

# Invercargill City Council

## Independent Governance Review Report

October 2020

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*He has extensive governance experience in both the public and private sector. He has had 20 years experience in Health sector governance including positions as Chair of the Otago DHB, and elected Board member of the Southern DHB and, following the Boards dismissal in 2015, was an appointed deputy Commissioner until retiring prior to the 2019 local Body elections.*

*He was previously a two term City Councillor in Dunedin and Chaired the Finance Committee. As well as chairing his own Company he has been Chair of the Composite Retail Group, is a current board member of Dunedin City Holdings Ltd, Dunedin Stadium Ltd., and is an appointed member of the Southern Partnership Group (governance body for the rebuild of Dunedin hospital).*

*In the charitable sector he has been the long term Chair of the Hawksbury Community Living Trust (provides accommodation for approximately 100 intellectually disabled adults) and a board member of the Healthcare Otago Charitable Trust.*

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## 1. TERMS OF REFERENCE

This report follows a request from the DIA that the Invercargill City Council provide:

- 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.
- A summary of key decisions that Council needs to make through to 30 June 2021 to deliver the next LTP.

These flow out of a letter from the DIA 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 the Council enter into a process to restore trust and confidence in its ability to meet the Crown's expectation of a high performing Council.

My specific TOR<sup>1</sup> were as follows:

- To provide 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.
- This was qualified with the following explanatory paragraph "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 and strategies for improvement"
- A further qualification, in the same paragraph, stated "suggestions about how to measure progress would also be within the brief".
- A final qualification is found in the next paragraph "we are open to hearing any views you may form about whether, to restore trust and confidence, (it) may be wise for Council to invite support, and/or external intervention, and how that might look".

## 2. BRIEF DISCUSSION OF TOR

The TOR have driven my approach to this report. Section 5 of the Code relates to relationships generally and sets out standards of behaviour between members; members and staff; and members and the public. Section 11 is around “creating a supportive and inclusive environment”. Although wordy they are significant in my terms of reference and so rather than append them, I have reproduced them below:

### *“5. Relationships*

*This section of the code sets out agreed standards of behaviour between members; members and staff; and members of the public.*

#### *5.1 Relationships between members*

*Given the importance of relationships to the effective performance of the council, members will conduct their dealings with each other in a manner that:*

- *Maintains public confidence*
- *Is open and honest*
- *Is courteous*
- *Is focused on issues rather than personalities*
- *Avoids abuse of meeting procedures such as a pattern of unnecessary notices of motion and/or repetitious points of order; and*
- *Avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language*

*Any failure by members to act in the manner described in s5.1 represents a breach of this code. Please note that nothing in this section of the code is intended to limit robust debate within the council as long as it is conducted in a respectful and insightful manner.*

#### *5.2 Relationships with staff*

*An important element of good governance involves the relationship between the council and its chief executive. Members will respect arrangements put in place to facilitate this relationship, and:*

- *Raise any concerns about employees, officers or contracted officials with the chief executive;*
- *Raise any concerns about the performance or behaviour of the chief executive with the Mayor/Chair or the chairperson of the chief executive performance review committee (however described)*
- *Make themselves aware of the obligations that the council and the chief executive have as employers and observe those requirements at all times, such as the duty to be a good employer;*
- *Treat all employees with courtesy and respect and avoid publicly criticising any employee;*
- *Observe any protocols put in place by the chief executive concerning contact between members and employees;*

- *Avoid doing anything which might compromise or could be seen as compromising, the impartiality of an employee.*

*Any failure by members to act in the manner described above represents a breach of this Code:*

*Please note: Elected members should be aware that failure to observe this portion of the Code may compromise the council's obligations to be a good employer and consequently expose the council to civil litigation or affect the risk assessment of council's management and governance control processes undertaken as part of the council's audit.*

### *5.3 Relationship with the public*

*Given that the performance of the council requires the trust and respect of individual citizens, members will:*

- *Interact with members of the public in a fair, respectful, equitable and honest manner;*
- *Be available to listen and respond openly and honestly to community concerns;*
- *Consider all points of view or interests when participating in debate and making decisions;*
- *Treat members of the public in a courteous manner; and*
- *Act in a way that upholds the reputation of the local authority.*

*Any failure to act in the manner described above represents a breach of this Code.*

### *11. Creating a supportive and inclusive environment*

*In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:*

- *Attending post-election induction programmes organised by the council for the purpose of facilitating agreement on the council's vision, goals and objectives and the manner and operating style by which members will work*
- *Taking part in any assessment of the Councils overall performance and operating style during the triennium*
- *Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the city, district or region.*

However, the phrasing of the TOR is important. It is clear that I am required "particularly", but not exclusively, to focus on these aspects of the Code of Conduct. In my view there are also other aspects of the code that are extremely material to my report, most specifically the "values" as outlined in the Code. These are:

- Public Interest:** *Members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.*
- Public Trust:** *members, in order to foster community confidence and trust in their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.*

- c. **Ethical Behaviour:** *Members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour.*
- d. **Objectivity:** *Members will make decisions on merit, including appointments, awarding contracts, and recommending individuals for rewards or benefits*
- e. **Respect for others:** *Will treat people, including other members, with respect and courtesy regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of officials.*
- f. **Duty to uphold the law:** *members will comply with all legislative requirements applying to their role, abide by this code of conduct, and act in accordance with the trust placed in them by the public.*
- g. **Equitable contribution:** *members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office including attending meetings and workshops, preparing for meetings, attending civic events and participating in relevant training seminars.*
- h. **Leadership:** *Members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of Council's collective performance.*

There is a footnote to these values which states that these values complement and work in conjunction with the principles of s14 of the LGA 2002 and the governance principles of s39 of the LGA 2002. Of these the most relevant to my investigation is S39 which is detailed below:

***“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.”*

There is one aspect of section 14 which does have some relevance to my enquiry and so I have quoted it below.

*“14(1) 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”.*

### 3. PROCESS OF EVALUATION

The following has occurred as part of my investigation:

- I have interviewed the Mayor and all City Councillors, plus the following members of the executive management team – CEO Clare Hadley, Interim GM Infrastructure Jane Parfitt, Interim Group Manager Finance and Assurance Dave Foster, Group Manager Customer and Environment Darren Edwards, Group Manager Strategy & Policy Cameron McIntosh, Manager People and Capability Gary Andrews, and GM ICHL Andrew Cameron. I had an interview framework<sup>2</sup> which I used as a guide to review whether I felt we had covered the key aspects, rather than as a formal structured interview. This was based loosely on the Local Government Excellence Programme Performance Assessment Framework but adapted for these specific circumstances. Every participant was advised that the discussions would be confidential. This was qualified by me as being “to the extent that any ombudsman’s ultimate interpretation of a refusal to make public, if subject to a LGOIMA request, was not in my control”. I advised each participant that I would be making notes as I went. In the case of one person I agreed not to make verbatim notes but advised that I would be making a summary recollection at the end.
- I have reviewed the Chief Executive’s most recent Performance Evaluation. This was completed in May 2019 (and so in the previous triennium with a different Councillor mix) and independently facilitated. It involved feedback from Councillors, tier 1 management and external stakeholders. My purpose in doing so was to better understand the context of some feedback from Councillors, and also to assist with “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 and strategies for improvement” as outlined in my TOR.
- I have reviewed written feedback from Councillors and CEO to Mr Bruce Robertson (Independent Chair of their Audit Committee) and his summary report of those views. This was provided to me with the knowledge of all participants and was a separate requirement (TOR second bullet point) of the DIA. I have attached Mr Robertson’s summary report<sup>4</sup> but have not attached the individual feedback to him as that was provided in confidence (save that he had permission for me to review it).
- I commissioned a tailored Institute of Directors’ Board Evaluation Analysis report<sup>5</sup> and Whole of Council report<sup>6</sup> and reviewed these results. This was to both provide

an independent, empirically based, view that could be used alongside my more subjective interview structure, and also to ensure that any assessment of the governance structure was provided separately by Councillors and Tier 1 management independent of my involvement. For this reason, I endeavoured to have the survey completed prior to my interviews so that I could not be seen as influencing it. This was done by all but one Councillor who I only discovered had not completed it during interview. He completed it immediately post my interview. The survey was completed by 12 out of 13 of the Councillors (including the Mayor) and by five of the six tier one management (including the CEO).

