engaging with the community. A shared service agreement

with Whangarei District Council or Northland Regional Council is one potential option for securing the services of such an adviser within available funding limits.

Financial management

Introduction

41. At the heart of the problems faced by the Kaipara District Council is its level of debt and lack of cash reserves. These problems have been compounded by inadequate systems and poor decision-making. The Council's lack of financial resilience leave it poorly placed to renew infrastructure or respond to any natural disasters that may occur.
42. The Review Team notes that the Council has made some improvements in the area of financial management over the past year. It commissioned a financial health and sustainability audit that was completed by Phillip Jones of PJ and Associates in July 2011. This report has greatly assisted the Review Team in its work. Later that year a new Chief Executive was appointed who has driven significant improvements in reporting and establishing the nature and extent of the Council's problems. Recently the Council agreed to establish a risk and audit committee. It is also to the Council's credit that the significant rate increases proposed in the draft long term plan reflected a realisation that the Council's debt needed to be brought under control and better managed, and a commitment to achieve that. While there were issues about how equitable and sustainable the rates proposals were, the Review Team commends the Council for taking steps to address these problems. It also acknowledges the progress the Council has made to date in improving its financial management but notes there are still significant improvements required.
43. To a large extent the Council's external debt of approximately \$80 million relates to the Mangawhai Scheme. The Review Team understands that the Council has borrowed approximately \$58 million to fund the Scheme. As noted, the Auditor-General is undertaking a review of the Mangawhai Scheme including the Council's financial management, monitoring and reporting in relation to it. The Review Team was precluded from inquiring into the financial aspects of the Mangawhai Scheme but recommend that if commissioners are appointed they address the Auditor-General's findings and recommendations when her report is released.

Kaipara District Council's debt

44. The level of debt that the Kaipara District Council is carrying (\$80 million) leaves it very exposed. It is the Review Team's understanding that for the loan funding the Mangawhai Scheme, additional debt was acquired to pay the interest and operational costs of the Mangawhai Scheme, and that this would continue until there were sufficient ratepayers connected to it. This is clearly a risky approach but is proposed to be changed through the 2012–22 long term plan so that borrowing is only used to fund part of the interest costs associated with the debt raised to service the cost of the Scheme that is reserved for future development. These costs are expected to be recovered through development contributions. The new approach is in keeping with accepted practice across the sector but does still carry some risk in terms of growth assumptions. There is also doubt as to what the actual capacity of the Mangawhai Scheme is – a question that the Review Team understands will be answered as part of the Auditor-General's investigation.

45. A priority for the Council is to reduce reliance on debt and to fully implement its debt management/treasury policy recently developed for the Council by Asia Pacific Risk Management, to prudently manage a loan book of this size. This is an area that commissioners, if appointed, should carefully monitor.
46. In the short term there are risks associated with the Council's reliance on the continued support of its bankers. The Chair of the Review Team has met with the Council's banks to discuss the current situation and to assure them that the proposed appointment of commissioners will increase the banks' security. The ongoing relationship with the Council's banks will need to be carefully managed by the commissioners, if appointed, and the Council's Chief Executive.

Long term plan and proposed rates

47. There are a number of risks associated with the long term financial sustainability of the Council as reflected in the current draft of the 2012-22 long term plan. The high level of debt, reliance on development contributions, uncertainty of rates revenue given the rates strike, the contingent liability created by previous rates being invalid and uncertainty about what capital expenditure may be required on infrastructure, raise questions about the Council's financial sustainability and its ability to achieve the outcomes projected in the long term plan. There are also risks associated with projected growth rates, development contribution revenue and interest rates.
48. While the draft long term plan documents these critical assumptions it is clear that there is significant risk associated with the Council's financial position. This will need to be carefully managed. The Council has recognised this and signalled areas in which further work is needed leading into a potential amendment to the long term plan prior to its next formal review in 2015.
49. Viewed in this context the plan is imperfect and challengeable, though the Review Team notes that achieving an unqualified audit opinion on the draft long term plan would be nearly impossible currently. However, given the Council needs to adopt a long term plan in order to be able to set rates for the 2012–13 financial year, the Review Team recommends that the Council adopt the draft long term plan as soon as possible, accepting that it is likely to receive a qualified audit opinion. The Review Team recommends that the adopted long term plan should be seen as an interim measure and that the commissioners, if appointed, begin work immediately on progressing the areas of review identified in the draft long term plan, along with any others that they may consider desirable to ensure that the Council has an equitable and sustainable funding base.
50. The Review Team note that there is a need to increase rates in the Kaipara district. The district has historically enjoyed relatively low rates⁶ and that a greater proportion of the cost of some local services may need to be spread across the district and shared by all ratepayers.

