

Report to:	Council	File #
Date:	26 August 2020	
Subject:	PGF Governance Group – Memorandum of Understanding and Terms of Reference, and Remuneration of Members	
Prepared by:	M Dickson, Senior Manager Corporate Services	
Input sought from:	PGF Governance Group	
Authorised by:	A Oosthuizen, Chief Executive	

1 PURPOSE

The Council, over the course of separate meetings in April and May this year, established the membership of the PGF Governance Group, to oversee the PGF funded projects for Wakatu Quay, and also some high level Terms Of Reference for that group.

As was anticipated, further detail of the operations of the Governance Group, and decision-making responsibilities between the Group and the Council, is required. This is to enable the efficient operation of the projects.

In recent weeks Council staff have provided draft documents for the Governance Group to consider. The Governance Group now seeks Councils approval to those documents, being a Memorandum of Understanding between Council and the Governance Group, and a more detailed Terms of Reference. In addition, the Group have also been discussing remuneration for its members, and propose a per meeting fee, for approval by Council.

Attachments:

- Draft Memorandum of Understanding between Council and the PGF Governance Group
- Draft Terms of Reference for the PGF Governance Group

2 SUMMARY

In order to build on the initial work of both Council, and the PGF Governance Group, following its initial work and considerations, it is now time to agree more detail of the respective responsibilities, of Council and the Governance Group.

The suggested documents for Council approval are attached. The Memorandum of Understanding is intended to be a simple overarching agreement between Council and the Governance group, with detail contained in an expanded Terms of Reference.

Without limiting Council's review of the attached, attention is brought to section 4 of the Terms of Reference which attempts to set out the decisions which rest with Council, and those that can be made by the Governance Group. It is important that these are agreed in advance to ensure efficient operations of the projects.

The documents also:

- recognise that as the projects develop, further clarity may be required, and attempt to provide processes for that
- provide processes intended to allow project payments to be made efficiently, bearing in mind those payments will require staff approvals and processing.

(Note that the high level terms of reference wording from Council in May are contained in italics within the now more detailed Terms of Reference.

The Governance Group has also been discussing remuneration. The group resolved as follows, and seeks Council's approval:

"It was proposed that each member, at their discretion, is entitled to receive remuneration on a per meeting basis for their time which includes time spent on related work. The Governance Group is proposing these actions in setting an appropriate fee of \$200 per meeting for ratification by Council."

Note this remuneration would come from the PGF funding for the programme.

3 RECOMMENDATION

That the Council:

- 3.1 Approves the Memorandum of Understanding between the Council and the PGF Governance Group
- 3.2 Approves the Terms of Reference of the PGF Governance Group
- 3.3 Approve that each member of the PGF Governance Group, at their discretion, is entitled to receive remuneration on a per meeting basis (to include all related work and preparation), at a rate of \$200 per meeting attended – to be paid from PGF funding.



MEMORANDUM OF UNDERSTANDING

**BETWEEN THE KAIKŌURA MARINE DEVELOPMENT GOVERNANCE
GROUP AND THE KAIKŌURA DISTRICT COUNCIL**

1. BACKGROUND

The Kaikōura Marine Development Governance Group (the Governance Group), established by the Kaikoura District Council, has been tasked by the Council with responsibility for the governance and oversight of two Provincial Growth Fund (PGF) approved projects; the development of Wakatu Quay, and the South Bay feasibility study.

Together these two projects comprise the Kaikōura Marine Development Programme. The Council entered into two agreements with MBIE covering the Programme. These agreements set out the terms and conditions of the PGF funding, as between MBIE and the Council.

In April and May 2020, the Council approved both high level terms of reference for the Governance Group, and its initial membership.

2. INTENT AND PURPOSE

The purpose of this MOU is to record the respective responsibilities of the Governance Group and the Council, the way in which they will operate in relation to the Programme, and their respective decision-making responsibilities.

