

# **Kaipara District Council Submission - Kaipara District Council (Validation of Rates and Other Matters) Bill 2013**

## 1 Summary

The Kaipara District Council would like to submit in support of the Kaipara District Council (Validation of Rates and Other Matters) Bill. Passing of the Bill is an important part of the package of measures needed to address the Council's historical failings while building a strong, high performing organisation that can serve the District well in the future.

Problems in Kaipara have been brewing for some years. The community has long suspected that things were not right in the Kaipara District Council. Many of their concerns have proven to be well-founded.

Over the last year the Minister of Local Government has had to intervene. This step was taken with the consent of the elected representatives of the Council. The Council:

- In November 2011 commissioned a review of Mangawhai Community Wastewater Scheme rates by Simpson Grierson who had not provided advice on these matters in the past.
- In February 2012 commissioned Simpson Grierson to review all other rates.
- In February 2012 asked the Auditor-General to undertake an inquiry into matters around the Mangawhai Community Wastewater Plant (MCWWS, also known as EcoCare).
- In June 2012, agreed to the Minister appointing a Review Team to inquire into Council's governance and financial management.
- In August 2012, after receiving the report from the Review Team, agreed that Elected Members be replaced with appointed Commissioners with the expertise needed to address the significant challenges facing the Council.

The four Commissioners are leading a transformation of the Kaipara District Council so that it becomes a high performing organisation able to provide the services that the people of the Kaipara deserve. Much has already been achieved, but there is more to do. While most of the issues can be addressed by the Commissioners, the new Chief Executive and new Executive Team, the Council needs your help in passing this Bill to address historical rating issues.

This Bill validates past rating irregularities. In many cases the irregularities were procedural, for example, the rate as set did not correspond to the description of the rate in the Funding Impact Statement, or, more significantly, the Funding Impact Statement (FIS) did not provide for the rate. In most cases there was some description of the rate elsewhere in an accountability document. A different irregularity occurred in some cases where the rate was not expressed in terms authorised by the Local Government (Rating) Act 2002. In every such case, rates differently expressed could have lawfully achieved substantially the same result. Attachment One includes an explanation of how the rates could have been set to achieve the same revenue and purpose.

The Bill if passed does not impose any extra rates on any person or property. If ratepayers are up-to-date with their rates, it validates the rates they have paid for services already received. It does not set rates for the future. This has been done as an Amendment to the Long Term Plan 2012/2022 and Annual Plan 2013/2014 which was adopted on 25 June 2013. The amended Plan includes a new funding model for MCWWS.

The initial focus of concerns has been on the rates associated with the funding of MCWWS, commencing in the 2008/2009 year. The wider review identified problems with some other rates and for financial years from 2006/2007. The total value of irregular rates in the period from 2006/2007 to 2011/2012 is \$17.013m, of which \$8.571m relates to Mangawhai wastewater ("one-off" capital contributions and operating costs) and \$7.728m relates to wastewater targeted rates for other parts of the District. The other irregular rates are the Mangaturoto Station Village Water Rate in each year, and the Forest Owners Roding Impact Rate in the 2009/2010 and 2010/2011 years. Attachment Two sets out information about the value of the irregular rates by year and by rate.

Other rating matters addressed in the Bill include:

- assessing of the Mangawhai Uniform Annual Charge on properties not connected at the commencement of the relevant financial year;
- inviting and receiving lump sum contributions for capital costs (the Mangawhai Uniform Targeted Rate) without complying with statutory requirements for voluntary election processes;
- failing to include some information required on rates assessments.

The Bill deals with three matters relating to the Local Government Act 2002. The first relates to irregularities with the extension of the Development Contributions Policy from the 2006-2016 Long Term Council Community Plan in the 2009/2019 Long Term Council Community Plan. For removal of any doubt, the Bill seeks to confirm the validity of the 2012/2022 Long Term Plan and the 2010/2011 Annual Report which were adopted later than the legislation mandates.

The Bill does not cover the matters being considered by the Auditor General in her Inquiry into the Mangawhai Community Wastewater Scheme. Nor does it stop Council from pursuing those who may have been negligent in managing the development of the Scheme. If actionable and recoverable losses can be proved against any company or individual, the Commissioners are committed to pursuing them. The Commissioners are also inquiring into other issues as they are discovered.

