Dear Louise

Kaipara District Council – Commissioner Term

The Commissioner’s term at Kaipara District Council will come to an end the day after the new members are declared elected, expected to be this week. The preliminary election results indicate that the governing body of Kaipara District Council will be led by a Mayor who has strong district wide support and outstanding leadership and governance credentials, and that the balance of the elected members will contribute valuable skills to the governance team.

We thought it might be helpful for you to note some observations from our time, in case a similar situation arises in the future where Commissioners need to be appointed to take over the governance of a Council. We have also made some commentary on the Local Government legislative framework.

On the terms of reference, the Commissioner skill set, and matters of timing.

1. Given the challenging and accumulating financial and governance issues that the Council was facing in 2011 and 2012, the decision to appoint a review team and subsequently to appoint Commissioners was the correct one.

2. There are some views in the community that the decision to appoint a review team was left too late. We assume that when flags are raised, Ministers are briefed by DIA. We recommend that the Office of the Auditor General be consulted also during this briefing process, if this is not already done.

3. The Terms of Reference gazetted on September 6, 2012 were well constructed and helpful as a guide and timetable for the Commissioners. The estimate of time required by Commissioners also proved to be correct.

4. The three year term for appointment would have sufficed for the Commissioners to meet the requirements set out in the terms of reference had the legal actions taken by the Mangawhai Ratepayers and Residents Association not been so protracted.

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5. Having a minimum of three Commissioners appointed to a task like this is important, for it enables decision making to be more considered than to have just one Commissioner. As importantly, it enables a team rather than a single Commissioner to shoulder the personal attacks, largely published in social media, from those in the community who have a vindictive manner.

6. Appointing Commissioners with a range of skills was helpful, in this case with all three bringing governance experience and good financial and legal competencies. It was also helpful to have the skill sets that each individually brought, including a local / regional government Chief Executive background, a background of Northland / New Zealand rural, and a local / central government elected member background.

7. Appointing Commissioners who resided outside of the district was important to remove any potential conflicts of interest.

8. Four Commissioners were originally appointed in Kaipara, with one resigning in 2014. In our view, appointing three Commissioners from the start would have been sufficient.

9. The total annual cost to the Council of remunerating three Commissioners has worked out to be below the total annual remuneration of elected members.

**On support from Government, Parliament and the public sector**

1. Soon after appointment, the Commissioners sought the support of the local Member of Parliament, Government Ministers, and Parliamentarians to help resolve certain matters of historic non-compliance with legislation. Importantly, cross-party support was secured for the Kaipara District Council (Validation of Rates and Other Matters) Bill. This support was critical to the efforts of Commissioner to restore the capability of the Council.

2. The interest from Ministers of Local Government in the progress being made in Kaipara was at the right level. By this we mean that it was not intrusive or instructive, and thus the Commissioners were able to get on with the tasks given to them without interference.

3. The support from officers of the Department of Internal Affairs was helpful and important throughout the time of Commissioner leadership. This support was mainly channelled through the Chief Executive, though in the first year, it was also with Commissioners directly.

4. The Auditor General's Inquiry Report detailing the history of the Mangawhai Community Wastewater Scheme was an important contribution to community healing. Without the report, the Commissioners would not have been able to hold parties to account.

5. The Commissioners note that the report took a long time to be completed — at least twenty months. Investigations of this nature need to be thorough, and this was. They also need to be completed on a timely basis to enable the execution of the corrective and follow-up actions that are required.

6. The Auditor General made the correct decision to appoint an independent expert to examine the performance of her business unit, Audit New Zealand, and to publish the findings in full.
On the local government legislative framework.

1. The Commissioners were assisted in their tasks by the legislative framework that supports local government. The Local Government Act 2002 sets out clearly the purpose of local government (Section 10), the role of local government (Section 11A), the core services to be considered in performing the role (Section 11A), and principles relating to local authorities (Section 14). These and other provisions assisted the Council to review its mandate and its priorities.

2. The Commissioners found the disciplines required of local government with respect to financial and infrastructure asset planning helpful. The requirement for annual and long term planning, and asset management plans, assisted Kaipara to plan its revenue requirements, to consider its investment needs, and to consider its debt profile.

3. The Commissioners found the 2014 changes to the consultation provisions of the Local Government Act 2002 helpful, whereby a wider variety of consultation techniques became available and discretion in terms of form is enabled. The move away from a hearing concept towards an engagement concept meant more meaningful engagement with the community. Issues were heard, and some addressed as a service request rather than as a submission on the Annual Plan.

4. [Withheld under section 9(2)(g)(i) of the Official Information Act 1982]

On priority setting.

The Commissioners needed to get themselves up to speed quickly after appointment with the issues facing Council. Once we understood the challenges in general, we worked with the Chief Executive, clarifying for him our expectations and setting up the disciplines and governance structures that competent organisations require. Specifically, within three months of appointment in 2012, Commissioners:

1. Focused on the expenditure of the Council on core business, cutting expenditure on non-core business, including community projects and economic development.

2. Set key financial performance indicators for the Chief Executive to cap debt at $80 million and to run small operating surpluses.

3. Advised the Chief Executive that legal compliance of all matters was required, with no exceptions.

4. Set up a CE Performance Review Committee and an Audit and Risk Committee.

5. Introduced policy frameworks to guide decision-making and move away from more ad-hoc decision-making.
6. Reviewed the rating system, simplifying it.