The responsibility to MBIE for the obligations and commitments in the PGF Agreements lie with Council, as do all the risks of the Programme.

The parties' intention is that the Governance Group be able to provide the oversight and governance for the Programme whilst providing assurance to Council that its obligations under the PGF Agreements will be met, and the deliverables in, and outcomes intended by, the agreements are successfully completed.

Those purposes are intended to be achieved by setting out decisions which are retained by Council, responsibilities and decision making of the Governance Group, and mechanisms intended to assist the efficient delivery of the projects.

Recognising that through the course of the Programme differing circumstances and unforeseen matters will arise, this MOU also provides a mechanism for dealing with those as they arise.

3. STRUCTURE OF THE MOU

This MOU sets out the high level principles and responsibilities between the parties, intended to assist the success of the Programme. It also (Appendix A) provides a formal Terms of Reference for the Governance Group. This replaces the initial high level terms of reference approved by Council in May 2020, providing more detail so that both parties are clear on their respective roles and responsibilities.

The intention is that substantive matters (and detail) are contained in the Terms of Reference

4. AGREEMENT

The Council and the Governance Group both wish to make the Programme outcomes as successful as possible. To this end they will work positively and co-operatively together in good faith, both to achieve those successful outcomes and meet the Council's responsibilities under the PGF Agreements.

The Governance Group shall operate in accordance with its Terms of Reference as attached.

The Council shall allow the Governance Group to provide the oversight and governance of the Programme as set out in the Terms of Reference.

Recognising that through the course of the Programme differing circumstances and unforeseen matters will arise, or where clarification is required, these shall be referred to the Chair of the Governance Group, and the Mayor and the CEO of the Council, in the first instance. They shall attempt to solve the matter in the first instance, and only revert to the full Council where they are unable to reach a resolution.

5. PERFORMANCE AND REVIEW OF TERM

There will be a quarterly meeting between the Chair: Kaikōura Marine Development Governance Group and the Mayor and Chief Executive Kaikōura District Council to assess progress and success with reference to the PGF project's objectives.

Signed on this _____ day of _____ 2020



**KAIKOURA MARINE DEVELOPMENT GOVERNANCE GROUP
TERMS OF REFERENCE**

1. BACKGROUND

The Kaikōura Marine Development Governance Group (the Governance Group), established by the Kaikoura District Council, has been tasked by the Council with responsibility for the governance and oversight of two Provincial Growth Fund (PGF) approved projects; the development of Wakatu Quay, and the South Bay feasibility study.

Together these two projects comprise the Kaikōura Marine Development Programme.

The Council has entered into two agreements with MBIE covering the Programme. These agreements set out the terms and conditions of the PGF funding, as between MBIE and the Council.

In April and May 2020, the Council approved both high level terms of reference for the Governance Group, and its initial membership.

2. PURPOSE

This document sets out the Terms of Reference (TOR) for the Kaikōura Marine Development Governance Group (the Governance Group).

This Terms of Reference provides more detailed clarity on the respective roles and responsibilities for both Council and the Governance Group for the delivery of the Programme. The Terms of Reference have been set pursuant to a Memorandum of Understanding between the Council and the Governance Group dated [Insert Date].

As set out in the Memorandum of Understanding, through regular reporting and progress with the Programme, or amended requirements from MBIE, changes to the Terms of Reference may be made as necessary to ensure the successful delivery of the Programme.

