

**Kapiti Coast District Council Governance-led Commissioning Statement and
Terms of Reference for Organisational Capability Review**

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KCDC Governance-led Commissioning Statement and Terms of Reference for Organisational Capability Review

For public release on 29 August 2019

This draft KCDC Governance-Led Commissioning Statement and Terms of Reference (CSTOR) is subject to change from consultation and discussion with the reviewer as part of the selection process. KCDC's Independent Organisational Review Committee will finalise the CSTOR before the Reviewer is appointed.

Terms

KCDC(EM) = Council elected members.

KCDC(SM) = Council senior management.

KCDC = The Council organisation in its entirety.

Establishment of the Review

1. KCDC(EM) commenced this review ("the Review") by Council resolution. KCDC(EM) delegated the task of commissioning the Review and managing its implementation to an informal subcommittee called in this document the "Review Committee"¹.

Review

Aim of the Review

2. The aim of the Review is to obtain accurate information through targeted and insightful interaction with people within and outside KCDC to elicit feedback concerning the efficacy and preparedness of KCDC to perform its statutory obligations and its capability and capacity to implement the planned workstreams in the Long Term Plan and Annual Plan and to achieve the long term interests of the community including through effective and responsive decision-making by KCDC(EM). Where appropriate the reviewer is to provide KCDC(EM) with improvement recommendations.
3. Concerning *Te Tiriti o Waitangi/Treaty of Waitangi Partnership*, the aim is to confirm that manawhenua and KCDC have a living partnership which is exercised at all levels of their respective organisations. Where appropriate the reviewer is to provide KCDC(EM) with improvement recommendations.
4. KCDC can never be perfect and choices mean trade-offs. KCDC(EM) understands this. The Reviewer needs to assess from the information gathering exercise matters that create significant risks to optimal performance by KCDC.

¹ The full name is the "Independent Organisational Review Committee".

5. A graphical representation of the influence of legislative requirements and the interactions with internal and external clients of KCDC and the distinctive relevance of and relationships with mana whenua is set out in Appendix 2.

Scope of the Review

6. A summary of the Review's scope to achieve the aims includes:

Broad mission and framing

7. The Review is to identify those areas where KCDC, across its activities, is performing well and those areas that need improvement.
8. The Review should frame the issues with a "state of the nation" perspective identifying the positives and negative features of KCDC's performance. Examples of positives include:
 - a The Standard & Poor's credit rating increase from A+ to AA.
 - b The KCDC securing the highest possible rating in the 2019 NZTA's Investment Audit Report.
 - c KCDC winning the Excellence in Climate Action at the 2019 Enviro-Mark Solutions Awards.
 - d The Auditor-General's Investigation of KCDC's water supply demand management compared with three other councils and its conclusion that it employs best practice.
 - e The Taxpayers Union's assessment that KCDC had second lowest operating cost per capita.
9. The Review should also assess based on feedback through the information gathering exercise whether or not:
 - a There is reasonable cause for concern that KCDC does not have the resources or capability to meet its deliverables (planned and unplanned), statutory obligations, duties and powers as outlined in the KCDC Annual Plan and Long Term Plan documents.
 - b KCDC can add greater value (i.e. being effective not just efficient) to Kapiti residents by becoming a more responsive organisation at all levels of engagement with stakeholders and the public.

Governance and KCDC

10. The Review should assess the relationship and interface between KCDC(EM) and KCDC. Where appropriate, the reviewer is to provide KCDC(EM) with improvement recommendations. This part of the Review should be done using the literature and tools provided by LGNZ and the Auditor-General. The best practice should be used by the Reviewer to identify areas for enhanced performance and a better understanding of the respective roles of each part of KCDC. The aim is for the relationship to be trusting, and respectful and allow dissent, disagreement or questioning as healthy aspects of the decision-making process.

Staff Culture and communications with Elected Members

11. The Review should assess the culture of KCDC and how this impacts on KCDC's efficacy to perform its statutory obligations, duties and powers and implement the planned workstreams in the Long Term Plan and Annual Plan and achieve the long term interests of the community.

Stakeholders

12. The Review should assess the views of key communities of interest and sectors on KCDC's efficacy to perform its statutory functions, powers and duties and implement the planned workstreams in the Long Term Plan and Annual Plan and achieve the long term interests of the community.

Te Tiriti o Waitangi/Treaty of Waitangi Partnership

13. The Review should consider the health and vibrancy of the crucial relationship between the Council and mana whenua. The Review should include a consideration of what the respective roles of KCDC (EM) and KCDC (SM) in fostering that relationship. It should be able to test what aspects of this Treaty relationship is one between governance and Treaty partners and when it is between management and Treaty partners. The Review should assess performance of the Council's LGA, s 81 obligations.