⁶ Since 1996 rates per capita for the Kaipara District Council have been below both the national average and average for rural councils. Rates per capita in the 1995–96 financial year were \$388 compared to a national average of \$433 (excluding Auckland councils) and a rural average of \$457. In the 2010–11 financial year Kaipara District Council's rates per capita were \$963 compared to a national average of \$981 and a rural average of \$1,054 (source: Statistics NZ Local Authority Financial Statistics 2001 and population estimates for the relevant year).

51. The Review Team is also concerned about the rates strike that, in the time since it was appointed, has spread. The Review Team consider that the current Mayor and Councillors are seen as a catalyst for many who have joined the strike and that if they are replaced by commissioners, many people who have joined the strike will resume paying their rates.

Invalid rates and development contributions

52. It was brought to the Council's attention by local resident Clive Boonham that a number of rates set by the council in relation to the Mangawhai Scheme were invalid. This was subsequently confirmed by the Council's legal advisers along with the fact that several other wastewater rates were inconsistent with the relevant funding impact statements, and that a forestry rate and water supply rate were invalid. In total the Review Team understands the quantum of invalid rates to be \$17.3 million (significantly more than initially estimated). The Council has made a commitment to work with the community to identify a process through which the invalid rates can be addressed.

53. The Review Team has been advised that some of the rating practices of the Council have been very unusual and far removed from the practices envisaged under the Local Government (Rating) Act 2002, and that rectifying these invalid rates is no simple matter. There is a need for some thorough research to precisely establish exactly what has been charged and for what, and then for a solution to be developed. This will involve a compromise between what is practicable and what is equitable.

54. In addition to the invalid rates, questions have been raised over the validity of development contributions collected for the Mangawhai Scheme. It appears that these may have been collected without a valid policy in place, which would breach the requirements of the Local Government Act 2002. The Review Team therefore recommends that the Department of Internal Affairs, and the commissioners, if appointed, undertake work to establish how best to deal with the invalid rates and potentially invalid development contributions.

Internal borrowing

55. It appears that financial contributions under the Resource Management Act 1991 and Mangawhai Harbour Board Lands reserve funds may have been borrowed internally in contravention of the legislative purpose for the contributions and funds, and internal Council policy. Work needs to be undertaken to establish the extent of these borrowings and how best to remedy the situation if they are found to be in breach of legislation, Council policy and/or accounting standards.

Financial reporting

56. As noted in the Governance section of this report, improvements have been made in terms of financial reporting in the past six months. However, there are still some improvements needed. As far as the Review Team is aware the Council does not operate a risk register. Clear commentaries should accompany all financial reports to assist ratepayers and Councillors – in particular to make the information more relevant and useable in terms of decisions they need to make. There is also a question about whether the Council's computer systems are fit for purpose in terms of financial management. Commissioners, if appointed, should decide what further improvements are required in terms of financial management.

Performance of Audit New Zealand

57. Several people raised with the Review Team whether the Council's auditors, Audit New Zealand, should have identified some of the issues that have only recently come to light in completing audits of the Council's long term plans and annual reports. The people expect Audit New Zealand to accept liability for these failings. For example, in his financial health and sustainability audit, Phillip Jones notes that the Council's 2009–19 long term council community plan received an unqualified audit opinion. However, he identified that the Council did not comply with section 100 of the Local Government Act 2002 as the Council was shown to be operating deficits in at least two of the years. Similarly there is a question about whether the invalid rates and lack of a clear development contributions and internal borrowing discussed above should have been identified by the auditors – issues that have created significant problems for the Council.
58. The Review Team therefore recommend that commissioners, if appointed, seek legal advice on the perceived failure of Audit New Zealand in auditing the Kaipara District Council's long term plans and annual reports to identify any of the issues that have contributed to the current financial problems of the Council.

