



Local Government Commission

Mana Kāwanatanga ā Rohe

Golden Bay local board application: amended investigation process

June 2020

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Purpose of document

In accordance with new legislative requirements, this document sets out the process the Local Government Commission intends undertaking to investigate the reorganisation application it has received for establishment of a Golden Bay local board in Tasman District.

Background

On 31 October 2018, the Local Government Commission received an application for the establishment of a local board in the Golden Bay Ward of Tasman District which would replace the existing Golden Bay Community Board.

On 29 November 2018, the Commission decided, under clause 6 of Schedule 3 of the Local Government Act 2002, to assess the application.

Following a request to delay the next required step of notifying the Commission's decision and inviting alternative applications, the Commission undertook this step on 8 May 2019. It received five responses to this invitation by the deadline of 10 June 2019.

On 22 October 2019, legislation to amend the local government reorganisation process as set out in Schedule 3 of the Local Government Act came into effect. This legislation includes transitional provisions relating to reorganisation applications that the Commission has received and decided to assess but, in respect of which, has not decided whether to issue a draft proposal. This was the case with the Golden Bay local board application.

The new legislation requires the Commission to undertake an investigation in relation to the application. But before commencing this investigation, the Commission must prepare a document setting out the process it intends following to carry out the investigation.

Before adopting this process document, the Commission was required to consult the affected local authorities (Tasman District Council) and affected iwi and hapū. Accordingly, the Commission arranged hui with affected iwi in October 2019 to discuss its proposed process and sought feedback on a draft document from Tasman District Council. This feedback was received on 12 December 2019.

Amendment to investigation process document

Clause 7(5) of Schedule 3 of the Local Government Act 2002 requires the Commission to amend an investigation process document if there is a significant departure from the process outlined in the document.

In light of the Covid-19 emergency that was declared in New Zealand in 2020, and in particular the resulting lockdown period that occurred, the timetable set out in this document involving public consultation has had to be adjusted. At its meeting on 18 June 2020, the Commission agreed that the consultation period in relation to the Golden Bay local board investigation will now run from 6 July to 14 August 2020.

The Commission considers the necessary amendment to the timetable is a significant departure and has amended this document accordingly. The amended timetable is set out on page 6. No other substantive changes to the document have been made.

Principles for undertaking investigation

The legislation sets out principles the Commission must have regard to when undertaking a reorganisation investigation. These principles are set out in the *Appendix*.

In relation to the principles and the proposed investigation into the Golden Bay local board application, the Commission notes:

- a) Information on the issues to be investigated, the process to be followed and opportunities for public input will be available when this document is published in 2020. This timing is considered appropriate given the number of meetings with interested parties that have taken place over the last year and the publicity that has already occurred in relation to the application.
- b) The process set out in this document is considered to be in proportion to the scale, scope and potential impact of the issues identified in the original application. The application was limited to Golden Bay with the key issue being Golden Bay's relationship with the rest of the district and Richmond particularly. Subsequently, the invitation for alternative applications attracted only one actual 'alternative' (a Motueka local board suggested by two respondents but not supported by another).
- c) The Commission already holds information on a number of issues relevant to the Golden Bay application process. This follows receipt of the original detailed application together with a petition and other indications of community support. Subsequently, the Commission received responses to its invitation for alternative applications including a detailed response from Tasman District Council and the Commission has met interested parties (the applicant, the council and Golden Bay Community Board) on two separate occasions.
- d) The Commission has initiated a process aimed at recognising the nature and extent of the interests of affected iwi or hapū in the outcome of the investigation. This includes any interests arising out of Treaty of Waitangi settlements or obligations. The Commission will carefully consider all the feedback received as it undertakes its investigation.

- e) The Commission intends providing the opportunity for those who so wish, to present their views on the Golden Bay local board application to the Commission. As set out in this document, this will be by way of an invitation for submissions on a specific ‘Golden Bay local board proposal’ and then the holding of hearings for those who wish to present their views in person to the Commission. The Commission will carefully consider all the feedback received during this process.
- f) The Commission considers the extent and nature of the public and stakeholder engagement proposed in this document appropriately reflects the degree of public interest in the Golden Bay local board application demonstrated to date and likely public interest in any reorganisation plan that may result. To date, the public interest has been largely confined to Golden Bay with some limited interest from Motueka. While the proposal will only be for a Golden Bay local board, the consultation will be across Tasman District and the Commission will carefully consider any input received supporting establishment of local boards elsewhere in the district. The proposed process is also seen as an appropriate balance of costs and benefits of different processes given the nature of the application and the responses received.