The Council is aware that some people believe the Bill is premature. The Council disagrees. There is no other viable option for correcting the irregularly set rates. Arrears in current rates payments of some \$2.5 million GST exclusive and not including penalties (or 11% of rates set) are placing stress on the ability of the Council to provide adequate services; the Council's focus is better to be concentrated on making the Council fit for the future. We ask Parliament to assist Kaipara by supporting and passing this Bill.

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 The Council argues that the negative consequences of not pursuing the Bill are far greater than pursuing it. This is particularly so given the impacts on the financial position of the Council and the effects that delay in collecting rates is having on the services provided to residents and ratepayers.
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 While the way the Council managed the development of the Mangawhai Community Wastewater Scheme may have triggered community action, over time it has been revealed that there were systemic issues with the way in which Council has historically run its business that were beyond the ability of Elected Members to address. Commissioners have been appointed to govern the District. The Commissioners are working with the new executive team to transform the Council into a high performing organisation.
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 The Select Committee will hear, as we have heard, a number of concerns that sections of the community have with pursuing a Bill at this time. This section responds to these concerns. Council does not believe that any of them justify a delay in the passing of the Bill.

## Attachments

- **One – Irregular Rates and the means by which the rates could have been set validly**  
 This attachment explains how Council could have set the irregular rates correctly by applying the correct wording in the Funding Impact Statement and Rates Resolution, or through using another available mechanism in the Local Government (Rating) Act 2002.
- **Two – Summary of specified rates (to be validated), including value by year**

## 2 Support for the Bill

The Kaipara District Council would like to submit in support of the Kaipara District Council (Validation of Rates and Other Matters) Bill. The Council wishes to appear in support of its submission.

The Bill seeks to achieve the validation of rates that could have been set in a valid and legal manner, if done with more care. It seeks to validate Rates Assessment Notices and remove any doubt as to the validity of the 2012/2022 Long Term Plan and the 2010/2011 Annual Report which were adopted late. It also seeks to remove any doubt over the validity of the continued application of the 2006 Development Contributions Policy from 2009-2012.

### 2.1 Validating irregularly set rates

The Bill validates five irregular rates.

#### **(i) Mangawhai Uniform Targeted Rate**

This rate imposed an initial capital charge on every property that connected to the MCWWS. This rate was reduced where properties were eligible for a Government subsidy<sup>1</sup>. Because the differential was expressed by reference to the date rating units were created (and therefore were eligible for subsidy) it was set in a way not provided for under the Local Government (Rating) Act 2002. There was also an option to pay by lump sum but the relevant process to authorise this was not followed. There was information about the proposed funding method elsewhere in accountability documents, but it was not included in the Funding Impact Statement (FIS) or when it was (in 2011/2012) did not include sufficient detail.

#### **(ii) Mangawhai Uniform Annual Charge**

This rate was set to cover the operating costs for the Scheme on properties connected or capable of being connected to the MCWWS.

In the 2008/2009 and 2009/2010 years there was no reference to it in the FIS. In the 2010/2011 year the rate was not set in all respects in accordance with the FIS. In 2008/2009 and 2009/2010 the rates were also assessed against properties that were connected during the year rather than from the start of the following year which was a requirement of the rating method chosen.

The Council subsequently refunded to the applicable ratepayers the Mangawhai Uniform Annual Charge that was assessed during the 2008/2009 financial year.

#### **(iii) Wastewater Disposal Rate**

This rate was imposed on those connected or capable of being connected to the wastewater schemes in the District other than Mangawhai. Schemes exist in Dargaville, Te Kopuru, Glinks Gully, Maungaturoto and Kaiwaka.

<sup>1</sup> Council received a grant via the Ministry of Health Sanitary Works Subsidy Scheme which included criteria requiring that it only be applied to properties which existed prior to 24 March 2002.

The manner of expressing these rates in the FIS made it difficult to be clear as to what was precisely intended and there are inconsistencies with the resolutions. The rates assessed against schools used a (discounting) approach which had previously been repealed by the Educational Establishment Amendment Act 2001.

#### **(iv) Maungaturoto, Station Village Water Supply Rate**

This rate was assessed on those properties receiving water supply from the small Maungaturoto Plant.

The rate was set on the basis that the rate per cubic metre (GST inclusive) be \$1.75 but with the condition of a minimum of \$73.25 per reading. While a fixed charge can be imposed each year the Local Government (Rating) Act does not authorise a rate to be set on the basis of a minimum charge for each reading of the meter.

