

Draft Terms of Reference:

Appointment of Review and Observer Team to the Tauranga City Council

1. At its meeting on 21 August 2020 the Tauranga City Council agreed to the appointment of a Review and Observer Team as the most appropriate pathway to address the issue of Elected Member relationships. It also resolved:
“That the Council requests the Chief Executive to report back to Council as soon as practicable with draft Terms of Reference, recommended appointees, cost estimate and budget approval request.”
2. At its meeting on 2 September 2020 the Council resolved:
 - a) To appoint **[insert name]** as a member and the Chair of the Review and Observer Team to the Tauranga City Council ("Council"), and two further members of the Review and Observer Team to the Council; and
 - b) To adopt these Terms of Reference for the Review and Observer Team.
3. The two further members subsequently appointed were **[insert name]** and **[insert name]**.
4. The role of the Review and Observer Team is to provide guidance and advice to elected Council members, collectively and individually, on matters of governance and the forging and maintenance of constructive and functional relationships with and amongst the elected members, including the Mayor. The Review and Observer Team may also provide advice and guidance to the Council Chief Executive and senior management team on how best to support elected Council members. The Review and Observer Team has the mandate to make recommendations to Council on matters within the scope of the Terms of Reference. The Review and Observer Team does not have a decision-making role and will not be involved in decision-making, other than offering guidance or advice.

Background Context for the Review and Observer Team

5. Recent events involving elected members have led to a high degree of media attention being focused on the Council, including the release of a significant volume of correspondence between members into the public realm following requests under the Local Government Official Information and Meetings Act 1987 (**LGOIMA**). This correspondence contained items that might generally be considered divisive and to reflect adversely on both the authors and the persons who were the subject matter of some of the comments involved.
6. This information, together with earlier media reports of tensions within the elected membership, is damaging to public confidence in Council. Equally importantly,

those tensions are real, and are inhibiting the ability of elected members to act cooperatively, and potentially on their ability to focus on important issues, including decisions leading to the 2021/2031 Long-term Plan (LTP). Critical proposals relating to the LTP that affect the future of the city must be considered in the coming months and community consultation must occur ahead of the adoption of that Plan, midway through 2021.

7. These events have come to the attention of the Department of Internal Affairs (DIA). On 13 August 2020 the Director Ministerial Advice, Monitoring & Operations wrote to the Chief Executive citing “*concerns raised through recent media articles and correspondence regarding significant conflict among elected members*”. The letter sought assurance and evidence that the Council was taking proactive steps to “*restore trust and confidence in its ability to meet the Crown’s expectations of a high-performing Council*”.
8. The Council is conscious of the power of the Minister to take steps under Part 10 of the Local Government Act 2002 to act where a problem exists concerning the management or governance of Council that detracts from, or is likely to detract from, its ability to give effect to the purpose of local government.
9. In the report prepared to enable Council to consider this matter (at its meeting on 21 August 2020), the problem to be addressed was described as that of dysfunctional governance arising from the breakdown of key relationships, including between the Mayor and councillors and between councillors or factions of councillors.

Purpose and Extent of Authority of Review and Observer Team

10. The purpose of the Review and Observer Team is to assist Council to address the problem of dysfunctional governance arising from the breakdown of key relationships, including between the Mayor and councillors and between councillors or factions of councillors.
11. In particular, the Review and Observer Team will provide support, assistance and guidance to ensure that the:
 - elected Council is able to function effectively as a governing body;
 - nature and extent of the issue of dysfunction governance is understood and addressed;
 - behaviours and relationships enable the elected members to collectively make decisions for the future wellbeing of the city;
 - Council has appropriate procedures and arrangements in place to manage decision-making and address future issues;
 - Mayor is able to provide leadership to (as per Section 41A of the Local Government Act), and to work cooperatively with, other elected members and the Council organisation;
 - elected Council members including the Mayor have the understanding required to carry out their local governance role;

- elected Council members including the Mayor have the capability and knowledge to make decisions effectively;
- Council provides a safe workplace, as provided for in the Health and Safety at Work Act 2015, for the elected Council members, including the Mayor;
- elected Council members, including the Mayor, are able to work effectively with the Chief Executive and senior management team; and that
- any related matter requested by the Council or the Department of Internal Affairs or the Minister of Local Government is addressed.

12. The Review and Observer Team:

- a) Will provide guidance and advice to elected Council members, including the Mayor, collectively and individually, on matters of governance;
- b) Will investigate, define and report upon the nature and extent of the problem of dysfunctional governance within Council;
- c) Will develop a recommended action plan with appropriate systems of measurement to assess progress;
- d) May provide advice and guidance to the Chief Executive and senior management team on how best to support elected Council members;
- e) Does not have a decision-making role and will not be involved in decision-making, other than offering guidance or advice.