Service delivery and asset management

Introduction

59. In reviewing asset management and service delivery the Review Team has been greatly assisted by the work the Kaipara District Council commissioned Alan Bickers, an experienced engineer and local government manager, to undertake on service delivery contracts and mechanisms. The Review Team understand that he is also to complete an organisational capability review. The fact that this work is being undertaken is a credit to the Council's Chief Executive and will lay the foundation for many of the improvements that the Review Team considers the Council needs to make in service delivery and organisational capability.
60. Undertaking this aspect of the review has highlighted the challenges that small, predominantly rural local authorities such as Kaipara District Council face. Growing expectations for improved levels of service, higher environmental standards and increasing costs make for a very challenging environment for such local authorities. These trends point to the need for functional reforms in local government to facilitate shared services that would achieve greater efficiencies and improved service delivery.

Kaipara District Council service delivery

61. Like many local authorities of its size, the Kaipara District Council has outsourced almost all of its core functions, the oversight of which is done under a 'provision of professional services contract'. Practically the whole of the delivery chain for roading, water, storm water and waste water services, solid waste, resource consents and compliance, and district planning have been outsourced. Alan Bickers identifies that this creates a high risk of consultant capture. It is apparent that the Council has lost institutional knowledge and control of intellectual property relating to these activities, and finds itself in a weak position to set policy and undertake planning and asset management. Bickers recommends that the interface between the Council's in-house functions and those that are outsourced are reviewed to ensure that the Council retains control of policy

development, service planning, customer services and asset management. The Review Team supports this recommendation.

62. The Review Team also concurs with Bickers' recommendation that a service delivery policy is developed that addresses the need to retain core functions and intellectual property in-house, the practicality of outsourcing delivery of the function or service, the costs of procuring and/or administering outsourcing, and the appropriate allocation of risks. Contracting out both the service delivery and the oversight of that work, as Kaipara District Council has, is risky as there is a loss of control and institutional knowledge.
63. In light of the challenges faced by small, predominantly rural local authorities like Kaipara District Council, shared service arrangements with neighbouring local authorities and council controlled organisations should be pursued. It is not feasible for small councils to have the specialist in-house capability necessary to deliver all the services they need to. However, as is evidenced by the low level of shared service delivery between local authorities in New Zealand, achieving this appears to be difficult and requires strong political leadership.
64. The Review Team recommends that as part of the development of a service delivery policy, shared service delivery models should be explored and if possible agreed with neighbouring local authorities and council controlled organisations to deliver:
 - professional services including engineering and planning;
 - solid waste services;
 - water supply, wastewater and storm water (see below);
 - parks and reserves management; and
 - regulatory services.
65. In the course of its investigations the Review Team met with representatives of the Whangarei District Council and the Northland Regional Council, both of which expressed a willingness to explore such arrangements with the Kaipara District Council.
66. In the short term the Kaipara District Council's Professional Services Provider contract should be reviewed and if necessary renegotiated to reallocate functions between the provider and the Council.

Water and waste water services

67. The Review Team met with representatives of WaterCare Services Limited, a council organisation wholly owned by the Auckland Council that delivers drinking water and waste water services to all Auckland residents, to discuss the provision of water and waste water services in the Kaipara district. At the Review Team's request Watercare investigated the state of water infrastructure in Kaipara and the potential for Watercare to deliver water and waste water services in the Kaipara district. Watercare reported to the Review Team on 13 August 2012.
68. Of the 18,000 residents in the Kaipara district, about 8,000 are connected to Council-owned reticulated sewage systems, and about 6500 are connected to reticulated water supply. All this infrastructure is managed by one provider with the exception of the Mangawhai Scheme. Watercare advises that the Council has little hard data regarding the condition of its assets but that given the majority date from the 1950s and 1960s,

most would be nearing the end of their lives. However, it notes that there is no evidence of significant failures, suggesting there is no immediate need for replacement.