7. Made decisions to bring the management of core business in-house. (Kaipara had almost no expertise in-house for its large infrastructure projects, including roads, stormwater, wastewater and drinking water.)

8. Considered options to attend to the legal non-compliant rating issues of the past, and decided to seek Parliament's support for a Validation Bill.

9. Launched a communication programme using local community newspapers to engage with the community.

The communication programme was relatively intensive. The Chair of Commissioners wrote six hundred word articles for local newspapers every two weeks throughout the four years of Commissioner term to explain Council decisions and direction.

**On leadership of the Council at Executive level.**

1. It was helpful for the Council to have a Chief Executive well-grounded in public law and public processes in the first two years of the turn-around. The Council needed to move from a reactionary and piecemeal approach to decision-making, to a planning and policy driven approach.

2. It was helpful for the Council to have a Chief Executive professionally qualified in accountancy and financial management in the first two years of the turn-around.

3. Once the turn-around was complete, the public law and accounting qualifications of the Chief Executive mattered less than the leadership skills, though legal and financial competencies remain important in any public sector Chief Executive role.

**On engagement with community and iwi.**

1. In 2012 there was anger by the people of Kaipara over the performance of its Council. A rates "strike" by over one thousand property owners had begun. There was a sense of relief by most people that Commissioners had been appointed.

2. Engagement with the community by Commissioners was critical to restoring the confidence of residents in their Council. A systematic approach to community engagement was put in place, village by village, town by town.

3. There were no protocols for the engagement and consultation process between Council and Iwi Hui took place to develop such processes. There is now a respectful relationship between the Council and Iwi at a local level.

4. Co-governance of the significant Taharoa (Kai Iwi Lakes) Domain by the Council and Te Roroa and Te Kuhi was in place, but lacked effectiveness and trust. Commissioners worked with Iwi to secure a working relationship of respect and a new management plan for this reserve.

5. Co-governance of the historically important Pou Tu te Rangi/Harding Park reserve been put in place. Council and Te Uri o Hau have agreed a shared vision.
On debt management.

1. The Local Government Funding Agency accepted Kaipara District Council as a member in 2016. This has lowered the cost of Council’s debt.

2. The Commissioners found the benchmarks set by this agency before membership is accepted useful as a guide for what acceptable industry debt levels should be.

On appointments of Crown Manager and Observer.

1. Putting in place a Crown Manager to take care of historic legal matters will assist the new Council. Selecting this appointee from the Commissioners makes sense, given their knowledge and familiarity with the cases.

2. Putting in place a Crown Observer to assist to reduce risks when an entirely new Council of elected members is being formed is also a prudent decision. Appointing a Crown Observer with Local Government Chief Executive experience brings good value should issues arise.

3. Should, on advice to you from both the Mayor and Chief Executive, the new Council settle down well and quickly and be fully functional, it is our view that the Crown Observer position should cease early.

On the return to democracy.

1. The Kaipara District Council’s challenges today are no more than would confront most other Councils in New Zealand. It is today a well-managed Council, with its finances in reasonable shape. Its relationships with most in the community are good.

2. Our view is that the Kaipara District Council is ready to be governed by elected members.

3. Our view also is that full return to democracy, with all governance members elected, is preferable to having a mix of appointed and elected members.

There are lessons to be learnt from the Kaipara experience.________________________

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Perhaps there are lessons that other Councils around New Zealand should take on board from the Kaipara experience. They might include:

1. Elected members should be cognisant of their purpose and roles as established in legislation, and be wary of being distracted by straying outside of core business.

2. Legislative compliance needs to be strictly adhered to and should be set as a key performance indicator for the Chief Executive. Cutting corners is not acceptable in the public sector. Legal oversight of processes like rate setting is essential.

3. Decision-making by elected members needs to be assisted by well-developed policy guidelines.

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4 Retaining good financial management skills and within the executive is important. Financial reporting to Council on a monthly basis, including performance against budget should be normal practice. The Chief Financial Officer should be the reporting officer.

5 Benchmarking and prudential tests should be used to measure debt levels and indicate rating levels relative to other like Councils.

6 Audit and Risk Committees should be in place. The Committee should have an independent member, preferably with an understanding of public sector accounting. The Committee should spend time with the Auditor without the executive present.

7 A Chief Executive Performance Review Committee should be in place, to meet at least twice each year. A performance review framework should be adopted and followed.

8 Large project proposals should be peer reviewed by an independent panel of experts before implementation, and project management disciplines need to be strictly adhered to.

9 Contracting out services can yield benefits, but also creates risks if capacity to manage the relationships are not resourced within the Council. Councils need to keep some expertise in-house, if only to ensure that the services contracted out are being performed to expectations.

10 Elected members should reflect carefully before renewing the appointment of a chief executive for too many terms. Changing Chief Executives can be challenging, but Councils need to reflect on the risks to the organisation of keeping a Chief Executive on for too many years.

We trust that this summary of observations and learnings is helpful.

Finally, the Commissioners have valued your particular interest and support. Your efforts to visit the District and to meet with members of the community was much appreciated. Thank you.

John Robertson
Chair of Commissioners