- I have read the views and opinions of Councillors as expressed in media. I recognise that whilst expressed as their views they will have been coloured by the perspective that the reporter chooses to take. Their value is not in those individual views per se but in the way in which they reflect the dynamics of this Council and its problems.
- Finally, I was independently contacted (unsolicited) by three Southern Mayors who wanted to convey their concerns. I was rung by one of them on behalf of the others. My response was that if they wished to make a comment they should do so signed in writing. I have not appended this as I have taken the same approach to all people who have provided me with information, that I would treat their contributions as private unless compelled otherwise.
- I have reviewed some Council documents and where they have relevance, I have notated them in the body of the report.

#### 4. KEY FINDINGS

It is clear from interviews with Councillors and Tier 1 staff, plus the results of the survey and the written material provided to Mr Robertson, that there are significant problems with Governance. Whilst it is the ICC rather than myself who is being asked to provide reassurance that they could meet the Crown's expectations of a high performing Council, **I do not believe, in the absence of appropriate intervention, that such an assurance could be confidently given.** How I have come to this view is best understood by presenting my key findings and my analysis of those. I will detail the intervention options in a later section of the report.

I note for the sake of clarity that my observations are in most respects the views of those that I have interviewed, or their views individually or collectively as detailed in the IoD survey and Mr Bruce Robertson's report. I have not attended Council meetings to observe Councillors and/or the Mayor in formal processes. I have attempted, at the risk of annoying the reader with repetition, to state where a comment is the observation/report of others. Where it is my view, based on those collected observations, I have said so. If at any point in the report I have failed to make that clear then this is an accidental omission and the reader should seek clarification from me directly.

I have identified seven key themes which I summarise first before elaborating on in more detail section by section. The summary is my conclusion, based on the reports of all, and my weighing up of those reports and the survey data.

- a) **LEADERSHIP VOID:** There was a clear consensus that the Mayor is struggling to fulfil significant aspects of his role and that the result of this is a leadership void in the governance arm. This has manifested itself in many ways and is seen both internally and externally (by other stake holders). There have been changes in the governance committee structure which assist in managing this (although that was not their primary driver) but the Mayor's difficulties are becoming increasingly apparent. There remain significant issues in providing an appropriate link between governance and management due to the Mayor's inability to perform what would normally be a key function of their role. There is no working relationship between the Mayor and the CEO and the appointment of Cr Clark as the new Deputy Mayor may (in my view, and subject to qualifications in more detail later in the report) risk destabilising this interface further. It should be stated up front, however, Sir Tim has never been a "standard" Mayor and he would acknowledge this. He has always seen himself as a promoter for Invercargill, rather than a "policy and process" mayor. I return to this in other places in my report.
- b) **IMPACT OF A NEW CEO:** The CEO was appointed in 2018 and it is generally agreed that she was charged with reviewing existing practices and making change as necessary. The absence of Mayoral leadership and a working relationship between her and the Mayor has meant that she has been forced into a situation where she is more entwined in governance than best practice would suggest ideal (my view, but I believe hers as well). She is generally seen as very competent (supported by an independently facilitated performance appraisal in May 2019). However, she is seen negatively by some Councillors (a minority). Their views would appear to be based more on her style than on her competence, and, in some cases, reflect different views as to how management and governance should interface.
- c) **ELECTION OF COUNCILLOR CLARK:** Cr Clark is a first term Councillor who is cited by a majority of his colleagues as being a factor in the difficult Council dynamics. He is (in my view) both capable and polarising and his approach to his role has earned the ire of many of his colleagues. He has adopted the role of an "activist councillor" (my term) and his relationship with staff is described by many interviewees as aggressive and rude. However, as I attempt to describe below, it is my view that much of what he seeks is reasonable, even desirable, but its passage out is alienating many. His elevation to Deputy Mayor is likely (in my view) to risk further destabilisation of both governance and the governance/management relationship, unless he changes his approach to a more collegial one.
- d) **BREAKDOWN IN CEO & MAYORAL RELATIONSHIP:** It is doubtful that there has ever been a meaningful relationship between the CEO and Mayor. The Mayor feels

abandoned by management and unsupported, a point perhaps best understood in his comments to the Southland Times of the 21st October 2020<sup>7</sup>, but also verbalised to me. (He feels that he has made a number of requests for assistance of an administrative, communications and research kind but these have not eventuated). The CEO, on the other hand, would say that she has found herself attempting to work with a Mayor who is unable to carry out his role, particularly as they relate to the interface between governance and management, political management, and strategic focus, and she has then had to adapt her approach to find a way through.

- e) CONTINUING “STONE IN THE SHOE” ISSUES: There are a number of long standing, and publicly prominent, issues that Council has been unable to put to bed in terms of the LTP. These appear to be continually relitigated and this also heightens the aggravation for many councillors and management.
- f) RELATIONSHIPS BETWEEN COUNCILLORS: Councillors largely believe (their self-report) that there is a community perspective that they are unable to work together but feel this is over stated. However, there are some who have described the atmosphere as toxic to me (and this is cited publicly relatively recently by the retiring Deputy Mayor ODT 14<sup>th</sup> October<sup>8</sup>). There have been two recent code of conduct investigations (one laid by the CEO, although now withdrawn following Cr Biddle’s notice of resignation) and an external investigation into leaking (inconclusive) that reinforce the perception of difficulties. I am also aware that there is the possibility of more code of conduct complaints (interview information) although none have yet been filed at the time of writing.
- g) GENERAL STATE OF THE CITY: The City has been generally well run in terms of common measures such as debt and quality of infrastructure assets. It is my view that the overall competence of Council is not materially better or worse than many other Councils but there is real risk that the other issues could result in a dysfunctional governance structure and loss of key management (and difficulty in replacing these due to perception).

I have elaborated on these in much greater detail below:

### **LEADERSHIP VOID**

1. The tailored Governance surveys<sup>5&6</sup> clearly back my own observations that there are significant concerns regarding the Governance at the ICC. **The Survey analysis must be read in conjunction with this report.** For brevity I have just included the IoD analysis conclusions in this section. They write:
  - a. The evaluation conducted with the Invercargill City Council has identified a board with significant concerns regarding governance of the Council. With



recommending a more streamlined structure. Her proposal to have two committees of the whole (Performance, Policy and Partnerships Committee and an Infrastructure Committee) was supported by a majority of Councillors.