69. Watercare notes that due to the small scale of the Council's water operations, it is not practical for the Council to have staff skilled in the planning, investigation, consenting, design, commissioning, or project management of the renewal, upgrade or expansion of their water infrastructure. Thus, the Council has entered into a provision of services contract across water and other utilities. Consistent with Alan Bicker's conclusions, Watercare considers this leaves the Council exposed in terms of 'consultant capture'. Specifically, the Council:

- lacks the ability to develop a long term strategy for the provision of water and waste water services, assess consenting proposals put forward by their consultant, and make informed choices between options for water infrastructure;
- would struggle to maintain long term relationships with consent holders and other key stake holders;
- would have limited 'ownership' of projects;
- does not receive or record operational information from their treatment plants or networks giving it limited ability to operate and manage their assets and optimise their performance; and
- would struggle to recruit engineering staff.

70. Watercare has high capability in the planning, delivery and operation of water and wastewater infrastructure. Watercare consider there are three potential models for how it could work with the Kaipara District Council:

- provide advice on demand in relation to water infrastructure;
- provide professional services in relation to water and waste water services (taking over from the current provider); or
- take over the operation of the Council's water-related infrastructure on a term contract.

71. The Review Team recommend that these options be explored with Watercare and other potential water service providers, if cost savings and other efficiencies can be realised.

Roading services

72. In the latest audit of roading services undertaken by the New Zealand Transport Agency, the Kaipara District Council received a rating of one out of five (five being the highest) – the first time a territorial authority had received that rating. The task of managing the roads in the Kaipara district is significant – there is a roading network of over 1,500 kilometres of which only 387 kilometres is sealed. The Council receives the highest subsidy of any territorial authority from the New Zealand Transport Agency, but has struggled to come up with its share of the funding. It spends approximately 47 per cent of its operating budget and 75 per cent of its capital expenditure budget on roading. The Review Team were advised by the Whangarei District Council that Kaipara District Council could make savings of up to \$4 million if its cost structure was adopted across the two districts.

73. The challenges the Council faces in relation to roading are similar to those in relation to its other infrastructure in terms of its capability. The Review Team consider it could

benefit greatly by partnering with Whangarei District Council and New Zealand Transport Agency to deliver roading services across the combined districts. The arrangement for roads in Marlborough between the Marlborough District Council and New Zealand Transport Agency is a possible model and should be explored.

Asset management planning

74. The Review Team sought advice from Geoff Swainson, Development and Infrastructure Manager for Local Government New Zealand, on the state of Kaipara District Council's asset management planning. Mr Swainson concluded that the asset management plans he viewed were consistent with accepted best practice guidelines. In contrast Watercare reported that information held on water assets was poor and needs to be improved. However, Mr Swainson noted that despite the plans being broadly fit for purpose it is possible they may not have been well understood by decision-makers within the Council. This leads to the possibility that the guidance they provide has not been factored into decisions on resource allocation leading to a misalignment between projections and reality.
75. The Review Team therefore recommends that asset management plans be reviewed and updated where necessary, and regard had to how they feed into Council planning, policy making and decision-making.

Organisational capacity

76. The Review Team's assessment of the Council's asset management and service delivery highlights issues around organisational capacity. It is clear that through a culture of outsourcing – common amongst local authorities of this size – the Council has lost valuable institutional knowledge that is now held by consultants. There is a need to rebuild the capacity of the organisation to give it better oversight and control over its service delivery activities where they are outsourced. Obviously, employing skilled professionals in the areas required comes at a cost, if in fact they can even be attracted to work in a small local authority which offers relatively little professional development opportunities. This problem is not unique to Kaipara.
77. The Review Team understands that an organisational capability review is to be undertaken by Alan Bickers and considers that this should be completed and the commissioners, informed by this, should undertake a comprehensive organisational review.