Approach to the Review

14. The KCDC(EM) commissioned the Review to secure a forward-looking analysis of ways to improve KCDC's capability and capacity to meet future challenges and to enable the KCDC(EM) and KCDC to do their job effectively and responsibly.
15. Council members acknowledge the many positive achievements and the fine contribution all staff have made over many years. Nevertheless, past experience has led KCDC(EM) to consider whether further performance improvements are possible and that has triggered the Review.
16. The KCDC(EM) approach is a no-blame approach and the past is merely a lens through which to assess possibilities for enhanced performance or unidentified risks. The following principles shall apply to the review. The pronouns "We" and "Us" apply equally to the KCDC and to the qualities expected of the Reviewer commissioned under this CSTOR.

We are where we are.

- Our culture demands we look forward to how improvements will assist stakeholders rather than look back to apportion blame for events or strategies that may have been sensible at the time of implementation but, as a result of circumstances, are no longer appropriate.

Every staff member and stakeholder has our undertaking that confidentiality will be maintained.

- To allow staff and stakeholders to discuss opportunities openly with us, we undertake that we will ensure that their comments are not attributed to them without their permission.

We are not here to judge the competence of anyone.

- Competency is out of scope as it is an operational issue.

Background to the Review

17. Planning is essential to the coherent delivery of goods and services to the community. However, when implementing projects significant new information or issues may emerge that affect the cost or achievability of the project. This new information must be evaluated for its significance. It is not enough to say that once the items are set by KCDC(EM) then it is an “operational matter”.
18. There is also the perennial problem of “you do not know what you do not know”. KCDC(EM) want to ensure that staff seek assistance internally or externally on matters of uncertainty and elevate any issues of concern to KCDC(EM) as early as possible.
19. The impetus for the review is KCDC(EM)’s view that the material risks to meeting KCDC’s goals are not necessarily on its radar and the best way to assess whether that is true is to engage with the people within and outside of the organisation to use their knowledge and skills to help KCDC.
20. The recent Morrison Low report called “Waikanae Library Review”² is a case in point. Some features of that review are:
 - a The high staff turnover in the asset management arena with a loss of institutional knowledge.
 - b Feedback from staff on the problems with the building not identified to KCDC(EM).
 - c A perception amongst staff that the budgets did not allow for unbudgeted capital expenditure and so issues were not addressed.
 - d Concerns about the capability of KCDC in relation to asset management of property.
 - e Staff perception that the budgets set by KCDC(EM) were more important than the more fundamental concerns about the health and safety of staff and the community.
21. KCDC(EM) are unsure whether the issues identified above can be extrapolated to other areas of Council and whether there is relevant information held by KCDC that KCDC (EM) are not aware of.
22. Relationships with mana whenua are important to KCDC(EM) and it wishes to ensure protocols in the Memorandum of Understanding are adhered to.

The Council and Members’ Legislative Role

23. The following provisions in the Local Government Act 2002 outline the role of KCDC(EM) and other important provisions that should inform the Review:

“14 Principles relating to local authorities

(1) *In performing its role, a local authority must act in accordance with the following principles:*

- (a) *a local authority should—conduct its business in an open, transparent, and*
 - (i) *democratically accountable manner; and*
 - (ii) *give effect to its identified priorities and desired outcomes in an efficient and effective manner:*
- (b) *a local authority should make itself aware of, and should have regard to, the views of all of its communities; and*

² “Waikanae Library Review”; Kapiti Coast District Council June 2019; Morrison Low.

- (c) *when making a decision, a local authority should take account of—*
 - (i) *the diversity of the community, and the community’s interests, within its district or region; and*
 - (ii) *the interests of future as well as current communities; and*
 - (iii) *the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):*
 - (d) *a local authority should provide opportunities for Māori to contribute to its decision-making processes:*
 - (e) *a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes; and*
 - (f) *a local authority should undertake any commercial transactions in accordance with sound business practices; and*
 - (i) *a local authority should periodically—*
 - (ii) *assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and*
 - (iii) *satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and*
 - (g) *a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and*
 - (h) *in taking a sustainable development approach, a local authority should take into account—*
 - (i) *the social, economic, and cultural interests of people and communities; and*
 - (ii) *the need to maintain and enhance the quality of the environment; and*
 - (iii) *the reasonably foreseeable needs of future generations.*
- (2) *If any of these principles conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i)."*

“39 Governance principles

A local authority must act in accordance with the following principles in relation to its governance:

- (a) *a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and*
- (b) *a local authority should ensure that the governance structures and processes are effective, open, and transparent; and*
- (c) *a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and*
- (d) *a local authority should be a good employer; and*
- (e) *a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood."*

“77 Requirements in relation to decisions

- (1) *A local authority must, in the course of the decision-making process,—*
 - (a) *seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*