5. This also enabled a rearrangement of the chairing structure. The Chairs of the four committees had been appointed by the Mayor and were all seen (by most non chair Councillors and management) as being informally aligned with him, although the perception is that Cr Pottinger had quickly stepped away from any alignment with the mayor. This included a first term Councillor as Chair of Finance who is seen as a very polarising figure by most of his colleagues (addressed in more detail below). It was also an intended outcome of this process that the Committees would have the delegations to make final decisions. This meant that the Mayor would essentially be chairing a full Council whose agenda was primarily only the approval of minutes, thus ensuring that the Mayor was chairing difficult or complex meeting agendas less frequently. The Mayor saw this as a deliberate diminution of his power, which it accurately was, but, in my opinion, that was a side outcome of the change rather than the primary motivation for the change. Many of those I spoke with saw it as a compassionate way to protect his reputation and mana by reducing the opportunity for his difficulties to be apparent to the public.
6. The new committee structure has allowed for a strengthening in the leadership structure in two ways. Firstly, the two chairs have general respect and experience. One is a previous Deputy Mayor and an experienced Chair. He is seen by all parties as being skilled in this respect and running a positive and well controlled meeting. The second is reported as less experienced in chairing and (self-report) has learnt from a couple of early miss-steps, but is seen as developing greater confidence, and colleagues see him as developing well. This is a positive change. It has also enabled the use of two other well regarded Councillors as Deputy Chairs, enhancing the strength of the senior chairing structure.
7. In addition, it has allowed for the potential development of a more balanced “Chairs Meeting” in which the potential to better manage the political process could be given expression. At present it is not achieving this aim (as reported by most participants) and it is unable to be Chaired by the Mayor in any real sense. As a result, the CEO has probably had to take a greater leadership role at times than she would like. This means that one possible way to address the Leadership void is not yet able to be fully realised due to the reality that the natural leadership of this committee should be the Mayor, assisted by the Deputy, and he is reported as unable to discharge this role.
8. A final, but critical, issue in the leadership void is that there is no working relationship between the Mayor and the CEO (discussed further below). Whilst the previous Deputy Mayor has generally had a working relationship with the CEO this too was strained at times, as evidenced in the CEO recently raising a code of conduct

complaint against her. Since Ms Biddle's resignation this has been withdrawn. (I note that Ms Biddle has been generally strongly supportive in her comments to me regarding her view of the CEO). She has, since announcing her resignation, stated in the media<sup>8</sup> that she had found the role very stressful due to being required to "do the Mayor's work for him".

9. The apparent absence of any working relationship between the Mayor and CEO, and the absence of any defined substitute model to fill this void, makes the ability to achieve the IoD survey conclusion that governance performance would improve with "strong leadership from the Mayor and CEO working together" an impossibility in my view.
10. There is, in my view, a risk that this situation will be further destabilised due to Cr Biddle standing down. The Deputy Mayor has resigned from her position and from Council. Under the legislation the Mayor is entitled to name her replacement and has appointed Cr Clark. Cr Clark is (according to the views presented to me) a polarising figure who has a combative relationship with Staff and most other Councillors. It is my opinion that there is a risk that his appointment as Deputy [REDACTED] [REDACTED] could result in management departures. Were this to occur it would be a significant risk for the City at this time. I note that, in the week I am finalising this report, three new tier 1 staff members have commenced their employment. They will replace, in some instances, interim staff who have been in place for sufficient time to provide some solidity to the management structure. The loss of the CEO (for example) at this critical time could be very de-stabilising in my view. I pick up this issue further on in my report.
11. There is no evidence that I have been able to elicit from Councillors, in the recent past at least, of any attempt by Council to assess its own performance and identify where its strengths and weaknesses lie. The results, as evidenced in the IoD survey data suggest that a serious attempt at self-reflection on a regular basis might have provided a guide as to what self-interventions may have proved useful before things got to this state.
12. I have received a letter signed by three Southern Mayors (which followed an unsolicited phone call) which adds additional support to the observations reported above. I have outlined the background to this in my section on the "process of investigation". They note their concerns for Sir Tim and say that, whilst they have observed decline over a number of years, this has increased in recent times. I believe their views have relevance to my investigation in that they have extensive experience of Sir Tim over a long period and provide an external validation of my summary of internal concerns. It is also relevant to section 14(1)e of the LGA 2002 which I refer to in my discussions of the TOR. There is a requirement for Councils to work collaboratively around policy and operational matters and they have expressed a view that this has become very difficult indeed.

## **THE IMPACT OF A NEW CEO**

13. Clare Hadley was appointed as CEO in 2018. She replaced Richard King who had been in the role for three decades. There is a general consensus (as reported to me by Councillors who were part of the appointment process) that the new CEO was required to make change. They report that there was a lot of practice that had not had a fresh pair of eyes on it for a long time, and a sense from the majority of Councillors at the time that they wanted the new CEO to have licence to make change where it might be needed.
14. The CEO has progressively restructured the Tier 1 leadership and has made significant changes to the way in which the Mayor and Council have co-existed. There is general agreement from Councillors that the top tier is now stronger than it was previously. Her strengths in making these changes are recognised by most Councillors regardless of whether they are supportive of her generally or not.
15. In the apparent absence of the political leadership that would normally be provided by a competent Mayor and Deputy working harmoniously, there has been a perceived leadership void. There is a group of Councillors who see the CEO as having stepped “out of her lane” and to be too heavily involved in governance. I am not sure that there is strong evidence for this. It is more likely the case that this reflects some disagreements between some councillors and the CEO as to process. That group (including the Mayor) cite things like the change to the committee structure, and her de facto chairing of the Chairs’ group meetings. It seems likely to me that the latter (when it has occurred) has become necessary due to the leadership void. The CEO is clearly working in both a very difficult, and essentially unsafe, environment, where she is damned if she does and unable to act sensibly if she doesn’t. The change to the committee structure was proposed by the CEO but I am certainly aware that other Councillors asked for her to look at a simplified committee structure based on the success of what happened during covid-19 lockdown.
16. The CEO is generally seen as very competent, even by most of those Councillors that appear to be less supportive of her in the role. The staff I interviewed all supported this view but, more importantly perhaps, the vast majority of Councillors made similar statements. These views are amply supported by the results of her 2019, independently run, performance appraisal which show strong ratings, both from Councillors, and (in a 360) from her senior leadership team.
17. She is reported as being very principled in her approach to things and strong in her resistance to deviation from appropriate local government process. She has been strong on the appropriate division between management and governance but there is also a sense from a majority of Councillors (including some who are very

supportive of her and rate her highly) that she could be more flexible in some situations.

18. The CEO's strong attention to boundaries and process are seen by supportive Councillors as appropriate and an indication of her strength. But there is also a sense that she may be tactically strong but strategically at risk – her reported unwillingness to bend could result in her winning some battles but losing the war.
19. Some of the discord around the Council table is definitely linked to a view (as expressed by Councillors) that their requests for information are taken as meddling in management and her push back in this regard has probably inflamed some tensions that could, with a softer approach, have been de-escalated. This appears to have commonly found its expression in regard to Cr Clark. As noted above, Cr Clark is a polarising figure but, in my view, he is not a one-dimensional character, simple to analyse. I pick this up further below.
20. Some Councillors expressed views that questions they asked which were pushed back on were about holding management to account and that this was not always seen similarly by management. Equally, the CEO has expressed a concern that there is not enough constructive push back/governance focused questioning by Councillors and that she would feel safer in her role if there were more. She cited an example of the finance report which she felt received little or no questioning by Councillors. My perception is that it is not questioning or push back that is the primary issue but the way in which that is occurring (primarily, but not solely, by Cr Clark)
21. The CEO (as reported by others) at times allows her body language to convey what she is thinking about someone. This is not well received by some councillors. It is also felt, by some, that she uses this to prompt councillors to respond to things that may have been said by other Councillors that she does not agree with. She plays an active role in advising Chairs in meetings and this is alleged by some councillors to have been widened to texts to supportive Councillors in meetings as prompts or "influencers". I would note, however, that communication with Chairs is a common practice by CEOs in meetings, especially with regard to process or legislation.
22. I would observe that there are times when it feels (to me, but also as reported by others) that she is too quick to respond, in a way that feels in part defensive and in part aggressive, when taking a moment to pause and reflect might turn the situation in a more positive way. Her response may be no different but she will have given the impression that she has taken the time to consider it and reflect and, more importantly, given herself the opportunity to do so.
23. It is also clear that there is a significant minority of Councillors that see the CEO as being a primary cause of the governance dysfunction. They see, incorrectly in my view, that their problems would be resolved if the CEO were to leave or be got rid of.