The Mangawhai Scheme

78. The Auditor-General intends to complete her inquiry into the Mangawhai Scheme by the end of 2012. Notwithstanding this, the commissioners, if appointed, should liaise with the Office of the Auditor-General to get, at the earliest opportunity, advice about whether the Scheme is fit for purpose and what its capacity actually is (as this has implications for how best to fund the Scheme in the medium term). Similarly a view on whether contracts currently in place for its operation are valid and enforceable would be helpful in assisting the Council or commissioners to plan for the future funding of the Scheme. The commissioners should deal with other issues in relation to the Scheme once the Auditor-General's investigation is complete and has issued her report.

Local government efficiency taskforce

79. As many of the challenges faced by the Kaipara District Council are experienced by other small, predominantly rural territorial authorities, the Review Team would be willing to discuss with the Local Government Efficiency Taskforce, if it is interested, how functional reforms in the delivery of services can be achieved to provide more efficient and higher quality services in districts such as Kaipara.

Recommendations

The Kaipara District Council Review Team recommends that:

Governance

1. Commissioners be appointed by the Minister of Local Government under section 255 of the Local Government Act 2002 to perform and exercise the Kaipara District Council's powers and duties under the Local Government Act 2002 and all other enactments.
2. A minimum of two commissioners be appointed and that collectively the commissioners are experienced and skilled in local government management, governance, financial management, local government infrastructure and community engagement.
3. The Minister of Local Government, in specifying the terms and conditions of the commissioners' appointment, have specific regard to mechanisms to ensure the community has input into decisions of the commissioners.
4. Following the first election after the commissioners' appointment ends, the Minister of Local Government considers appointing a Crown observer to support and advise the newly elected Council.
5. Comprehensive governance training is provided to the Mayor and Councillors who are elected at the end of the commissioners' appointment, through the Local Government New Zealand 'Know How' programme. The uptake of this training should be monitored by the Crown observer.

Community

6. A comprehensive plan is developed for engagement with the Kaipara community at all levels (commissioners/elected representatives and staff). This should include such things as regular meetings with stakeholders and regular clinics at which ratepayers can discuss issues with the commissioners (if appointed) or Councillors.
7. A dedicated communications advisor be employed, or a shared service agreement reached with either Northland Regional Council or Whangarei District Council, to manage engagement and communications with the community.

Financial management

8. The Kaipara District Council adopt its current draft long term plan for 2012–22 and that rates be struck as currently proposed as an interim arrangement, accepting that the long term plan is likely to receive a qualified audit opinion.

9. A priority for the commissioners, if appointed, is to amend the long term plan for 2012–22 to provide the Council with a sustainable and equitable funding base.
10. The Department of Internal Affairs undertake work to determine how best to deal with the invalid rates and potentially invalid development contributions, and that in light of their advice, the Minister of Local Government and the commissioners (if appointed) take any necessary action.
11. The commissioners complete the implementation of the Council's debt management/treasury policy and work to reduce reliance on debt and to prudently manage a loan book of this size.
12. Work is undertaken to clarify the extent and nature of internal borrowing, including from the Mangawhai Harbour Board Lands endowment funds, and if irregularities are apparent, a plan developed to remedy these.
13. Although improvements have been made in financial reporting in the past six months, further improvements needed are identified and undertaken. Clear commentaries should accompany all financial reports to assist Councillors and ratepayers.
14. Commissioners seek legal advice on the perceived failure of Audit New Zealand in auditing the Kaipara District Council's long terms plans and annual reports to identify many of the issues that have contributed to the current financial problems of the Council.

Service delivery and asset management

15. Commissioners develop a service delivery policy that addresses the need to retain core functions and intellectual property in-house, the practicality of outsourcing delivery of the function or service, the costs of procuring and/or administering outsourcing, and the appropriate allocation of risks.
16. As part of this policy, shared service delivery models should be explored and agreed with neighbouring local authorities for:
 - professional services including engineering and planning;
 - solid waste;
 - water supply, wastewater and stormwater;
 - parks and reserves management; and
 - regulatory services.
17. In respect of any outsourced services the interface between the Kaipara District Council's in-house functions and those that are outsourced be reviewed so that the Council retains the primary responsibility for:
 - policy development;
 - service planning;
 - customer services; and
 - asset management.
18. Asset management plans need to be reviewed and updated where necessary and regard had to how they feed into Council planning, policy making and decision-making.