Matters to be investigated

After considering the principles in relation to the Golden Bay local board application, the Commission believes the options available to it are limited to:

- a) the establishment of one or more local boards in Tasman District, or
- b) establishment of no local boards in Tasman District i.e. retention of status quo arrangements.

The limited range of options also results from the legislative definition of the “affected area” in relation to the Golden Bay local board application (addressed next).

The Commission notes that in the event it determines status quo arrangements should be retained, it could consider making recommendations to Tasman District Council about these arrangements. These could include, for example, the scope of delegations to the existing community boards.

Affected area and local authorities

The legislation provides that the “affected area” in respect of a local board reorganisation application is the district of the unitary authority concerned i.e. in this case Tasman District. The “local authorities affected by the investigation” are just Tasman District Council.

As a result of these definitions, reorganisation options are limited to just Tasman District as currently defined. They cannot extend to options such as abolition of Tasman District and union of the area with another district, division of Tasman District between other districts, or alterations to existing Tasman District boundaries.

Procedure and timetable for investigation

In assessing the desirability of the reorganisation options available to it, the Commission must take into account how best to achieve a number of objectives set out in the legislation.

These include the following objectives which are proposed to be a particular focus given the nature of the reorganisation application:

- a) better fulfilment of the statutory purpose of local government (which relates to democratic local decision-making and to present and future community well-being)
- b) effective responses to the opportunities, needs and circumstances of the affected area
- c) enhanced effectiveness, efficiency and sustainability of local government services
- d) enhanced ability of local government to meet the changing needs of communities for governance and services into the future.

In deciding whether or not to adopt a reorganisation plan in response to the Golden Bay local board application and following the investigation, the Commission must consider, among other things, levels of public support and opposition to any proposed changes.

To help it assess likely support and opposition, the Commission intends preparing a 'Golden Bay local board proposal' for consultation purposes. This will set out what a local board is (compared to a community board), what it could do, and what are the likely cost impacts.

The Commission believes a specific proposal relating to Golden Bay is necessary for the public to properly consider the merits, or otherwise, of a local board for that area and to present their views to the Commission.

To assist it determine possible responsibilities for a Golden Bay local board and the likely costs, Tasman District Council has agreed to assist the Commission in identifying these aspects of the proposal. This is to ensure as useful and accurate information as possible is available to the public in the proposal document.

The Commission has received a consultant's report on current service delivery and funding arrangements in Tasman District. This will assist it in its investigation of possible local board responsibilities, costs and impacts on Tasman District Council.

To help identify further relevant information, the Commission will consult Auckland Council. Auckland is currently the only area in the country with local boards.

While the proposal will be for a Golden Bay local board, the document will also identify other possible options of local boards elsewhere in Tasman District and retention of status quo arrangements including the existing community boards. This will assist it gauge the respective levels of community support and opposition for the various options.

The Commission will invite submissions on the 'Golden Bay local board proposal' and hold hearings across Tasman District for those submitters who wish to present their views in person to the Commission.

In addition to the proposal document, further information will be made available through the media, Tasman District Council communication channels and the Local Government Commission website.

The intended timetable (as amended) for the investigation is as follows:

- a) completion of consultation on investigation process document: December 2019
- b) publishing of amended investigation process document: June 2020
- c) release of Golden Bay local board proposal: July 2020
- d) completion of submissions process and hearings on proposal: August/September 2020
- e) Commission decision on whether or not to adopt a reorganisation plan: November 2020.

Opportunities for affected iwi or hapū to engage with investigation

The Commission is required to provide information on how and when affected iwi and hapū will be given the opportunity to engage with its investigation.