24. There is one issue which has arisen and been commented on by some Councillors as a reflection of her being too involved in governance that probably needs to be referenced here. It relates to what has become one of the significant infrastructure issues for this Council – Rugby Park. Rugby Park is not owned by Council. Instead it is owned by a Charitable Trust. The Trustees of Rugby Park are bound by their own Trust Deed and must act in accordance with this. Perhaps unfortunately, the CEO, Mayor, and Deputy Mayor are all Trustees by dint of position. They are required to act in their role as Trustee in the best interests of the Trust. It is inevitable that, when the Trust has no funds to invest in the maintenance or upgrade of Rugby Park that the Council will be asked to do so. All three must inevitably find themselves hopelessly conflicted in this situation. The CEO therefore finds herself in a situation where she must act in her own right as a Trustee – equal in status to other Trustees – and then act in the City’s best interest as CEO of Council – in a different status to her fellow Trustees. It is hardly surprising that this has led to conflict.

It needs also to be said that there was a significant view from staff, and many Councillors, that the only thing holding the Council together at present was the quality of her leadership. Clearly there are those who feel otherwise amongst Councillors but it is my opinion, based on all the evidence I have received, that the loss of the CEO at this point in time could be very damaging for the City. No CEO is indispensable but there are a unique set of circumstances operating here. The normal political/process management role of the Mayor appears unable to be performed; there is conflict and disagreement arising from the past working style of the new Deputy Mayor (both between him and a significant number of Councillors and between him and management), and half of the Tier 1 executive team are just commencing.

### **ELECTION OF CR CLARK**

25. A further destabilising impact this triennium, commented on by most Councillors and Management, has been the election of a new Councillor, Cr Clark. He is a complex character who is seen by the majority of Councillors as extremely polarising. There is a common theme that runs through their comments which indicates many see him as abrasive, failing to understand his role as governor, at times demeaning of council staff, abusive of process, and dividing of Council. These things are, based on the commonality of their reporting, probably largely true. But it is also probably the case, (and here and in the next paragraph I present my personal view based on multiple interviews, including Cr Clark), that his manner of operating is getting in the way of what may well be reasonable and principled questions and positions. Cr Clark is clearly a man who does significant research, has many links into the community, and a publicly stated agenda that he sees as his responsibility to progress. He reports himself as feeling stymied by management obstruction and push back from other councillors and has adopted the tactics he sees as legitimately available to him as an elected representative to get around this. Hence his use of the media in ways that

annoy others, and his use of notices of motion to get matters on the agenda. It is my view that his behaviour and manner have resulted in what might be seen as reasonable requests for information, when spread across a range of Councillors, being seen as unreasonable because they are regularly coming from him.

26. For example. Cr Clark asks many questions (as reported to me by himself and some other Councillors) that, if they had a better passage out, would not be unreasonable questions for a Councillor to ask in discharging their duty of care. At times the resistance to these, and the labelling of them as “management not governance” by some of his colleagues would appear to be more driven by exasperation than reasonableness. There is a sense of “mission” about Cr Clark that I think comes from the right part of the body – his heart. But his colleagues find his manner and methods hugely aggravating and many point to Cr Clark as a significant cause of the governance disharmony.
27. There is a strongly held view by many Councillors (probably most) that Cr Clark is a major cause of the re-litigating of issues. He would see this as him appropriately holding management to account by ensuring that decisions are made on the basis of full information. There is probably truth both ways, but the key issue it raises for me is the process by which issues are dealt with by this Council, and I deal with that in my suggestions in the pathway forward section.
28. Cr Clark has also earned the ire of many of his colleagues as he is seen as working in any way that he can to achieve his aims. I think he would generally agree with that assessment but see it as an appropriate way to achieve his political goals. He is seen as using both community groups and media to create a climate in which other Councillors may feel forced into either agreeing with him or looking bad in the eyes of the public. These tactics are also directed very much at Staff. It was directly reported to me by some Councillors and Management that they did not trust him and my impression is that this is a view shared by quite a number of his colleagues.
29. It would be inappropriate to leave an impression that Cr Clark is unsupported in his approach to things. My sense is, from comments made to me in interview, that two Councillors plus the Mayor see his approach as appropriate. A third made the point that “he is genuine in his wishes to get the best for his community but his manner is alienating”. That person is probably seen by other councillors as a supporter of Cr Clark but would categorise themselves more as supportive of his intent than his methods.
30. Most other Councillors, and management, commented on his frequent use of notices of motion. These are seen by most as either ways to meddle in management (by demanding further information from staff to support his own investigations or positions) or an attempt to re-litigate prior decisions. He would see them as an

appropriate response to obstruction to information requests by Chairs and the CEO and therefore a legitimate response.

31. Because of the, to date, poor relationship between Cr Clark and both management and many Councillors, his appointment by the Mayor to the Deputy's position on the 20<sup>th</sup> of October, in my view, significantly heightens the risks of further governance discord and, possibly, governance failure. It is not my role to question the democratic process but it is my role to examine the potential impact of that process on the TOR. I have already made clear that there is seen to be a leadership void in governance because of the Mayor's reported inability to carry out aspects of his role. This means that the power vested in his Deputy is far more significant than it would be in a normal City Council situation. Given Cr Clark's polarising approach to things, and his private and public criticisms of the CEO, and his past willingness to use any tactical approach he feels will advance his advocacy for a position, I can see the potential for discord, whether between Councillors, or between Council and management, as significantly enhanced by this appointment. The risk is if this were to express itself in significant management departures. There is a view from some Councillors that this may well be seen by Cr Clark as a desirable outcome, which, if it were to be a correct view, might increase that risk. It may well be that Cr Clark will recognise that the responsibilities inherent in his change of position, combined with the unique circumstances of the Mayor's difficulties, require him to reassess his modus operandi. That remains of course to be seen.