- (b) *assess the options in terms of their advantages and disadvantages; and*
- (c) *if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.*

(2) *This section is subject to section 79.”*

“81 Contributions to decision-making processes by Māori

(1) *A local authority must—*

- (a) *establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and*
- (b) *consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and*
- (c) *provide relevant information to Māori for the purposes of paragraphs (a) and (b).*

(2) *A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—*

- (a) *the role of the local authority, as set out in section 11; and*
- (b) *such other matters as the local authority considers on reasonable grounds to be relevant to those judgments”.*

Approach to Review

24. The review will be undertaken in phases. The following provides an overview of the review phases:

Table 1

<i>Phase 1 – Information Gathering and Analysis</i>	<p>During Phase 1, the Reviewer will:</p> <p>Conduct interviews with staff and key external stakeholders concerning the Topics of Inquiry in Appendix 1. It is anticipated that those interviewed may include:</p> <ul style="list-style-type: none"> • KCDC Staff • Councillors KCDC(EM) • Community Boards • Iwi • Contractors • Chamber of Commerce, KEDA • Resident’s Associations • Other TLA’s • PSA • KCDC Staff <p>Gather other relevant information and documentation; Analyse the information gathered and prepare draft reports outlining recommendations in relation to the Topics of Inquiry. The draft reports will then be updated as required.</p>
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<i>Phase 2 – Draft report</i>	Analyse the information gathered and prepare draft issues and outputs outlining recommendations in relation to the areas of focus outlined above for consideration. Consult with the Review Sub-Committee. The draft report will then be updated as required.
<i>Phase 3 – Presentation of Review Report</i>	This phase will involve the implementation of the approved recommendations contained in the final review report.

Proposed Timelines

25. These timeframes are indicative only and may be subject to change.

Table 2

Activity / Milestone	Timeframe
Announcement of CSTOR to the community	TBA
Phase 1 – Information Gathering and Analysis	TBA
Phase 2 – Draft report	TBA
Phase 3 – Presentation of Review Report to full Council	TBA

Roles and Responsibilities

Table 3

Role	Resource	Background
Review Team		
Reviewer	TBC	
Project Director	TBC	
Other Advisors:		
Independent Advisor to the Review Sub-Committee ³	John Maassen	Barrister

³ This role is to assist the Review Committee to address issues as they arise during the implementation phase and is on an “as required” basis subject to appropriate arrangements with the Secretariat to the Committee.

Review Deliverables

Final Report

26. The primary review deliverable to stage 3 is a final report for the KCDC(EM) with:
- a A “state of the nation” type summary of performance and capability in the areas of interest identified in this CSTOR or arising from the information gathering process.
 - b Recommendations for improvements in KCDC where necessary to achieve the aims of the Review.
 - c A summary of the tools available to the KCDC(EM) to provide leadership, direction and effectively fulfil their statutory role and meet the aims of the Review.
27. The recommendations must address the Review’s aim, and Topics of Inquiry identified in Appendix 1.

Issue and Options Paper

28. The Review will produce an ‘issues and options’ paper to solicit feedback from the Review Sub-Committee for the Reviewer to consider in writing their final report.
29. This issues and options paper is due with the Mayor by [].
30. Additional reporting may be required at the Mayor’s request.

Roles and Responsibilities

Reviewer

31. The Reviewer’s role is to undertake a comprehensive review of the KCDC organisation in line with the scope and process outlined by these terms of reference.
32. The Reviewer will have skills in designing interview questions to elicit information on the topics of inquiry in Appendix 1, skills in local government, organisational management and devising tools for effective communication of values and expectations across diverse communities of interest.
33. The Reviewer reports to the Mayor.
34. The Reviewer will be responsible for:
- a Maintaining a broad knowledge of the issues and interests that relate to the Review.
 - b Designing and conducting effective interviews on the topics of inquiry in Appendix 1.
 - c Compiling and analysing and evaluating the information gathered.

- d Attendance at the Review Sub-Committee’s meetings and other events directly related to the Review.
- e Preparing for the Review Sub-Committee’s meetings and actively participating in discussion.
- f Achieve the Review’s aims.
- g Complying with the terms and conditions set out in their appointment letter.
- h Progressing any relevant actions delegated by the Mayor.
- i Responding to direction from the Mayor in a timely manner.
- j Producing outputs within agreed time, cost and quality parameters.
- k Seeking financial approval through the Mayor of the Secretariat prior to incurring expenditure.

Secretariat

- 35. A Secretariat for the Review Sub-Committee is established by the KCDC comprising Sharon Foss and Mark de Haast. The Secretariat’s role is to help the Review Sub-Committee operate efficiently and support the production of the key deliverables.
- 36. The Secretariat will be accountable to the Mayor, and responsible for completing all reasonable requests made by the Mayor to support the Review Sub-Committee and the Reviewer. The Secretariat will also be responsible for all financial expenditure associated with the review.