Included within the Terms of Reference are the respective decision-making responsibilities of both Council and the Governance Group, as envisaged at the commencement of the programme. These will be subject to regular review, including at key points within the Programme, to ensure they continue to:

- Provide the Governance Group with sufficient certainty to progress the Programme
- Ensure that Council is able to deliver on its contractual commitments with MBIE
- Assist the Programme to optimise the benefits to Kaikoura

3. PURPOSE AND OBJECTIVES OF THE GOVERNANCE GROUP

The high level terms of reference of the Kaikōura Marine Development Governance Group as initially approved by Council were:

- *Management of the project teams for both Wakatu Quay and South Bay Feasibility*
- *Oversight of Wakatu Quay and South Bay feasibility*
- *Development of concept design for Wakatu Quay Project*
- *Development of detailed design for the Wakatu Quay project*
- *Development of economic/commercial model for both projects*
- *Funding and Financial governance for both projects*
- *Oversight of reporting to the Provincial Growth unit*
- *Stakeholder engagement and management*
- *Oversight of communications for both projects*
- *Independent commercial governance and oversight of both project*

- *Management of project risks and risk mitigation strategy*
- *Accountability to Council and MBIE.*

As these were high level, and at the inception of the Programme, any clarification relating to these matters can be dealt with between the Mayor, Council CEO, and the Chair of the Governance Group as they arise – only requiring formal Council approval if deemed necessary by the Mayor and CEO.

4. DELEGATIONS AND DECISION MAKING OF THE GOVERNANCE GROUP

To enable the Governance Group to oversee and govern the Programme, whilst ensuring that the obligations of Council, including under the PGF Agreements are met, as well as the efficient operation of the projects:

- Council has identified some decision points that it reserves for itself (*following recommendations from the Governance Group*)
- Decisions not specifically reserved for Council will be a matter for the Governance Group
- As the Programme develops, matters may be identified as ones where decision making responsibility is unclear or are significant and therefore may require formal Council approval. These will be subject to discussion between the parties
- In order to allow for the efficient delivery of the projects mechanisms for approvals and payments have been agreed – again these can be subject to review as the programme develops
- Other than as set out in these Terms of Reference (or as otherwise agreed) the Governance Group shall be responsible for the delivery of the Programme, including the Council's obligations under the PGF Agreements (noting that Council ultimately remains responsible to MBIE under those agreements).

(The identified decision making does not in any way affect the obligations under the Council's agreements with MBIE, to obtain the approvals of MBIE as required under those agreements).

Decisions requiring Council Approval

Following recommendations from the Governance Group:

- Formal appointment of key Project Managers
- Approval of the overall work programmes for both projects
- Approval of the overall budgets for each phase of the projects – as described in the MBIE agreements
- Remuneration, if any, of Governance Group members
- Approve of:
 - The co-funding for the projects
 - Appointment of demolition contractor
 - Wakatu Quay Development Concept
 - Wakatu Quay Concept Design
 - Wakatu Quay Detailed Design
 - Wakatu Quay Programme of Works for the Construction Plan and the appointment of the main contractor
 - South Bay draft feasibility study

- Any general engagement with the wider community, whether formal consultation or wide-ranging engagement (for clarification the Governance group may, and is expected to, engage with a wide range of stakeholders). A Communications and Engagement Plan is suggested for the Governance Group to develop, which will provide further clarification in the area
- the commercial and investment models for both Wakatu Quay and South Bay
- End of project reporting to MBIE

Formal Reporting to MBIE

The formal reporting to MBIE required under the PGF agreements shall be the responsibility of the Governance Group. To ensure the obligations of Council are met whilst maintaining the effectiveness of the Programme:

- The reporting to MBIE under section 13 and the reporting on completion of the key deliverables and milestones under section 7 of the Key Details of the agreements shall be provided by the Governance Group to the Mayor and CEO of Council for final approval
- Payment Requests to MBIE, as required by the agreements shall be provided to the Mayor and CEO of Council, in order that these may be duly authorised through the Council CEO for submission to MBIE

Project payments by Council

Following necessary MBIE approvals, Council payments from the project budgets to contractors and suppliers will:

- Be supplied and recommended by the Governance Group to the Mayor and CEO
- Be duly processed by Council as authorised by the CO or other staff with appropriate delegation

(Noting that Council approved delegations will be put in place to allow for the PGF Agreement payments to be approved by staff, without Council approval in each case)

5. GOVERNANCE GROUP REPORTING TO COUNCIL

The Governance Group shall report monthly to Council and the CEO on progress with the Programme. Reporting shall include:

- assurance over the projects' progress
- performance and report progress, including:
 - Risks and issues identifying any potential concerns or issues that impact budget or time
 - Progress against budgets
 - Progress against timelines and agreed milestones with PGF
 - Areas requiring engagement with the community
 - Matters requiring Council assistance or advocacy
 - Legal matters
 - Matters that may trigger Council's significance and engagement policy

6. GOVERNANCE GROUP UNDERTAKINGS

Members of the Steering Group undertake to:

- work in a collaborative ‘no surprises’ way, and strive for a unanimous agreement on outcomes for projects and related matters in order to achieve a ‘best for project’ outcome
- actively resolve issues, ensure their respective organisations are committed to supporting the role of the Group
- ensure that public information and communications enable consistent and timely information on progress and roles and responsibilities.

7. MEMBERSHIP [& VOTING RIGHTS]

The initial membership of the Kaikōura Marine Development Governance Group as resolved by Council are:

- Craig Mackle – Mayor Kaikōura District Council
- Councillor Neil Pablecheque - Kaikōura District Council
- Warren Gillbertson – PDU, MBIE
- Ata Kahu, Chair Te Rūnanga o Kaikōura
- Darran Kerei-Keepa- Chair Te Rūnanga o Kaikōura Ltd
- Independent:
 - Danny Smith
 - Chris Sturgeon
 - Joe Van Rooyen
 - Neroli Gold
 - Lynette Buurman
 - Gerald Nolan

The CEO, Senior Manager: Corporate Services and Operations will also be in attendance in support of these two projects, as required.

It is envisaged as the PGF projects progress that the Kaikōura Marine Development Governance Group will grow as experienced individuals or investors are identified.

8. CHAIRPERSON

The Chair of the Kaikōura Marine Development Governance Group is Danny Smith.

9. APOLOGIES, SUBSTITUTES, QUORUM, DECISIONS

- Apologies are to be advised to the Chair prior to the meeting as required
- No substitutes are allowed
- A quorum of six (6) members is required for decisions to be made and a representative from the Kaikōura District Council must be included. If a Council representative is not available on the day then voting should occur via email to ensure Council representatives is included in any voting
- If there are no decisions being sought, then the quorum is not applicable
- The Group shall work to make decisions by consensus. However, decisions can be made by way of majority. Where 75% approval is not obtained, that fact shall be advised to the Mayor and CEO of Council.

10. MANAGEMENT OF CONFLICTS OF INTEREST ON THE KAIKŌURA MARINE DEVELOPMENT GOVERNANCE GROUP

To be inserted Conflicts are anticipated as part of a successful project, and these will be managed through the Chair of the Governance Group, taking advice, and involving others as appropriate.

11. MEETINGS

- The Kaikōura Marine Development Governance Group will operate according to these Terms of Reference
- Agenda papers shall be provided to the Kaikōura Marine Development Governance Group members a minimum of [two full working days] before each meeting. Late papers are received at the discretion of the Chair
- The group is responsible for formally recording discussions, decisions and actions and sending minutes to members within [three working days] after the meeting
- Urgent papers will be received at the discretion of the Chair

12. MEETING DATES / TIMES / VENUES

The Kaikōura Marine Development Governance Group will meet at least once a month with additional meetings arranged as required by the Chair. The frequency and length of the meetings will be assessed by the members and amended by the Chair as required. Meetings will be held at Kaikōura District Council, 96 West End, or as arranged by the Chair.

13. TERM AND REVIEW

The Term of the Kaikōura Marine Development Governance Group shall be [xxx].
The effectiveness and membership of the Kaikōura Marine Development Governance Group will be reviewed after [xxx] months in collaboration with Council [detail?]

14. CONFIDENTIALITY

Each party must keep the other party's Confidential Information in confidence, and must use or disclose that Confidential Information only to the extent necessary to perform its obligations,