#### **BREAKDOWN IN CEO & MAYORAL RELATIONSHIP**

32. The Mayor sees (correctly) that the CEO has changed some of the arrangements that had previously existed for him, such as Mayoral spending. He complains (Southland Times 22/10/20<sup>7</sup>) that he does not have the support that he perceives other Mayors to have around the country and I combine this with his own comments to me to infer that he sees this as one of the reasons he is struggling.
33. The Mayor is suing his Council over its refusal to pay his legal fees that were incurred in successfully defending a defamation suit against him by a, now, former Councillor. The Council states that it has legal advice, and it is the view of their insurer, that these costs should not be borne by the ratepayer/insurer. (They were to be paid in significant part as costs by the unsuccessful party in the case but she was adjudicated bankrupt and was unable to pay them). This may further complicate the difficult relationship between the Mayor and the CEO (although the matter is, I understand, between the Mayor and Council and their legal advisors, rather than the Mayor and the CEO).
34. The Mayor appears to feel that he has been abandoned by management and had his power stripped from him. Most Councillors and staff recognised that under the

previous CEO there was a close relationship that benefitted the Mayor and also supported him. The Mayor has made similar comments to me. But there was also a view expressed to me by some longer serving councillors and staff that the Mayor had to be managed, and sometimes informal arrangements were put in place to facilitate and enable this. One interviewee phrased it along the lines of “the Council essentially made a pact in which Tim’s significant skills in public speaking and promotion would be harnessed for the City’s advantage and the CEO would manage him in the governance role”. This is my paraphrase but the essential flavour is accurate. This is a view that other longer serving Councillors and Staff largely agreed to be the general situation. I think, in fairness to Sir Tim, that it would equally be his view that he sees his skills in certain areas and has played to those strengths to the benefit of the city. He has probably always seen his role as in publicity and profile for the city, rather than a more traditional Mayoral focus. He was quite open to me that he did not see his skill set as being what most mayors do in their role, but argued that there were few who could do what he has been able to do in terms of promoting a city.

35. It is the observation of a number of people I interviewed that the difficulty in separating “brand Shadbolt” from Mayor Shadbolt now contributes to some of the difficulties between himself and the CEO. As a practical example – Sir Tim has had an arrangement as a brand ambassador with SIT for which he is paid. His work in that capacity has not always been easily differentiated from his role as Mayor. When he appears on speaking engagements, is he there as “brand Shadbolt”, ambassador to SIT, or Mayor of the City? The danger of such an arrangement is that expenses associated with these things can be easily entwined without any malicious intent.
36. The current CEO has chosen to actively scrutinise these for both probity and quantum. This appears to have upset Sir Tim (from both his self-report and the reports of others).
37. Equally importantly, the previous CEO, was widely seen as having actively supported and protected him from his own actions at times. Sir Tim acknowledged this in his interview. In a sense he was “looked after” (his words) by the previous CEO in ways that the current CEO is less prepared to do.
38. I sense also that the absence of a meaningful relationship is a function of the CEO seeing the Mayor as unable to discharge the normal mayoral duties [REDACTED] and so looking to find links with Governance elsewhere. It would be a very difficult position for a CEO to be in if that primary relationship is unable to be built because the Mayor is no longer able to carry out this part of his job adequately. Given the strongly reported view that this is the case, it seems inevitable that the CEO will try to build other relationships to enable her to do her job. However, that would also further reinforce the failure of the relationship with the Mayor. It becomes a spiral issue with no happy outcome.

## **CONTINUING “STONE IN THE SHOE” ISSUES**

39. There are a small number of high-profile issues that significantly divide the Council, at least in terms of process. These include the Museum (whether it should be re-opened as is through to a complete redevelopment in the \$60m plus vicinity), the re-opening of the stadium at Rugby Park (whose responsibility various aspects of it are, and what the scope of repairs should be), the Anderson Park historic property (currently closed for several years as an earthquake risk, but possibly on the way to a resolution in the last couple of weeks), the redevelopment of the City Centre (there is commonality of purpose but disagreements as to Council's management/governance role in the project), the demolition/disposal of several derelict buildings in Esk St (a series of purchases that appear to have lacked sound governance decisions and appear likely to incur a multimillion dollar loss to extricate Council from), water tower (earthquake risk), and the civic building (which needs significant work or replacement), but these are the main ones.
40. The common thread running through these is a failure of process. One might expect them to be resolved as part of an LTP process and they are covered by that. But it appears that the ground keeps shifting as they are re-litigated, and many of the costs that have been budgeted in the LTP were holding figures that do not correlate well with current reality.
41. It feels as though these issues significantly divide the Council and their resolution would significantly aid a more cohesive forward path. But they appear to have fallen victim to being debated as isolated projects where the impact of one decision is not well linked to how it affects others whether in quantum or in timing.
42. Because these have also become political aims and ambitions for some Councillors, especially Cr Clark and some closer to him, they have also become a lightning rod for the behaviours that are incensing some other Councillors.

## **RELATIONSHIPS BETWEEN COUNCILLORS**

43. Councillors largely believe that there is a community perception that they are unable to work cohesively together but also feel that this is over stated and largely due to issues from a couple of members. Some further relate this to perception created by the use of media which highlights conflict over issues by a small number of Councillors.
44. However, it goes further than this with some Councillors describing the atmosphere around the table as “toxic”. This is a view that has also increasingly been used in the

media by a number of Councillors as I write this report. It in turn prompts further conflict as others state that this is not the case.

45. There has been a string of deputy Mayors and the City has just embarked on its fourth in less than four years. This creates a sense of disharmony and has been due to a range of factors. But there is also a sense expressed that the Mayor has determined that he wants a totally supportive deputy and if that person does not support the Mayor (for example by running against him) then they are removed or not reappointed.
46. The election of Cr Clark is reported to have significantly altered the atmosphere around the Council table. He is seen by a majority of Councillors as not prepared to work as part of a team, and to act in ways that are inappropriate with staff. His manner is seen as aggressive and abrasive. He is single minded in his pursuit of what he believes he was elected to do and is seen as being prepared to use any methods he can to advance these matters, including ones that many Councillors consider to be inappropriate in maintaining a strong working relationship between council and Staff. These are often defined by others around the table as not being part of a governance role and essentially calling into question the honesty of staff. He has reportedly called the CEO a liar in open meeting. I have addressed earlier that I think this is a more complex matter than as described to me above but perception is reality and it drives how people feel.
47. There have been two high profile codes of conduct complaints in recent times (although, as noted earlier, the CEO has now withdrawn hers) and there is a separate investigation into the apparent leaking of information. This has also contributed to an atmosphere of mistrust around the Council table.
48. These matters are serious but, in my view, they have taken on a greater significance because of the reported leadership void.
49. It is also apparent that the Mayor has adopted an approach that might be described as “putting out fires with gasoline”. This has included very public criticism of his Deputies on a number of occasions in ways that have been seen by others as hurtful and undeserved. E.G. Southland Times 28<sup>th</sup> May criticism of Deputy Mayor Biddle<sup>10</sup>
50. There have been several efforts to use training in governance to assist with the Council relationships and processes but these are seen to have had little impact as some councillors simply do not accept that what they are doing is inappropriate from a governance perspective. It is also the case that attendance has not always been strong.

51. I need to note here that these views are those of the majority, and all interviewed staff, but that the minority will see it differently. I have addressed this difference in the section above on Cr Clark.
52. The resignation of Deputy Mayor Biddle, and the Mayor's subsequent announcement of the appointment of Cr Clark to the role of Deputy will, in my opinion, add significantly to the risk to Council. I sense that there are some Councillors who, whilst unsupportive of Cr Clark's appointment as Deputy Mayor, may be of a view that they should stand back and let whatever is going to happen, happen. They (I believe) think it will end badly and it is politically better to allow that to happen. There is another group who are likely to take the view that his elevation to Deputy Mayor is too fraught with risk for the City and would prefer to oppose the Mayor's choice. Given that there is also a group of Councillors who are likely to support the Mayor's appointment, I suspect that the numbers would not be there to challenge the Mayor's choice. This is my informed opinion only, but based on my assessment of how Cr Clark is seen by the individuals I talked too. I detail it, however, as I think it helps to emphasise the increased risk of disharmony that exists following Cr Clark's appointment, or that might also exist if it were to be challenged, whether successfully or not.
53. The significant bright spot though is the move to the two committees of the whole structure with strong Chairs. This has, reportedly, already improved the workings of Council and has widespread (although not unanimous) support apart from the Mayors trenchant criticisms post its voting in.