With the assistance of Tasman District Council, the Commission has identified nine iwi as having interests in the affected area. Given the requirement to consult affected iwi or hapū before adopting this document, the Commission has commenced a process aimed at recognising the nature and extent of the interests of affected iwi or hapū in the outcome of the investigation. To date this has involved hui with Manawhenua ki Mohua and Te Waka a Maui Iwi Chairs Forum to outline the proposed investigation process and opportunities to engage with the investigation including the submissions and hearings process.

The Commission will carefully consider all the feedback received from affected iwi as it undertakes its investigation including any requests for further meetings.

Opportunities for key stakeholders to engage with investigation

The Commission is also required to provide information on how and when key stakeholders will be given the opportunity to engage with its investigation.

With the assistance of the interested parties, the Commission will identify key stakeholders with district-wide or local community interests within Tasman District. These stakeholders will be advised of the proposed investigation process and opportunities to engage with the investigation including the submissions and hearings process.

The Commission will carefully consider all the feedback received from stakeholders as it undertakes its investigation including any requests for meetings.

Public consultation on investigation

The Commission is required to set out information on how and when members of the public will be consulted on the investigation.

The Commission believes its decision to prepare a specific 'Golden Bay local board proposal' for consultation purposes, including a submissions and hearings process and timelines for these, is the most appropriate mechanism for meeting this requirement.

The Commission will carefully consider all the feedback received from this consultation.

Other relevant matters

Experience with local boards

As noted, at present local boards only exist in Auckland which has 21 boards established across its area as a result of Auckland-specific governance reform legislation in 2010. The option of the establishment of local boards was subsequently extended to other unitary authorities in New Zealand.

As part of its investigation, the Commission will need to consider the extent to which the Auckland experience with local boards is applicable to Tasman District. Alternatively, to what extent would it be 'breaking new ground' if the Commission were to determine that just one local board, in Golden Bay, be established in Tasman District?

Funding of local boards

Under the Local Government (Rating) Act 2002, only local authorities may determine how rates are levied across a district. The Commission does not have the power to determine rates for the local authorities concerned as part of a reorganisation plan.

If the Commission were to establish one or more local boards in Tasman District, it could only make a recommendation to Tasman District Council on how that board(s) should be funded such as by way of a targeted rate for particular costs. Accordingly, as part of its investigation, the Commission will need to consider possible implications of the council's funding and rating decisions for the local board area(s) concerned and also the wider Tasman District, as part of its decision on a possible reorganisation plan.

Commencement date for a local board(s)

The Local Electoral Act 2001 provides that if an election for a particular body is held within 12 months of the next triennial general elections, a further election for that body is not necessary at those triennial elections. This means that the maximum term for any local board established as a result of a reorganisation, is four years.

If the Commission were to establish one or more local boards in Tasman District, it would have then to consider the appropriate commencement date for that board(s). More particularly, it would have to consider whether a two-year term, say from November 2020 to October 2022 (the date of the next triennial elections), would be appropriate, or whether elections for the new board(s) should be delayed until October 2021 to allow for an initial four-year term.

Principles to have regard to when undertaking a reorganisation investigation

Clause 7(3) of Schedule 3 of the Local Government Act 2002 (as amended on 22 October 2019) sets out the following principles which the Local Government Commission must have regard to when undertaking its investigation into the Golden Bay local board application:

- a) early information should be available to the public and stakeholders about the issues to be investigated, the process to be followed, and the opportunities for public input
- b) the process should be in proportion to the scale, scope and potential impact of the identified issues and of any reorganisation plan that may result from the investigation
- c) the process should recognise the relevant evidence and information that the Commission already holds
- d) the process should recognise and reflect the nature and extent of the interests of affected iwi or hapū in the outcome of the investigation
- e) the process should provide persons, entities and organisations who wish to have their views on the subject matter of the investigation considered by the Commission with a reasonable opportunity to present those views to the Commission
- f) the extent and nature of public and stakeholder engagement should:
 - i. reflect the degree of public interest (including of each affected iwi or hapū) in the issues and in any reorganisation plan that may result from the investigation
 - ii. reflect the importance of:
 - A. stakeholder input
 - B. community engagement
 - C. public acceptance of the process and the potential outcome
 - iii. appropriately balance the costs and benefits of different processes.