#### **(v) Forest Owners' Rooding Impact Rate**

The Forest Owners Rooding Impact Rate, which was introduced to recognise the additional costs that this activity can create for Council's rooding network was only applied when central government funding from the Regional Development Fund was not available.

The "conditional" nature of the rate was not authorised under the Local Government (Rating) Act although a decision not to set the rate would not be problematic. This rate was only set during the 2009/2010 and 2010/2011 financial years, but the fundamental irregularity is that the FIS did not provide the required particulars of it.

### 2.2 Rates Assessment Notices

The legal review identified that the Council's Rates Assessment Notices failed to meet the statutory requirements of the Local Government (Rating) Act 2002 in that:

- i. They did not clearly state the Schedule 2 matters used to categorise a property,
- ii. They did not clearly state the information used to calculate each targeted rate,
- iii. They did not state that rates records can be inspected.

It could be argued that these deficiencies are minor and do not in themselves make the rates invoice invalid as there was substantial compliance with all the other matters required by section 45. It is desirable, however, to confirm the validity of the Rates Assessment Notices so as to remove any doubt.

### 2.3 Other Matters

#### **2.3.1 Development Contributions from 2009/2012**

Council's Development Contributions Policy was not reviewed in the 2009/2019 Long Term Plan. The Plan referred to the 2006 Policy from the 2006/2016 Long Term Plan. The advice that Council has received is that in the absence of a new policy in the Long Term Plan 2009/2019, the 2006 Policy continued to have effect.

To remove any doubt about the validity of the Policy and funds collected, the Bill contains a clause that validates the continuation of the 2006 Policy over the three years 2009-2012. The value of the Development Contributions collected over those three years is \$1.15 million.

### 2.3.2 2012/2022 Long Term Plan

The Local Government Act 2002 requires local authorities to have a Long Term Plan in place at all times. Because of the late adoption of the 2012/2022 Long Term Plan (LTP) and subsequent late setting of the 2012/2013 rates, Kaipara District Council had a period of two months more or less where there was no Long Term Plan. However, any revenues collected in that period were either from a previous period or separately authorised. Rates were not set for 2012/2013 until the LTP was adopted.

When sending acknowledgement letters to submitters who had indicated that they did not wish to be heard, no reference was made to the fact that they were still able to present a verbal submission should they change their mind. This is in contravention to the requirements of the Local Government Act 2002 Sec 83(1).

While the advice that Council has received is that these matters would be highly unlikely to invalidate the Plan, the Bill contains a clause to confirm its validity despite its late adoption and any failure in the special consultative procedure.

### 2.3.3 2010/2011 Annual Report

The LGA requires that an Annual Report is adopted within four months of the end of the financial year. Because of the length of time it took to resolve a number of historical accounting issues and gain clearance from Audit NZ, the 2010/2011 Annual Report was not adopted until August 2012.

The advice that Council has received indicates that the late adoption is highly unlikely to make the report invalid. However, to remove any doubt, the Bill contains a clause to confirm the validity of the 2010/2011 Annual Report.

## 3 Matters outside the scope of the Bill

### 3.1 MCWWS Development

The Bill does not seek to validate any decisions made on any aspect of the MCWWS except the irregularly set rates and Development Contributions set to fund the costs of the Scheme.

### 3.2 MCWWS Debt

The Bill does not seek to validate the MCWWS debt. It does not need to do so. The debt is a protected transaction, under section 117 of the Local Government Act 2002 and is therefore valid.

It is important that debt remains a protected transaction so as to minimise borrowing costs for the local government sector as a whole. As the debt that Council has is valid and enforceable, it must collect rates to service it. The Bill seeks to validate rates that have been collected in the past to service the debt that Council has incurred in building the MCWWS.

### 3.3. Funding of MCWWS and other water and wastewater schemes in the future

The Bill if passed will validate past rates paid. Future rates to fund wastewater and water supply schemes including MCWWS have been set in accordance with the adopted Long Term Plan 2012/2022 and 2013 Amendment.

Arrangements made in the Long Term Plan Amendment for funding MCWWS are:

- To resume principal repayments of the debt in 2012/2013 after one year where no rate was charged.
- Three distinct communities (current scheme users, future development and district-wide ratepayers) are funding the debt according to allocations set out in the Long Term Plan.
- New targeted rates for those that have not paid an initial capital contribution, or have only paid part of a capital contribution that was set in the past
- The current scheme user community have an option to pay in instalments (ranging from 21 to 30 years) or in one sum in accordance with a new Policy for payment of rates for a subsequent financial year
- A proposed Rates Postponement Policy, if adopted, will allow those with vacant sections to defer payment for up to seven years and for those who have one instalment due next year, to spread it over a number of years.