#### **GENERAL STATE OF THE CITY**

54. In and amongst all these issues it would be easy to forget that ICC is actually well placed relative to many Councils. Its basic infrastructure is, reportedly, well maintained (some prominent buildings excepted) and has not incurred the kind of historic under investment that leads to the need for massive and expensive catch up. Debt is not excessive and over the last twenty years or so there has been a significant number of projects completed. These have often been partnerships between the City and other funding bodies (the presence of a successful Licensing Trust for example has enabled significant external funding into what otherwise might be entirely civic funded projects).
55. There is a common view around the Council table that there is a strong executive management team, notwithstanding the view of some that the CEO is the cause of their troubles.
56. Several Councillors, even those who posited that significant intervention may be needed, were at pains to emphasise that "lots of good things happen here".

57. I think that it would also be easy to come to a conclusion that there is a general lack of competence around the Council table. My view is that there are some strong and able Councillors, both relatively new and also some with considerable experience. I do not see this Council makeup as being inherently more or less able than many Councils. In my opinion it is not the general makeup but the leadership void that is the significant deficit. There were comments made to me that there has been a loss in recent trienniums of some long serving Councillors that provided a strong base to Council – either in a traditional governance sense, or in a collegial sense, and that the current team is struggling still to fill that void.
58. My perception however is that the risks that exist for the City lie more in the impact of a continued disharmony in Governance, and the leadership void. It seems clear that management can ensure that the City is not seriously harmed by the leadership void in the short term. The real dangers are:
- a. If that leadership void is captured by a dominant personality that results in destabilisation of that management structure. In my opinion this is currently a strong possibility following the announcement that Cr Clark is to become Deputy Mayor. With minimal or no leadership from the Mayor, the Deputy will have a very direct line engagement with management (and obviously the CEO in particular). There is a high risk for the City that this might end badly without significant change in approach from Cr Clark.
  - b. The leadership void and the potentially destabilising risk of Cr Clark's appointment must (in my view) heighten the risk of the CEO choosing to leave. I have already made clear that there is good evidence to conclude that she is a very capable CEO. Departure at this point would be de-stabilising given the governance difficulties and the fact that half of her Tier one team have just started.
  - c. An equally significant risk is that senior staff start looking elsewhere, and the pool of replacements begins to dry up based on the perception of the governance difficulties. One has to have a concern that, if the current CEO were to leave now, Invercargill might have significant difficulty in attracting a replacement of her calibre. If they were to be successful in this then it is likely that the issues that divide the governance arm (principally around process and the governance/management divide) would likely continue under a new CEO.
  - d. A failure to use strong LTP processes by the governance arm risks a series of ad hoc decisions either being made in contravention of management advice, or in isolation of the consideration of the wider programme. The LTP should underpin this process but that does not appear to me to be so. It is not so much the management understanding and implementation of the LTP process but governances' inability to lock in projects into this structure and understand their inter-relationships.

- e. I do not think there is a good understanding from a small number of Councillors that it is dangerous in a number of ways to be both poacher and game keeper. There is a view from some Councillors that doing their own research and seeking their own advice separately from management, and outside of any formal structure, is perfectly appropriate and part of “holding management to account”. Whilst it would be naive to think this never happens in governance there is a significant risk around it. If you are doing this “research” and using it to make a governance decision then how do you hold yourself to account for the quality or provenance of that research? You cannot independently step back and critique the information that you are bringing to a decision in the same way that you can bring an independent set of eyes to a management paper.
- f. A continuing decline in public confidence that impacts both morale and the commitment to continue by competent Councillors. There is a strong view from a number of Councillors that this is already impacting. A significant number cited a view that the public perception of them is a significant cause of the DIA interest.

## 5. RELEVANCE OF KEY FINDINGS TO TOR

59. I have addressed my TOR from a wide perspective and detailed earlier in my report my interpretation of that scope. It is clear from my findings preceding that:

60. With regard to Section 5 of the code there are, in my opinion, significant issues in each of the three sections of Section 5 of the Code of conduct:

- a) Relationships between members: It is my view that the Council is having difficulty maintaining public confidence. This is evidenced by the views of those interviewed and the increasing public awareness of disharmony (as evidenced for example in numerous press stories including those already referenced in this report). Code of conduct complaints and an inquiry into leaking, combined with numerous Councillors discussing a lack of trust in some of their colleagues, questions to what extent the Council is open and honest. There is very strong evidence that there has become a focus on personalities rather than issues (e.g., I have talked about how Cr Clark may have valid issues but his manner is resulting in the attention being on him rather than what he is saying at times). There is a wide spread view that there has been abuse of meeting procedures such as over use of notices of motion, and re-litigation of issues that had previously been determined.
- b) Relationships with staff have deteriorated primarily due to the approach of a few Councillors (Cr Clark’s behaviours have been canvassed above as the extreme example). There have been negative comments made about

the CEO in particular in public arenas and/or in front of other staff (e.g., some of the issues being canvassed in the code of conduct complaint against Cr Clark). Senior Council employees report feeling disrespected by the tone and approach of some of the “holding to account” as practiced by some councillors.

- c) Relationships with the public did not figure significantly as a concerning aspect in the material before me but it seems clear that there has been a failure to act “in a way that upholds the reputation of the local authority”.

61. Section 11 “creating a supportive and inclusive environment” appears to me to be significantly failing. It is clear from the totality of the feedback that there is not a “culture of mutual trust, respect and tolerance” and the things that might contribute to this in the form of full attendance and engagement around post induction programmes, any form of regular Council assessment, or a commitment to ongoing training are largely absent.

62. These views are significantly reinforced by the IoD survey data. The IoD state that “Over the past twelve years working with clients, we have identified that an overall average rating above 5.7 reflects a strong level of confidence by boards in their governance practice. Alternatively, scores below 5 will require further analysis”. ICC rates on average very poorly. Examples germane to the above include:

- a. Standard of integrity rates 2.9 out of 7
- b. Collective decision-making rates 2.9 out of 7
- c. Chair & CEO relationship rates 2.4 out of 7
- d. Council performance shortfalls rates 2.8 out of 7
- e. Culture as a section averages 4.1 versus an all boards average of 6.1

63. I note that the report of Mr Robertson<sup>4</sup>, in which he summarises the self-assessment of the key issues affecting governance and management, the results of the IoD survey which are indicative of a failing governance structure, and my own conclusions based on interviews, all essentially align.

64. It is also clear that the Values of the Code of Conduct are not being met in a number of ways. In particular:

- a. “Members in order to foster community confidence and trust in their Council, will work together constructively” – it seems clear that there is significant conflict now between, largely, one councillor and many of the others, and that this is impacting the wider culture of Council.
- b. “Members will make decisions on merit, including appointments” – it seems apparent that the Committee structure at the commencement of this triennium was to ensure that those aligned to the Mayor (at least at that time) were put into positions of responsibility, irrespective of experience or qualifications. Councillors who were qualified by dint of both were left on the

side lines. It remains to be seen how Councillors will perceive the appointment of Cr Clark to the role of Deputy Mayor. At the time of my interviews this appointment was not envisaged as Cr Biddle had not yet stood down.