19. The Commissioners work to agree a partnership between Kaipara District Council, the New Zealand Transport Agency and Whangarei District Council for the delivery of road services across the combined Districts, including consideration of arrangements such as 'Marlborough Roads'.
20. In order to achieve improvements in asset management and service delivery the capacity of the organisation needs to be reviewed and strengthened in many critical areas. In this regard the capability review that the Council has commissioned should be completed as a priority.
21. In the short term the Kaipara District Council's Professional Services Provider contract be reviewed and if necessary renegotiated to reallocate functions between the provider and the Council.
22. In light of the seriousness of the issues surrounding the Mangawhai Community Waste Water Scheme, and notwithstanding that the Auditor-General will not complete her investigation until the end of 2012, the commissioners work with the Office of the Auditor-General to urgently establish:
 - whether the Scheme is fit for purpose and what its capacity actually is (as this has implications for how best to fund the Scheme in the medium term); and
 - the validity and enforceability of contracts that are in place.The commissioners should deal with other issues once the Auditor-General's investigation is complete and has issued her report.
23. In light of the fact many of the challenges faced by the Kaipara District Council are experienced by other small, predominantly rural territorial authorities, the Local Government Efficiency Taskforce may wish to consider how functional reforms in the delivery of services can be achieved to provide more efficient and higher quality services in districts such as Kaipara.

Appendix 1 – Terms of Reference – Kaipara District Council Review Team

Background

1. The Kaipara District Council (the Council) has invited the Government to assist it by inquiring into its financial management and governance processes. This invitation has been issued against a background of considerable community concern about proposed rate increases, apparently caused by:
 - substantial escalations in the cost of the Mangawhai community wastewater scheme (MCWS);
 - the effects of the Council adopting a more conservative approach to debt funding the MCWS; and
 - proposed changes in rating systems resulting in substantial shifts in the incidence of rates.

In addition there is community concern about issues relating to the validity of some Council rates assessed in previous years.

2. The Government has accepted the Council's invitation and is partnering with Local Government New Zealand (LGNZ) to provide a Review Team, supported by expert advice, to provide a report and recommendations to the Council and the Minister of Local Government (the Minister). The Review Team is modelled upon the provisions for such a team included in the Local Government Act 2002 Amendment Bill introduced to Parliament in May 2012.

Objectives

3. The overall objectives of the review are:
 - to provide a report to the Council identifying current and future governance and financial management challenges it should address, and the options for, and implications of, meeting those challenges; and
 - to provide a report to the Minister on the scope of the current and future challenges the Council faces and its capability to address those challenges now and into the future.
4. The objectives should be met within one report addressed to the Council and the Minister, making such recommendations as the Review Team considers appropriate to the Council, the Minister, or both. A copy of the Review Team's report is to be provided to LGNZ.
5. While conducting its inquiry, the Review Team will engage with elected members and senior managers to assist them in analysing issues and developing options to address the challenges the Review Team identifies.

Scope

6. The review is to inquire into:

- the Council's core governance processes, especially its identification of strategic issues facing the Kaipara District and its positioning of the Council to respond to and provide community leadership on those issues;
- the Council's communication, engagement and relationships with ratepayers and key stakeholders;
- the council's asset management planning practices and how they compare with industry good practice;
- the adequacy of the Council's financial management including:
 - the strengths, weaknesses and risks of its current financial position;
 - identification of the underlying drivers of the proposed rate increase contained in the Council's draft 2012/22 long-term plan (especially those not related to the MCWS);
 - strategies for financial resilience;
 - consideration of the range of financing and rating options available to it;
 - the adequacy of its planned provision for investment in infrastructure; and
 - use and management of debt; and
- such other matters as the Review Team considers desirable to assist the Council and the Minister to understand the current and future challenges the Council faces and the issues it must address to fulfil its statutory responsibilities.

Exclusions

7. The Review Team is not to:

- inquire into matters the Auditor-General is inquiring into in relation to the MCWS. The Review Team is to keep the Auditor-General informed of the scope of its work and ensure it does not obstruct the Auditor-General's inquiry; nor
- consider whether or not the Council should merge with, or alter its boundaries with, adjoining local authorities.

