

**To: Local Government Commissioners**  
**From: Don Mackay Senior Adviser**  
**Date: 9 October 2017**  
**Meeting: 11 October 2017**  
**Subject: Deliberation on Northland Reorganisation Draft Proposal**

### **Purpose**

1. This report provides advice to support the completion of the decision-making process on the Northland local government reorganisation application, under clause 21(1) of Schedule 3 of the Local Government Act 2002.<sup>1</sup>
2. Officers recommend the Commission decide not to issue a final proposal and give public notice of the decision and the reasons for it. This would supersede the earlier decision of 25 May 2015 to identify a new preferred option as the basis for a new draft proposal. This would mean that the existing local government arrangements for the Northland region would remain in place.
3. It is recommended that the Commission continue to engage with the local authorities of the Northland region in terms of its general powers under sections 30 and 31(1A), with a view to reporting and making recommendations to the councils about the further development of shared services among them.

### **Recommendations**

4. We recommend that Commissioners:

#### *Previous consideration*

- a) **note** that on 25 May 2015 the Commission decided:
  - (i) not to proceed with the previous draft proposal for a region-wide unitary council for Northland; and instead,
  - (ii) to identify, under clause 11, a new preferred option as the basis for a new draft proposal.
- b) **note** that the Commission did not at that time immediately identify a specific new preferred option but decided to re-engage with the region's councils to develop such an option.

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<sup>1</sup> All sections referred in this paper refer to the Local Government Act 2002 unless otherwise stated. References to clauses are to clauses in Schedule 3 of the Local Government Act unless otherwise stated.

### *Statutory decisions required*

- c) **note** that the process under clause 21 to identify a new preferred option requires the Commission to revisit the multi-step decision process that is set out in clauses 11 and 12.
- d) **note** that clauses 11 to 19 set out the following sequence of decisions which the Commission is required to make in order to produce a new draft proposal:
  - (i) the extent to which the Commission identifies reasonably practicable options;
  - (ii) the identification of reasonably practicable options;
  - (iii) the identification of a preferred option from among the reasonably practicable options; and finally
  - (iv) the content of a draft proposal giving effect to the preferred option.
- e) **note** that the context in which the Commission is now applying the tests set out in clauses 11 and 12 differs from that of its initial consideration of them in that the Commission is now able to be informed by the results of consultation on the previous draft proposal, and the further engagement with the Northland councils since that time.

### *Extent of Identification of reasonably practicable options*

- f) **agree** that having had regard to all of the matters in clause 11(3) the Commission should limit the extent of its consideration of reasonably practicable options to options which it has reason to believe would attract a sufficient level of community support for such a proposal to be likely to be successfully implemented – that is that they would have a reasonable chance of success at a poll of affected electors.

### *Identification of reasonably practicable options*

- g) **note** that clause 11(4)(a) states that “reasonably practicable options” must include the existing local government arrangements.
- h) **agree** that there is no other option for local government reorganisation in Northland, other than the existing local government arrangements, that satisfies (f) above.
- i) **note** that, as a consequence of (h), there is no option to which to apply the tests in clauses 11(5) and (6) for an option to be regarded as “reasonably practicable”.

### *Reconciliation with previous decisions*

- j) **agree** that as a consequence of (h), it is not possible for a new preferred option to be identified as a basis for a new draft proposal, as had been anticipated at the time of the Commission’s decisions of May 2015.
- k) **agree** instead to decide not to issue a final proposal and give public notice of the decisions and the reason for it, under clause 21(1)(d).
- l) **agree** that the Commission’s reasons for this decision are that:
  - (i) it is conscious of the efforts being made by the Northland councils to explore and advance shared services arrangements as a means of delivering

better value to their ratepayers, and wishes to work with the Northland councils to further advance these;

(ii) it considers that the ongoing development of such shared services arrangements, rather than local government reorganisation, is at this time the option that best promotes good local government in the region;

(iii) it does not believe that there is any option for local government reorganisation in Northland that would have a sufficient level of community support to be successfully implemented – that is have a reasonable chance of success at a poll of affected electors.

m) **Note** that the Commission has the powers

(i) under section 30(2)(b) to promote good practice in relation to a local authority or to local government generally, and

(ii) under section 31(1A) to consider report and make recommendations to local authorities on matters arising from a reorganisation process.

n) **agree** that the Commission continue to work with the Northland councils in terms of its mandates under sections 30(2)(b) and 31 (1A).

#### *Next steps*

o) **note** the Commission has accepted an invitation to attend a meeting of the Northland Mayoral Forum in Whangarei on 20 October.

p) **note** that this will provide an opportunity to advise the councils face to face of the Commission's decision, in addition to the more formal public notice that is required.

q) **agree** that the Commission will do a report for the councils and Minister on the outcomes of the Northland reorganisation process and the shared services initiatives among the councils in the region.