The amendments to the Long Term Plan and rates set for 2013/2014 have all been reviewed by the Council's lawyers and Deloitte, the appointed auditor acting on behalf of the Auditor-General.

## 4 The decision to pursue a Local Bill

### 4.1 Regaining trust and confidence

Most of the activities needed to turn the Kaipara District Council around are within the capacity of the Commissioners and the Executive Team. The most challenging is regaining the trust and confidence of the people of Kaipara in the Council. This will take time and will not happen evenly across the different communities of the District. The report from the Auditor-General and the Council's response to it will be critical in this healing process.

### 4.2 Responding to problems of the past

Also critical to the healing process is bringing to a conclusion the debate within the community about the need to pay the rates that were not set correctly in the past. If the Council is to be able to provide the services needed by its ratepayers then it must be able to collect the rating revenue it needs to fund those services. Without surety as to whether it will be able to collect the rates set the Council will need to severely restrict the provision of services to the detriment of all ratepayers.

The main matter for which the Council needs assistance from Parliament is in correcting the errors and omissions of the past Council in the matters contained in this Bill. Council does not have the resources or capability to continue on the transformation journey as well as address these issues using other means. Council needs the help of Parliament to address these issues by enacting this Bill.

The scope of the Bill has been intentionally kept to addressing the past. The Long Term Plan is available to address funding issues of the present and future.

### 4.3 Other options considered

#### 4.3.1 Rates Replacement

The Local Government (Rating) Act 2002 Part 5 allows local authorities to turn back the clock and re-set invalid rates, followed by a present-day reconciliation using the special consultative procedure. It avoids the need to make refunds of the irregularly set rates. This procedure is complex and can present significant systems challenges. The full details of this procedure are explained in Attachment One.

The Council has a limited-function rates database system which is good for storing information on rates but is limited in its analysis and reporting functions. It would need to rely on this database in the rates replacement process. There is no confidence that the system would be able to give the information that would be required especially given the number of properties involved and the number of years of irregularities.

The process is also extremely resource hungry. It would require significant legal support, and staff time to implement. Kaipara District Council is a small organisation and is only beginning to build the capability that is required to transform the organisation to a competent high performing Council for the future. The diversion of reliable and competent staff to implement the rates replacement process would take needed resources away from this transformation and increase the risk of future errors.

This option was rejected because of the likelihood of errors, its cost and the significant administrative requirements.

#### 4.3.2 Rates Refund

The Council could chose to refund the irregular rates. It could then set a new rate equivalent to the irregularly set rate to recoup the refunded rates, or cover the loss of revenues through savings or service cuts, or by raising new debt.

The refund would go to the property owner who paid the rates at the time, not the current owner. Therefore this option would not allow the Council to credit the rates against the rating unit or current rates account.

Where properties have changed hands, this is a significant practical and administrative challenge in identifying who paid the actual irregular rate(s) and locate them. It also creates unfairness in that the refund goes to the past owner and the new rates are set on the current owner. If debt or other revenues are used to pay for the refunds, this would place an immense burden on a district that already has a high level of debt.

This option was rejected because of the inequities it would create, its administrative complexity and cost, the significant call on Council resources required and the need to rely on the rates database.

#### 4.3.3 Order in Council

The Local Government Act 2002 (section 261) contains provisions which mean that an Order in Council may be used to validate actions taken after the time required under the Act. This mechanism may have been available to validate the late adoption of the 2010/2011 Annual Report and

2012/2022 Long Term Plan. The Department of Internal Affairs view was that the error in the submissions process (not offering in the letter to submitters that they were still able to be heard when they had already indicated in their submission that they did not wish to be heard) meant that an Order in Council was not an appropriate method in this case. In any event, once a validation bill was identified as necessary, it was considered that it should address all related matters.

## 5 Impact of the Bill on ratepayers

### 5.1 If the Bill is passed

The Bill provides the opportunity for the District to deal with historic issues and move forward with confidence. The Bill only deals with validating the rates imposed in the past. It does not create any new obligations.