Expert Assistance

8. The Department of Internal Affairs and LGNZ will use their best efforts to obtain expert advice for the Review Team and the Council by arranging the secondment of skilled and experienced local authority employees to analyse and advise on aspects of the Council's operations. This will include expertise in strategic planning and governance, communications, asset management planning and financial management. Seconded experts will work collaboratively with the Council's executive team to fulfil their brief.

Timeframes

9. The Review Team is to present its final report to the Minister and the Council no later than 31 October 2012. The Review Team is to advise the Minister and the Council of its progress no later than 17 August 2012.

Stakeholder engagement

10. The Review Team may gather information in any way it considers appropriate. However, this is not a public inquiry and it is not expected that the Review Team will hold public meetings or hearings about its work.

Publicity

11. The Review Team is not to make public statements on its progress. Media enquiries should be referred to the Minister and/or the Council.

Appendix 2 – Office of the Auditor-General’s terms of reference for inquiry into the Mangawhai community wastewater scheme

16 March 2012

The Auditor-General Lyn Provost has decided to carry out an inquiry into the Kaipara District Council’s management of the Mangawhai community wastewater scheme. This document sets out the terms of reference for the inquiry.

Background

The construction of the Mangawhai community wastewater scheme has been a significant project for the Kaipara District Council since 1998.

Local ratepayers and the Council have raised concerns about various aspects of the scheme, including the Council’s financial management and planning for the scheme. There has been a significant increase in the total cost of the scheme. Other concerns relate to the lawfulness of the Council’s decision-making processes and the development contributions and rates used to fund the scheme.

The Council has been carrying out a number of reviews of the scheme, including legal and financial reviews. The Council asked us to carry out an investigation into its decision-making, financial, and contract management processes for the scheme. We agreed to do so.

The inquiry

The inquiry will examine Kaipara District Council’s development, implementation and oversight of the Mangawhai community wastewater scheme (and any related projects), from inception, including:

- the Council’s planning and decision-making, including how well it complied with its policies and strategies, and the legal and other requirements for decision-making;
- the governance, management, and contracting arrangements for the project;
- the Council’s financial management, monitoring, and reporting;
- the funding for the scheme, including the use and setting of rates, borrowing, and development contributions;
- the overall suitability and cost-effectiveness of the scheme that has been constructed.

The inquiry will also consider:

- the role played by the Council’s auditor;
- the role played by other relevant agencies; and
- any other matters that the Auditor-General considers it desirable to report on.

The inquiry is being carried out under section 18(1) of the Public Audit Act 2001. We will publish a report when the inquiry is completed. It will also be presented to Parliament.

How to contribute

We encourage members of the public to let us know their views on the Mangawhai Wastewater Scheme and any concerns they may have about how it has been developed and implemented by the Council and its contractors.

We will arrange some community meetings in Mangawhai for people to talk to us directly.

Written comments can be sent to us, in confidence:

- by email to kaipara@oag.govt.nz; or
- by post to “Kaipara inquiry”, Office of the Auditor-General, Private Bag 3928, Wellington 6140.

Contact for queries

For media queries, please contact:

- Tamar McKewen on (04) 917 1879, Communications Advisor (Media); or
- Lynley Jenkins on (04) 917 1520, Manager, Reports and Communications.

For general queries about the inquiry, please contact:

Nicola White, Assistant Auditor-**General**, Legal on (04) 917 1500.

Appendix 3 – List of persons and organisations the Kaipara District Council Review Team met

Auckland Council – Chief of Staff, Mayor’s Office

Farmers of New Zealand

Garry Hooker, Te Roroa

Ian Farrant and James Brackenbury

John Dickie

Kaipara Citizens and Ratepayers Association

Kaipara District Council – Chief Executive

Kaipara District Council – Mayor and Councillors

Local Government New Zealand

Mangawhai Golf Club – President

Mangawhai Ratepayers and Residents Association

Mark Farnsworth

New Zealand Transport Agency

Northland Regional Council – Chair and Chief Executive

Office of the Auditor General

WaterCare Services Limited

Whangarei District Council – Chief Executive