- c. “Members will treat people, including other members, with respect and courtesy...members will respect the impartiality and integrity of officials” – there is a general perception that this has not been the case, from one Councillor in particular, but not solely so.
- d. “Members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office including ... participating in relevant training seminars” – there has been a luke-warm participation to date from some members.
- e. “Leadership: members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of Council’s collective performance” – there has not been any assessment carried out in the memory of current councillors.

68. Finally, I return to the last issue I noted in my discussion of the TOR. Section 14(1)e of the LGA 2002 relates to the requirement for local authorities to work cohesively and harmoniously together. For example, the Three Waters Legislation is clearly envisaging the need for regional co-operation at both a governance and management level. The very real concerns of, at least some, other local Mayors as to Sir Tim’s ability to work with them now is clearly an issue. I think the Council needs to have a very real concern as to how they manage issues like this with a Mayor who is reportedly struggling to understand and contribute to these types of forums and discussions.

In summary it is impossible to escape the general conclusion that this is a Council in trouble because it does not appear to have a shared culture, is struggling to work together cohesively, has a number of Councillors who are at odds with the CEO, and for whom there has been a significant impact from a couple of changes in personnel since the last election. But most of all, it is a Council operating in a leadership void. Whilst a number of longer serving councillors and management have emphasised that the Mayor was never strong on governance management – as opposed to other skills he had – (something I have also commented on several times), he is increasingly unable to deliver on the kind of leadership that might unite a struggling Council, and his difficulty in discharging many of the normal duties of a mayor, is becoming increasingly obvious. This is both distressing to many councillors, but also dangerous as there is no one to lead the changes necessary in the way that a Mayor might normally be expected to do. This is not to say that the Mayor cannot continue to deliver on the more promotional or ceremonial aspects of his role however. Which all begs the question, is there a pathway forward that would give the City, the Council and the DIA the confidence that Invercargill is in good hands.

## 6. PATHWAY FORWARD

65. A further requirement of the TOR was to identify a pathway forward.
66. It is my view that this situation will not improve without some form of intervention. There are a range of external and internal interventions that could be appropriate. At the most extreme end is the dismissal of Council and its replacement by a Commissioner. I am not asked to make any determination as to whether this is an appropriate response, and it lies outside of my TOR. Such a step requires a very high bar for obvious reasons. I can report that there were some Councillors that expressed the view that Commissioners might be the best option. Whether the degree of disharmony and dysfunction has reached the level required that a Minister might consider such intervention I must leave for the DIA/Minister to determine when they have received the City's report (which will include my independent evaluation). I therefore limit my comments to what I believe is within the City's power to achieve using their own initiative.
67. When considering the totality of the findings – the self-assessment by Councillors and management through the IoD surveys, their self-reports to myself in interview, and their own assessment in writing to Mr Bruce Robertson – it is difficult for me to come to any other conclusion than that this is a Council that is struggling with basic governance. The significant question for me is whether this is due to poor representation generally or more specific factors. I am not persuaded that the general mix of Councillors (Mayor, as he currently presents, excluded) is any better or worse than that which would be found in many other Councils.
68. It is my conclusion that the major factor is the leadership void created by a Mayor who is no longer able to do key parts of the job. This might be managed over the remaining two years of the triennium if there is a strong Deputy Mayor, who has a clear understanding of their governance role, and an ability to work inclusively with the rest of Council. Whilst Cr Clark has yet to be able to demonstrate how he will work with his colleagues as Deputy Mayor, I cannot help but worry that the Mayor's lack of insight into what is needed has resulted in him appointing the person least likely to enable a collegial path forward in my view (based on the views of Councillors, but acknowledging that these pre-dated his appointment).
69. I believe that the Council would benefit from the inclusion of at least one, and possibly two, independent appointed "active observers". I use the term "active" advisedly. I have observed a range of Crown Monitor appointments over 20 years active involvement in health governance. These have varied enormously in terms of what value they have added. The determining feature has been the extent to which they see their role as one of "observing and reporting to a Minister" versus "bringing their experience and wisdom to bear on the process and actively working to support".

70. It would also be my view that one of the roles for that observer would be to chair the Chairs meeting. I would envisage that their role would be to act as if they were a Councillor save that they would not have a vote. I have suggested two observers because I believe that the level of discord is high and that there will need to be some support for each other and a division of responsibilities.
71. In my view the appointment of Cr Clark to Deputy Mayor will be a significant risk and I would encourage Council as a whole, and Cr Clark in particular, to consider this and how it might best be resolved. It is my view that a uniting figure is required rather than a polarising one. The challenge will be whether Cr Clark can amend his previous style to recognise what is needed for this Council to develop as a team.
72. On the basis of all the evidence presented to me, I do not believe the Mayor is able to discharge his role in a way that gives confidence to the majority of his colleagues and management. If Council do not have confidence that the Deputy Mayor is leading in an appropriate manner, given the Mayor's difficulties, they have the means to rectify this. The Deputy needs to represent the broad wishes of the majority of Councillors, and be able to work effectively with Management. The wide range of feedback I have been given suggests that Cr Clark has not demonstrated that he can be a unifying member of council in the past. Whether he can be in the future is up to him.
73. I have been implicitly, if not explicitly, critical of Cr Clark's approach in the comments above. However, my comments are based on the overwhelming view of his colleagues that he is a major cause of the discord around the table. I have also said, earlier in my report, that a significant part of what Cr Clark is trying to achieve is not unreasonable in itself. I believe that many of the questions that he seeks answers to, if delivered in a less divisive way, would be of benefit to Council. However, that cuts both ways. If Cr Clark is to have any confidence that this is possible, then improved Chairing, which works with Cr Clark (and others), will be a necessary component. There is going to be a need for a fresh start from more than simply the Deputy Mayor.
74. In this respect I think it is clear that the shift to the two committees of the whole structure has been beneficial and the Chairing has stepped up. Cr Ludlow is an experienced Chair and it appears that he has already commenced trying to work with Cr Clark in a more facilitative manner. Cr Pottinger is seen by his colleagues as also developing as a strong Chair, but may still need to do some work on how he builds a working relationship with the likes of Cr Clark in Council's best interest. I would encourage Council to continue to support this structure and to also invest in training to develop the skills of the two deputy chairs, and other Councillors who might ultimately aspire to Chairing within Council. This could include really good understanding of standing orders, and training role play around how to handle a

range of different scenarios. Chairing is something that experience generally makes you better at and investing in this would be a simple and effective intervention in building confidence in what has been a difficult environment.