The Bill does not change the incidence of rates. It does not change the rates that any ratepayer is required to pay, and neither does it remove the potential to hold to account past decision-makers, advisors, or contractors.

In regard to the irregularly set rates, the Bill proposes to validate the relevant rates as assessed by the Council from 2006 to 2013 and any penalties added to those rates. It treats all rate payments received by the Council as having been lawfully paid, and declares any outstanding rates to be lawfully payable. This will enable the Council to pursue recovery of any part of the rates and penalties for those years that remain unpaid using its normal debt recovery processes.

All of the irregular rate setting decisions made by the Council could have been made in a legal and legitimate way that would have resulted in the same impact on ratepayers. The table attached (Attachment Two) shows how each rate could have been set validly.

The use of validating legislation is only proposed as a last resort. Council has considered all other options and come to the reluctant conclusion that there is no other feasible option.

### 5.2 If the Bill is not passed

#### 5.2.1 Rate Arrears

There are a number of Kaipara ratepayers who are not paying their rates as a protest against the mistakes of the past. While the level of rate arrears has been reducing during the year it remains high. The following table provides an overview of current year rate arrears as at 30 June 2013:

Number of properties in arrears

Roll Group	Paid in Full		Not Paid in Full				Total Rateable Properties #
	#	%	No Payment		Partial Payment		
	#	%	#	%	#	%	#
Dargaville	4,283	85.1%	151	3.0%	596	11.8%	5,030
Kaiwaka	689	74.8%	51	5.5%	181	19.7%	921
Mangawhai	2,681	69.2%	556	14.3%	639	16.5%	3,876
Maungaturoto	911	81.4%	35	3.1%	173	15.5%	1,119
Other Districts	2,144	79.7%	120	4.5%	427	15.9%	2,691

	10,708	78.5%	913	6.7%	2,016	14.8%	13,637
Maori Land Registry	122	44.4%	106	38.5%	47	17.1%	275
<b>Total Rateable Properties</b>	<b>10,830</b>	<b>77.8%</b>	<b>1,019</b>	<b>7.3%</b>	<b>2,063</b>	<b>14.8%</b>	<b>13,912</b>

This table shows the numbers of ratepayers who have paid in full, made no payments and have made partial payments compared with the total number of ratepayers for each roll. Overall, 10,830 ratepayers (77.8%) have paid in full, 1,019 (7.3%) have not paid anything and 1,906 (14.8%) have made partial payments.

Dollar value of arrears (at 30 June 2013, including GST and penalties)

Roll Group	No Payment Received		Partial Payment Received		Total Current Year Rates Overdue	
	\$	%	\$	%	\$	%
Dargaville	258,508	44.9%	316,679	55.1%	575,187	15.0%
Kaiwaka	99,241	34.5%	188,605	65.5%	287,845	7.5%
Mangawhai	1,608,065	75.6%	519,799	24.4%	2,127,865	55.4%
Maungaturoto	63,765	40.6%	93,223	59.4%	156,987	4.1%
Matakohe	15,453	49.1%	15,991	50.9%	31,444	0.8%
Other Districts	197,858	55.2%	160,360	44.8%	358,218	9.3%
	2,242,889	63.4%	1,294,657	36.6%	3,537,546	
Maori Land Registry	286,125	94.0%	18,174	6.0%	304,298	7.9%
<b>Total Current Rates Unpaid</b>	<b>2,529,014</b>	<b>65.8%</b>	<b>1,312,830</b>	<b>34.2%</b>	<b>3,841,844</b>	

<b>Instalments 1-5 + instalment penalties to date</b>	30,787,485
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<b>% Uncollected</b>	12.5%
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This table shows the dollar amounts of those who have made no payments and have made partial payments compared with the total due for each roll. Overall, there is some \$2.5 million outstanding from those who have made no payments and \$1.3 million outstanding from those who have made partial payments. This leaves 12.5% uncollected. Payments of \$26.9 million have been made out of the total due of \$30.8 million for the 2012/2013 year<sup>2</sup>.

Of those who have not paid their rates, just over half do not live in the District, and in Mangawhai this rises to two-thirds.

Area	Number of ratepayers with no payments	% "No Payment" ratepayers with non-Kaipara address
<b>TOTAL</b>	913	52%
<b>Mangawhai</b>	556	66%
<b>Dargaville and surrounds</b>	148	26%
<b>Kaiwaka to Ruawai</b>	141	45%
<b>Other</b>	65	23%

<sup>2</sup> Excluding GST and penalties the figures are 10.7% uncollected, \$2.8 million altogether with payments of \$23.2 million made out of the \$26 million total due.