13. The Review and Observer Team will conduct its discussions with and provide its advice to elected members and the Mayor on a confidential basis and will generally not refer to any individual elected member by name in its reports to the Chief Executive, Council, DIA or the Minister.¹ This does not prevent the Review and Observer Team from being specific as to individuals should they consider it necessary to fulfil their role and/or deliver on the purpose (as specified in clause 9 above).

14. The Review and Observer Team will provide support to elected Council members, including the Mayor, the Council Chief Executive and senior management team, in any way deemed necessary to fulfil these Terms of Reference. This may include, but is not limited to:

- attending any Council and Council Committee meetings;
- meeting individually with the Mayor and elected Council members at their request or at the request of the Review and Observer Team;
- meeting with the Council Chief Executive and senior management team, as appropriate;
- receiving correspondence between elected members and providing advice on the appropriateness thereof;

¹ All information produced in the course of the Review and Observer Team fulfilling its role under this Terms of Reference will be held as official information and is subject to the LGOIMA 1987.

- monitoring and reviewing engagement with news media and social media by elected members on Council-related issues;
 - reviewing decision-making procedures and arrangements to ensure they are appropriate and fit for purpose;
 - providing such collective and/or individual feedback and advice throughout its term to elected members, the Mayor, and the Chief Executive as it sees fit on governance issues and changes designed to address dysfunctional governance arising from the breakdown of key relationships;
 - identifying elected member governance development needs and also attending and contributing to the Council's development programme for elected Council members; and
 - attending and contributing, as appropriate, to workshops and meetings (including informal briefings and meetings) where elected Council members are being briefed on, or meeting to discuss, significant or challenging matters.
15. The Review and Observer Team may, with the prior approval of the Chief Executive, work with or confer with the Department of Internal Affairs, or other parties it considers necessary to fulfil these Terms of Reference.
16. If at any time the Review and Observer Team considers that insufficient progress is being made or is expected to be made to address the problem of dysfunctional governance it may, after giving no less than 7 days' notice to the Chief Executive of its intention to do so, report that conclusion to the DIA with such recommendations as it considers appropriate.
17. The Review and Observer Team must ensure, as far as practicable, that the existing organisational capability of the Council is not diminished.
18. The elected members of Council, including the Mayor, the Chief Executive and senior management team undertake, to:
- co-operate with the Review and Observer Team, so that it may fulfil these Terms of Reference; and
 - comply with any reasonable request of the Review and Observer Team to provide relevant information.
19. The Council will make available and accessible the resources required for the Review and Observer Team to fulfil these Terms of Reference.

Term of Appointment

20. The term for the Review and Observer Team appointment and the observation period starts on *[insert date]* and will, unless sooner terminated by recommendation of the Chief Executive and resolution of the Council, end on 30 June 2021.
21. By the end of the first quarter of 2021 (31 March 2021), the Review and Observer Team, together with the Chief Executive, and in consultation with Elected Members, will complete an assessment on the appropriateness of extending the continuation of the Review and Observer Team beyond 30 June 2021. That assessment will be reported formally to Council.

Remuneration and Costs

22. Costs associated with the Review and Observer Team will be paid by Tauranga City Council. Council has approved a budget and costs will be managed by the Chief Executive or his delegate. Actual costs will be reported transparently to Council.

Reporting

23. The Review and Observer Team members will, within four to six weeks of their appointment, produce a recommended action plan.

24. The Review and Observer Team must monitor the Council's response to the problem of dysfunctional governance arising from the breakdown of key relationships and provide quarterly reports to the Council and the Chief Executive on the progress in fulfilling its Terms of Reference, together with any interim recommendations it considers necessary.

25. The Review and Observer Team must provide a final report to the Council as soon as practicable after the observation period ends, which includes the following:

- (a) a narrative description of the activities of the Review and Observer Team in relation to these terms of reference; and
- (b) an assessment of progress in addressing the problem of dysfunctional governance arising from the breakdown of key relationships, including between the Mayor and councillors and between councillors or factions of councillors; and
- (c) any final recommendations to the Council, or to the DIA or the Minister, or both, except that before making any such recommendations to the DIA or the Minister, the Council shall have not less than 14 days' notice of the content of those recommendations; and
- (d) without limiting paragraph (c), any final recommendations to the DIA on whether the Minister should take action, pursuant to the powers contained in Part 10 of the Local Government Act 2002, in relation to the Council, including whether the Minister should appoint any Ministerial body to the local authority.

Dated at Tauranga this *[insert date]*.

MARTY GRENFELL, Chief Executive Tauranga City Council.