75. Something which came up time and time again was the re-litigating of prior decisions and the way in which this was often pinned onto requests for further information, and notices of motion. This is reported as having consistently occurred around a number of “stone in the shoe” issues for Council. These include the Museum, Anderson House, Rugby Park, Esk St., the Water Tower, and the Central City redevelopment. In the normal course of events these would be managed within a Long-Term Plan framework – and at one level they have been. But clearly there is little consensus amongst Councillors as to how these all fit together, the inter-dependencies, the cost implications of various changes, etc. I think Council needs to revisit these issues in a significant workshop framework with independent facilitation, and with the active involvement of the CEO. I am advised that the Chairs and CEO may have already talked about initiating something similar to this which is positive. And I am also aware that work done by Mr Steve Bramley earlier in the year was seen as helpful. I don’t have the detail of the Committee Chairs’ relevant thinking but for me the purpose of this would be to:

- a. Develop a clear understanding of the key issues that Councillors have brought with them to the table. There may well be good sense in Councillors first having an independently facilitated workshop, without management present, to define these in a way that is not surrounded by conflict and meeting procedure argument.
- b. Understand where the support exists, and does not exist, for pursuing these further (not in a decision-making sense but in an understanding sense).
- c. Agree, in a facilitated workshop process, what a work programme might look like to address these issues and how it might be prioritised, what resources might be required, etc. Note that again I am not suggesting that these be decision making forums, which would be quite inappropriate. Rather they would be focused on the processes that might enable Councillors to get to that point with a clear acceptance that they have the material they require to make decisions. This would enable the appropriate canvassing of bullet points d, e and f below.
- d. Develop a prioritisation framework for identified Council projects (what I have termed “stone in the shoe” projects)
- e. Determine the full range of questions and information required from staff and determine a time frame and process for providing those. (This would allow Cr Clark and others to address his full range of concerns outside of the pressure and standing order dominated committee structure).
- f. Establish a framework that would facilitate final decisions being made (in a formal Council meeting). This would clearly need to link back to the LTP and I recognise there is a procedural problem in that it is highly unlikely that this

can all be completed within the time frame for the signing off of the current LTP. However, my sense is that the LTP has continued to have a high-level analysis of projects that have subsequently moved around, and there may be ways of addressing this that can give comfort to auditors without sacrificing progress to procedural sanctity.

76. I fully recognise that this is normally the function of the LTP process but it is clearly failing to engage Councillors around a common understanding. That common understanding does not mean that they will all agree on outcomes but it will better enable options papers to be drafted by staff, fully cognisant of what the issues that they need to address are.
77. There is a need to have a formal Council evaluation assessment on at least an annual basis. The current IoD survey would provide an excellent base line to measure against if repeated. I would also recommend an independently facilitated workshop in a few months that looked to get everyone's informal feedback as to what progress was being made, what issues needed further working on, etc. There are methodologies that can be applied to these that will reduce the risk of them degenerating into slanging sessions. But they will require a commitment from all parties to engage.
78. If the Mayor is going to continue in his role (as he has publicly stated is his intention) then there needs to be a clear set of delegations for the Deputy Mayor that are explicit as to his role. It is clear that the esteem with which the Mayor has been held over many terms has made it very difficult for Councillors to know how to handle the current situation. This means that the delegations need to be clear and wide.
79. It also needs to be clear what roles the Mayor will continue to fulfil. These may be those where he has traditionally focused his energy – promotion and ceremonial primarily. But Council is going to need to address what level of support they are prepared to provide the Mayor in order for him to achieve these. In my view this is something the governance arm needs to determine and come to some agreement on. The Mayor has expressed a view that support he has requested has not been forthcoming. I have had suggested to me a number of areas of possible support. I think that some of those have merit but others fail to adequately recognise the reality of the situation. It is better that those around the table who know him best determine what needs to be provided. It should not be the responsibility of the CEO to determine this
80. The terms of reference refer primarily to the state of governance but it is almost impossible to consider this without considering the interaction between governance and CEO and any areas where the CEO might wish to consider how she could assist future governance strength. I have commented several times on the generally held view as to her competence and success in addressing a range of change matters that

she was charged with. I think there are some things she could focus on which would enhance her role going forward. These include:

- a) I believe that she has been placed in a very difficult position by the leadership void that I have determined exists. This has forced her (in my view) to act more directly in governance, at times, than would normally be required. If a strong external observer, or observers, is delegated to run the Chairs' meetings and be a direct link between Management and Governance then she will be able to be relieved of that need to step in and can leave it to the Chairs and the independent observers.
- b) I think there is good evidence that her appointment reflected a desire from a majority of Councillors to make change. She has demonstrated that she has the skill set to do this successfully. The Council is now at a point where much of that change has been made and the focus needs to be on developing relationships between governance and both herself and a largely new tier one team. This will not be easy in the governance situation I have described and where there are a significant number of unresolved local issues ("the stones in the shoe") which a lot of the governance discord has become focused around. I think this Council is not one that has invested in its self-development and I comment below on Councillors need to do this. In the same way, I would encourage the CEO to engage with a strong mentor, or similar, as a support person. There is an unusual set of difficulties that exist in the ICC, and fraught relationships. Rebuilding these relationships will not be easy and I think it necessary that everyone gets the support they need. I would add that what I am suggesting is not uncommon for CEOs and others in leadership positions.
- c) I would encourage the CEO to focus on how her body language may be being picked up by others. Also, Councillors and staff have commented (and I have also witnessed) that she can be very quick and strong in her responses to challenge or question, when pausing and reflecting might benefit both her and the other participants.
- d) It is recognised by her that she has been forced at times into a more active role in governance than is desirable due to the leadership void. If that can be improved through a collegial approach from a Deputy and some good appointments as observers then she can focus on stepping back again. If a less charged governance environment can be achieved, I would encourage her to work closely with councillors around their information needs. Whilst some of this may appear excessive, and she has some grounds for worry as to how that might have been used at times, I believe that this will assist with resolving some of the strength of feeling from some councillors.
- e) It is inevitable that difficult governance situations leave a CEO very exposed. She should take considerable confidence from the formal CEO assessment process completed last triennium which rated her very highly.

81. Council training. I say this with some reservations as it is clear that there has already been a number of attempts to provide training and some Councillors have not attended and part of the issue anyway is not a failure to understand but a failure to accept. However, I believe the Council needs to invest in its Councillor team to develop their skills in governance including funding them to attend a range of training.
82. Rather than focus on more “governance 101” type training there may be merit in focusing on the culture of Council. This does not have to be an expensive or complex process. A facilitated workshop that focuses on what their common expectations are and how these might manifest themselves in behaviour, may assist with the development of some culture-based ways of interacting rather than rules-based ones. I appreciate that for this to be effective all must be prepared to participate and it is unclear whether that commitment would be there, but it would be worth exploring in my view.
83. The use of the Media to try to influence outcomes by creating public pressure is a matter that many Councillors commented negatively on. It is permissible under Standing Orders for any Councillor to speak to the media as long as they are clear they are speaking on their own behalf and not that of Council. That does not mean however that Councillors could not agree a methodology of operating that would be respectful of process and each other. Something that I have seen work well in another political organisation is an agreement to “give their colleagues the courtesy of hearing their views around the table before speaking to the media”. This allows for all Councillors to hear the views of management and each other before making comments to the media. It does not prevent them from being critical, or expressing a contrary view, but I have seen such an accord take the heat out of a difficult set of relationships and I would encourage the Council to consider this.
84. It may be preferable to have the independent observers appointed before commencing some of these recommendations. I recognise that may not be able to be achieved quickly and the likelihood is that my suggestions will run up against Christmas quickly. However, the workshop approaches I am suggesting could be implemented relatively quickly. The extent to which they affect, or are affected by the LTP creates another timing problem but I think it is better that they are run well than rushed to fit a procedural timeline.

## 7. LAST WORDS

This has been a very difficult report to write, principally because of the huge regard that so many have for the Mayor’s extremely long service to the City. At times people have expressed anxiety about being honest as they are worried about the impact on the Mayor, his mana, and his legacy. I too have had to confront these issues. I recognise that much of

what I have recorded here will be distressing to some, but to pull my punches because of that would have been of little benefit for the City. It represents a current set of views and should not be seen as in any way reflecting on the accomplishments of the Mayor over more than two decades. These, in the view of almost everyone I have interviewed, have been significant.

I want to thank people for their willingness to contribute and for the manner in which they have engaged with me.

Richard Thomson

Independent Evaluator