

## Terms of Reference for Independent Evaluation of Governance Performance at ICC

### Background

The Department of Internal Affairs has written to the Mayor and Chief Executive, expressing concern around conflict among elected representatives and the Chief Executive at Council, questioning the capacity of Council to provide strong and unified governance and leadership, and requesting that Council enter into a process to restore trust and confidence in its ability to meet the Crown's expectation of a high performing Council.

A copy of this letter is attached as Appendix A.

The letter specifically requests:

- An independent evaluation of the current standard of governance performance by elected representatives against the expectations set out in the Council's Code of Conduct, particularly in relation to sections 5 Relationships and 11 Creating a supportive and inclusive environment"
- A summary of the key issues that elected representatives and the Chief Executive agree are impacting the Council's performance;
- A clear plan on how the Council will address the issues, including a timeline and framework for how success will be measured; and
- A summary of key decisions that Council needs to make through to 30 June 2021 to deliver the next LTP.

Council has met twice since receiving the letter.

The reports which were presented to Council are attached as Appendices B and C.

The reports were received in public excluded, to allow for free and frank exchange of views.

Appendix D contains a copy of the letter that went to the DIA on 28 August after the Council meetings.

The first decision made by Council was to appoint Bruce Robertson, Chair of Council's Risk and Assurance Committee, as an independent advisor to guide them through the process. Mr Robertson provides assurance to Council that any work recommended and commissioned has independence.

Councillors and the Chief Executive have been asked to provide their views on the key issues impacting performance, and Mr Robertson is compiling that into a report for the DIA.

Council's next meeting, will be Friday 4 September at 9.00 am. Our intention is that Council will then be in a position to commission the evaluation of current standard of governance performance and to provide responses to the DIA on the remaining matters as requested.

### Our Requirements

As stated in the letter from DIA, specifically we *require* "an independent evaluation of the current standard of governance performance by elected representatives against the expectations set out in the Council's Code of Conduct, particularly in relation to sections 5 Relationships and 11 Creating a supportive and inclusive environment"

Appendix E contains Council's Code of Conduct.

It is appropriate to note that this Council came into office on 29 October 2019 and originally had four standing committees with regular meetings between the four committee chairs, Deputy Mayor and Mayor. The Chief Executive attended by invitation.

In May of this year, Council altered its governance structure and introduced a two committee system, with Council delegating all decision-making to those two committees (excluding those decisions which the Act specifies cannot be delegated). A Council Leadership Group of the two committee chairs, deputy chairs, Deputy Mayor and Mayor was established, meeting regularly with the Chief Executive.

We expect the evaluation to provide us with a thorough analysis of the current state of play including what is working well, what could be improved, and suggestions/strategies for improvement. The key issues and decisions (as requested by DIA) would be made available to you so you are clear about the operating environment and what's ahead. Suggestions about how to measure progress would also be within the brief.

Council has chosen to take matters into its own hands to address the situation and has committed to addressing the matters swiftly. You will be aware that there are several levers within the LGA that the Minister, if she so chose, could implement to address the situation. We are open to hearing any views you may form about whether, to restore trust and confidence, it may be wise for Council to voluntarily invite support and/or external intervention and how that might look.

## **Process**

### *Local Government Official Information and Meetings Act and Official Information Act*

It is important to recognise from the outset that the correspondence from the DIA, although not explicitly referring to the section, is a request under s257 of the *Local Government Act* 2002 (LGA). The Minister has taken this approach at this stage, rather than utilise the power to appoint a Crown Review Team under s258 of the LGA. While not enacting this power the result will be a report provided to the DIA which will form part of further decision making. In particular upon receipt of any report the DIA will implicitly be required to form a view as to whether the Minister needs to take any action pursuant to Part 10 of the *Local Government Act* 2002.

Further, by its request, the DIA has required an investigation into compliance with the terms of the Council Code of Conduct. A breach of the Code of Conduct is not an offence under the LGA (schedule 7 part 15(7)). It does however provide for potential penalties for those involved, and may result in findings amounting to a breach of regulatory or legislative requirements (Code of Conduct part 13.2).

Information held by Council is subject to the *Local Government Official Information and Meetings Act* (LGOIMA) and by the Crown the *Official Information Act* (OIA). Given the matters noted above and the inclusion of Code of Conduct issues, by their very nature involving the conduct of individuals, the release of material while the investigation is in process would be detrimental. In addition a release pending any further determinations by the Minister and/or investigations under the Code of Conduct would be inappropriate.

Following completion of any subsequent steps applications for information to Council will be subject to the rules of LGOIMA.

## Protected Disclosure Act 2000

The Evaluator cannot force participants to provide information to the investigation. Information sought and obtained by the Evaluator may amount to evidence of serious wrongdoing within the meaning of the *Protected Disclosures Act 2000* (PDA). The Evaluator is an appropriate authority for the receipt of information under the PDA.

Consistent with the purposes of the PDA the Evaluator must ensure that processes and procedures are in place to ensure, to the extent possible, people taking part in the investigation are afforded the protections available under the PDA. In particular the Evaluator is to take the steps necessary, so far as possible, to ensure that confidentiality is maintained in accordance with s19 of the PDA.

### **Methodology**

As well as background reading of key Council reports and documents we envisage that you would need to meet with the Mayor, Councillors, Chief Executive and a small number of other senior staff.

Council has meetings on 8 September (Performance, Policy and Partnership Committee); 22 September (Council) 6 October (Infrastructure Services). It is envisaged that the evaluator would attend one or more of these meetings. In addition, there may be workshops taking place during this time which could be useful to attend.

We would also make available to you information from the two Code of Conduct complaints currently under investigation, and the report commissioned by the Chief Executive into the leak of confidential material from a committee agenda. If the Ombudsman's Official Information Practice review is available at this time, this will also be made available.

The summary of key issues compiled by Bruce Robertson would be available to you, along with time for an interview with Mr Robertson.

It is intended that the evaluation be undertaken in such a way that it could be reviewed over a defined period so that progress and change can be evaluated.

If it would be helpful, an independent and experienced report writer to support and write up the evaluation process would be available.

### **Timeframe and Deliverables**

The expectation is that the final report would be delivered to Council mid-October, with a date for presentation and discussion at Council to be determined.

An interim briefing to Council would be desirable in mid-September, and a draft report to Bruce Robertson and Council's Leadership Group in the week commencing 12 October for their comment and return to you for finalisation the following week.

Our expectation is that you would present your findings in person to the full Council on Tuesday, 20 October or Thursday 22 October.

The report would also be provided to the DIA.