To mitigate some of the financial costs of this level of rate arrears the Commissioners have instructed officers to make savings and defer expenditure so that debt remains within its current level.

- Projects, primarily in the roading and community development areas, have been deferred to fund the decreases in revenue and the additional expenses. Overall \$2.3 million has been deferred in the roading budget, which in turn means that subsidy income of \$1.2 million will not be received, and \$0.3 million has been deferred in the community assistance area. The \$2.6 million net impact of the deferred projects compares with the increase in rate arrears of \$2.6 million.
- The current uncertainty has high process costs and risks associated with it. The actions taken to manage the potential impacts can only be sustained for a short period if infrastructure deficits and long term service level reductions are to be avoided. The Council cannot move forward and catch up on deferred expenditure needed to maintain its fixed assets until it has certainty as to its ability to collect outstanding rates.

### 5.2.2 Council debt levels

Should the value of irregularly set rates be refunded, it would add \$17 million onto an already high level of debt for Council, increase the level of rating by 5.3% for debt servicing costs alone, and the net debt ratio to revenue would increase from 190% to 205%.

## 6 The path to this point

### 6.1 Communities seek a review

The way decisions were made and the increasing costs to build a MCWWS triggered community concerns as far back as 2009.

Representatives from the Mangawhai community started expressing concerns, including those around the scope, consultation and funding of the wastewater scheme. The Mangawhai Ratepayers and Residents Association approached both the Ombudsman and the Office of the Auditor-General in 2009 to ask for their review of the Council in regard to MCWWS. However, no investigations were undertaken.

Following the consideration of further ratepayer concerns, in August 2010, the Office of the Auditor-General recommended that the Council commission an independent "first principles" review of its approach to the wastewater rate for 2010/2011 against the requirements of the Local Government (Rating) Act 2002 and the Local Government Act 2002.

Some legal advice was sought by the Council but they did not initiate the comprehensive review recommended by the Office of the Auditor-General.

### 6.2 Council commissions a legal review of rates

In October 2011, Council resolved to undertake a review of MCWWS rating issues using Simpson Grierson. This review concluded that the rates for MCWWS were seriously irregular and highly likely to be invalidated if challenged. The errors identified tended to indicate that there was a more systemic

problem with Council's rate setting practices, and a review of all rates and rates assessment noticed was commissioned.

From this second review Simpson Grierson identified three more rates that were to varying degrees also irregular. The main issue was a failure to make provision or sufficiently clear provision in the FIS.

### 6.3 Council requests Auditor-General Inquiry

In addition to the rating irregularities and concerns being raised by the community, the new Chief Executive appointed in late 2011 had also begun to identify a number of more widespread concerns about the organisation, its financial position and the way in which it had been operating for a number of years. This led to a report to Council in February 2012 recommending that Council invite the Auditor-General to conduct an Inquiry into the way in which Council had managed the MCWWS and other matters. Council agreed to the Chief Executive's recommendations and the OAG Inquiry was launched in March 2012.

### 6.4 The Minister appoints a Review Team

In June 2012, at the request of the Kaipara District Council, the Minister of Local Government appointed a review team to inquire into the Council's governance processes and financial management. Their final report and recommendations was received in August 2012. The Review Team made 23 recommendations for improving practice covering governance practices, community engagement, financial management, and service delivery/asset management.

The conclusions reached at that time were:

- i. The challenges facing the Kaipara District Council were beyond the current Councillors' ability to solve,
- ii. The organisation's lack of appropriate capability compounded the issues,
- iii. The Council requires a shift in culture that will only happen with strong leadership,
- iv. The Council's financial position is weak, with high debt, significant contingent liabilities and reduced cashflow and the Long Term Plan needs to be amended to establish a more sustainable and equitable funding base for the District,
- v. The Council should seek legal advice on the perceived failures of the auditors.

The Review Team recommended that the elected representatives be replaced by appointed commissioners. The Council agreed and Commissioners were appointed in September 2012.

### 6.5 Commissioners are appointed

Commissioners were appointed by the Minister of Local Government in September 2012 to govern the Kaipara District Council.