Conditions of Appointment

General

- 37. The Reviewer will be appointed subject to the terms and conditions specified in their letter of appointment and these terms of reference. These letters will be signed by the Mayor.
- 38. Each member of the Reviewers team will be required to complete a conflict of interest declaration prior to their appointment.

Confidentiality

- 39. All communications and information gathered during Phase 1 shall be kept confidential to the Reviewer and the Reviewer must:
 - a Enter into a confidentiality/non-disclosure agreement with KCDC to protect the privacy of individuals.
 - b Send each interviewee copies of the confidentiality/non-disclosure agreement and confirm that the Council has commissioned the Reviewer to maintain the privacy of people.
- 40. All communications whether written, verbal or recorded must be held securely by the Reviewer.

41. For the avoidance of doubt matters identified by the participants may emerge as matters for the Council to address in the final report. However, steps will be taken to ensure the identity of the person providing information is not disclosed or discoverable.

Signed by

K Gurunathan, JP, MA,

Mayor Kapiti Coast District, Chair Independent Organisational Review Committee

Appendix 1: Suggested Topics of Inquiry

Interviewee Category	Suggested Topics of Inquiry
Staff Satisfaction and Culture	Are staff confident they can express their views safely and in utmost confidence in this review process?
	Do staff have the confidence that they can identify risks to KCDC performance and if risks are identified that the concerns will be acted upon appropriately?
	Do staff recognise that KCDC(EM) is open to receiving information concerning risks to its operational performance even if matters are not planned for or budgeted for?
	What are the areas of dissatisfaction among the staff? What causes their frustration?
	What are the areas of job satisfaction?
	Are levels of experience and management skills in KCDC(SM) adequate? Recommend action to up-skill where required?
	Are staff satisfaction surveys informative and appropriate?
	What is the staff's view of the support they receive from KCDC?
	Does the levels of staff turnover impact on KCDC through the loss of operational knowledge and efficiency?
	Does KCDC have an adequate understanding of why staff are leaving?
	Governance and Management
Do members of KCDC(EM) consider they are receiving sufficient information in a way and in sufficient detail to perform their role?	
What do KCDC(SM) consider are the strengths and weaknesses of the interactions and relationship and how these may be improved?	
Mana whenua	What are the levels of satisfaction concerning the strength the relationship between KCDC(EM) and KCDC(SM) and mana whenua?
	Are mana whenua adequately resourced to contribute to decision-making?
	Are the committee appointments of iwi representatives appropriate?
	Is there a clear understanding of the respective functions and roles of KCDC(EM) and KCDC(SM) in achieving a living vibrant partnership?
	How well does KCDC(SM) understand the role of actively protecting mana whenua interests and values?
	Mana whenua personnel are expertly qualified, resourced for specific activities that are required under the legislative framework, and hold a comprehensive understanding of resource management values important from mana whenua's perspective. Is mana whenua's experience and skill adequately utilised to assess risk in KCDC operations?
	Does preparation of KCDC preparation and content agenda items adequately identify and give notice to mana whenua of matters of interest to mana whenua and Te Whakaminenga o Kāpiti?
	What issues are we facing with key stakeholders & partners?

Interviewee Category	Suggested Topics of Inquiry
Stakeholders, sectors and communities of interest	What are the areas of dissatisfaction in the community's interactions with the council?
	How adequate are our communications with the general public?
	Are we pro-active enough when dealing with the media (as distinct from general community engagement)?
	What are our stakeholders view of councils "open for business" program. What does it mean to them?
Staff - re the 'Open for Business programme'	What is the staff's attitude to, and understanding of, the 'open for business' programme?
	How is this being lead and directed by senior management?
	How is success being measured?
	Do stakeholder/business/community surveys fully reflect user's opinions and experience? (Do reports to KCDC(EM) just reflect average outcomes against KPIs without elaborating on those few that might be especially negative?)

Appendix 2: Issues the Reviewer Must Not Address

Issue	Comment
Staff roles/Employment	This review is not about the individual competence of staff or the performance of staff or units or groups. The Reviewer must not alter or affect the employment of individual staff or address the staffing arrangements of the Council.
Chief Executive’s role or performance	This review is not about the competence or performance of the Chief Executive and must not impinge on the role of the sub-committee of the Council responsible for assessing the Chief-Executive’s performance.
The Te Whakaminenga o Kāpiti structure	Te Whakaminenga o Kāpiti (TWOK), Iwi Consultation Group is established to perform partnership functions. A review of that structure is occurring independently of that process.

Figure 1