## 6.6 Commissioners work to address the challenges

### 6.6.1 The problems identified

The problem of irregularly set rates is just one of many problems facing the Council. While the most widely publicised problems relate to the MCWWS, this is the tip of the iceberg of the issues that have been identified. Most problems have originated from a history of systemic inadequate performance of the organisation.

### 6.6.2 The progress to date

The Commissioners only have until October 2015 (or at any time of future Northland local authority reorganisation, should this eventuate) to finish the work in transforming the Council into a high performing organisation. With the new Chief Executive (appointed in November 2011) and a new Executive Team there are many improvements already instituted or underway.

- i. **Governance** – The Council’s governance structures have been restructured with new Committees and delegations in place. Work is also well advanced with the implementation of new governance policies and processes. Importantly, all decisions are now made at public meetings, not workshops.
- ii. **Organisation capability** - The organisation has been restructured and a number of new staff employed to create a more capable organisation that relies significantly less on consultants and contractors. An ongoing organisational development and improvement programme is also being put in place to ensure that the Council has the systems, processes and culture needed to be a high performing organisation.
- iii. **Financial reporting and management** – Council has now changed to full accrual accounting. Monthly and quarterly reporting is now mandatory and includes financial management reporting that allows proper scrutiny of the organisation’s financial position and performance. The Council works within a cap put on debt at current and decreasing levels. The Council’s treasury management processes have been restructured including its debt and interest rate management practices so that they are in keeping with good practice.
- iv. **A balanced budget** – The Long Term Plan has been amended to include a new financial strategy and practice from 01 July 2013 that will result in a balanced budget with revenue matching expenditure. Work is also well under way with development of the 2015 Long Term Plan including the development of new Asset Management Plans and Activity Plans.
- v. **Risk management** - A new Risk Management Policy and practices have been implemented. These are overseen by a new Audit and Risk Committee that has the responsibility for ensuring Council has sound financial and risk management practices.
- vi. **Service Delivery Review** – A review of service delivery methods and existing contracts has been completed. New contracts are in place or in process for all major services. Council officers have an increased role in contract management and monitoring which means that intellectual property relating to Council infrastructure is now being retained in-house.

- vii. **Procurement** - Proper procurement policies and practices and sensitive expenditure policies and practices are now in place to ensure best practice and legal compliance.
- viii. **Community engagement** – A Communications Plan has been approved and its implementation has been started. This increases the communications between Council and the people of Kaipara in a planned and transparent way. One Commissioner is almost fulltime in his two days in Kaipara, meeting with community groups and individuals. Commissioners have a portfolio they are responsible for and they meet with related stakeholders on a regular basis.

These are just examples of the transformation the Kaipara District Council is undergoing to create a high performing organisation by October 2015.

## 7 Concerns with the Bill expressed by some in the Community

### 7.1 Council's financial position

Some members of the community have raised concerns about Council's financial position and whether it is a going concern.

The decisions made through the 2012/2022 Long Term Plan and its Amendment in 2013, which include significant efficiency gains and an increase in rating levels, mean that Council is now in a stable financial position.

While Council's level of debt is high, it is still well within accepted industry debt levels. The following table provides an overview of key financial ratios used to measure local authority debt comparing Kaipara District Council's external debt with other local authorities<sup>3</sup>:

Council	Debt to Revenue Ratio	Interest % of Rates	Interest % of Total Revenue
<b>Kaipara District Council</b>	209.92% <sup>4</sup>	19.50%	10.13%
<b>Far North District Council</b>	95.56%	9.20%	6.05%
<b>Hamilton City Council</b>	177.84%	19.35%	10.63%
<b>Kapiti Coast District Council</b>	193.95%	11.37%	8.38%
<b>Tauranga City Council</b>	250.91%	25.63%	15.25%
<b>Taupo District Council</b>	229.99%	19.86%	13.23%
<b>Western Bay of Plenty District Council</b>	196.76%	19.98%	12.12%
<b>Whangarei District Council</b>	135.71%	12.15%	7.17%
<b>LGFA Limits<sup>5</sup></b>	<175%	<25%	<20%

<sup>3</sup> Data sourced from 2011/2012 annual Reports.

<sup>4</sup> The current ratio at 30 June 2013 is approximately 190%.

<sup>5</sup> Limits before requiring Board approval

## 7.2 A Validation Bill is premature

Some parts of the community would like to see the Council work with them to resolve issues before resorting to a validation bill.

In July 2012 the Council agreed to work with a Community Focus Group to look at the options for dealing with the irregularities. The Chief Executive met with the Mangawhai Ratepayers and Residents Association (MRRA) several times in an attempt to agree a process through which both the Council and the MRRA could work together. This initiative failed.

The Commissioners met with the MRRA Executive three times, in September, November and December 2012. They have met on a number of other times with individual members of the Executive. At the formal meetings, the MRRA presented the Commissioners with a list of demands, some of which the Commissioners have no control over. The MRRA has acknowledged that a Bill will be necessary, but has been reluctant to engage on the construction of the Bill. They encourage their membership, through their regular email newsletters, not to pay rates due for the services that their members are using. They have since turned to the Courts. The Commissioners meet regularly with individuals and groups to hear a wider selection of views on the matters they are dealing with.

In parallel with the above meetings, the Commissioners considered in depth the issues and alternatives available to address the irregularities. The conclusion was reached that there was no realistic alternative to a validation bill. There was also a need for speed in addressing the issues which existed given the financial impacts that the non-payment of rates was having on the organisation and the divisions caused in the community.

The decision to use a validation bill was made by a Council resolution in an open meeting in December 2012 and confirmed by a Council resolution in February 2013. The options advice from Simpson Grierson was attached to the Order Paper for the item on the December 2012 Council agenda, and the Order Paper included an analysis of the options. A draft of the Bill (as at that time) was included in the agenda of the February Council meeting. The decision to use a validation bill was included in the proposed Annual Plan for consultation released in March 2013 for submissions. One hundred and thirteen submissions against the Bill were received, almost all using the same words, as a pro-forma submission from the MRRA.

## 7.3 Accountability

Where there is evidence of culpability on the part of third parties that can be presented to regulatory authorities or in Court with confidence that resultant losses are recoverable, the Commissioners intend to do so. Clause 14 of the Bill is directed to this point:

***“Council’s right to bring proceedings unaffected***

*To avoid doubt, nothing in this Act affects the right of the Council to bring any proceedings against any person arising out of, or in connection with, any actions or omissions validated by this Act.”*

#### 7.4 Timing of the Bill in relation to the Judicial Review

Some ratepayers will argue that the Bill should not proceed while the MRRA has judicial review proceedings before the High Court.

Council challenges some of the claims in the case made by the MRRA in their Application for a Judicial Review, and has applied to strike out some claims. On matters relating to the 2010/2011 Annual Report and the 2012/2022 Long Term Plan, Council has legal advice that it is highly unlikely that timing of adoption of these matters affect the validity of the rates resolution and subsequent rates collection. However, these are included in the Bill to remove any doubt about their validity, which has been raised by some as a basis for non-payment of 2012/2013 and subsequent rates.

In relation to matters such as the irregularly set rates, Council has already acknowledged that there are issues and is looking to address these through this Bill. The wording of the initial drafting of the Bill was used extensively by the MRRA in the development of their proceedings. The relief sought by the MRRA is extreme in that it seeks a refund of all rates (and not just those with irregularities) set between 2006 and the present, and an order that Council has no ability to set a rate to repay the MCWWS debt. Such relief would place Council in an untenable financial position if granted and therefore must necessarily be defended, at a high cost to ratepayers of the District.

In all the circumstances, and particularly having regard to the interests of the Kaipara community, the Commissioners urge the Select Committee to progress this Bill despite the proceedings brought by the MRRA.

#### 7.5 Penalties charged on arrears of irregularly set rates

Some people would like penalties on the rates to be validated removed from the Bill.

The majority of arrears are related to 2012/2013. According to Council's legal advice, there is no plausible argument that these rates are irregularly set. The late adoption of the Long Term Plan does not, in the view of our advisors, constitute a reason for the setting of rates to be invalid or illegal (see 6.4. of this submission). Others have paid their rates, and all ratepayers continue to receive services whether they have paid or not. Those who have paid are funding the services being used by those who have not. This is unfair.

On a number of occasions the Council has advised those withholding rates that late payment penalties are being applied.

A number of capital projects have been deferred to make the \$2.6 million of savings required to manage the reduction in revenue from rates arrears. When these projects proceed, their cost will have risen with the rate of inflation. Penalties will go some way to funding the additional costs from the delay in payment, legal fees and funding the artificially high debt levels.

#### Attachments

**Attachment One** – Irregular Rates table and the means by which the rates could have been set validly.

**Attachment Two** – Summary of specified rates (to be validated), including value by year.