# **1. Background and previous consideration**

## **Application received**

1. The Commission received a local government reorganisation application from the Far North District Council in December 2012. The application was for the council to become a unitary authority. The Commission accepted that the application met the statutory requirements, and agreed to assess it. It resolved that the 'affected area' was the whole Northland region, as the establishment of a Far North unitary authority would impact materially on the operational scale and scope, and capacity of the existing Northland Regional Council.
2. The Commission notified the applications on 8 March 2013, and called for alternative applications. A total of 41 responses were received. Seven of these met the criteria to be regarded as 'alternative applications', but the Commission considered all responses as valid expressions of alternative views. Over the period from May to August 2013 the Commission met with all affected local authorities, with a wide range of other interested individuals and groups, and held a series of public meetings at locations throughout the region.

## **Reasonably practicable options identified**

3. The Commission identified the 'reasonably practicable options' and its 'preferred option' as required by clauses 11 and 12. In determining the extent to which it identified reasonably practicable options at that time the Commission sought to cast the net widely and considered a wide range of options.
4. Following consideration of the criteria set out in clause 11 the Commission identified four "reasonably practicable options" in addition to the status quo. These were:
  - a) a modified status quo involving transfers of land transport and land use planning responsibilities from the territorial authorities to the regional council;
  - b) two unitary authorities for the region;
  - c) one unitary authority for the region; and
  - d) a single combined territorial authority along with the existing regional council.

## **Preferred option and draft proposal for region-wide unitary council**

5. In September 2013, the Commission determined that its preferred option was to create a single region-wide unitary authority. In November 2013 it released a draft proposal for the establishment of a unitary authority called the Northland Council, and called for submissions.
6. Submissions closed in February 2014, and a total of 1,894 were received. A large majority (90.3%) of submissions were opposed to the proposal. This sentiment was general across all three affected districts, with the most frequent reasons offered by

submitters being that they were generally satisfied with the current arrangements and concerned at the loss of voice for smaller communities. This was seen as a clear message to the Commission that the people of Northland identified strongly with their local communities and their existing districts.

### **Commission withdraws region-wide unitary proposal**

7. In May 2015 the Commission considered the range of options set out in clause 21, which require the Commission to either:
  - a) issue the draft proposal as a final proposal; or,
  - b) issue a modified draft proposal as a final proposal; or,
  - c) identify, under clause 11, another preferred option as the basis for a new draft proposal; or,
  - d) decide not to issue a final proposal and give public notice of the decision and the reasons for it.
8. The Commission decided to identify another preferred option as the basis of a new draft proposal for the Northland region because it considered that:
  - a) it could not be satisfied that there was demonstrable community support in the district of each affected territorial authority, either
    - i. to issue the draft proposal as a final proposal, or
    - ii. to issue a modified draft proposal as a final proposal, but that
  - b) the issues around good local government identified in the application, and through consultation with the community and investigations undertaken by the Commission, meant there were sufficient grounds to continue to investigate changes in Northland local government arrangements.

### **Re-engagement with councils**

9. The Commission did not immediately identify a specific new draft proposal as it considered that further engagement with the affected local authorities was desirable to better inform its decision on what a new preferred option might be. Over the period since June 2015 the Commission has undertaken further work in this regard. Having regard to the submissions it had received the Commission's focus has been on working with the councils to jointly identify a range of opportunities to improve local governance and service delivery in Northland.
10. Through these processes it has become clear that there is no appetite among the Northland councils overall for major structural change to local government arrangements along the lines of the four other reasonably practicable options identified in December 2013. The councils' positions are consistent with the level of opposition to the earlier draft proposal expressed by submitters, and the reasons expressed for this.

11. The range of options for change that are available to the Commission is limited to those things that fall within the scope of “local government reorganisation” as defined in section 24. In summary, this includes establishing abolishing and combining districts, altering their boundaries, giving territorial authorities the powers of regional councils, and transferring statutory obligations (but not other roles and responsibilities) among councils. Significantly this does not include options such as mandating the establishment of council controlled organisations as vehicles for shared services among councils.
12. Accordingly while amendments contained in the Local Government Act 2002 Amendment Bill (No 2) propose to extend the scope of “local government reorganisation” to also include the creation of council controlled organisations and to transfer a greater range of responsibilities among councils, this broader range of options is not relevant to the Commission’s current decisions.
13. At the impetus of the councils, the Commission’s engagement with the Northland councils over the period since 2013 has, however, focused largely on the development by the councils of a Northland Strategic Collaboration and the exploration of a range of opportunities for shared services as means of improving local government service delivery in the region under the umbrella Northland Forward Together. This is a body of work initiated by the councils concurrently with Commission’s formal reorganisation process.
14. Overall 20 separate work streams have been identified as part of Northland Forward Together although not all have been prioritised for immediate action. A key aspect that has been prioritised has been the establishment of the Northland Transport Alliance. This is a Shared Services Business Unit of the councils and NZTA, located in Whangarei, but with staff remaining employees of their home organisation.
15. A Memorandum of Understanding between the Commission and councils was agreed in April 2016 around how the parties would work together across the shared services area and the Commission’s reorganisation process.
16. The Commission has contributed by providing funding for two specific pieces of work. The first of these was a regional overview of the current state of water assets, covering drinking water, wastewater, stormwater and flood protection. The second was a review of the councils’ ICT architecture. These were presented to the Northland Chief Executive’s Forum in September 2016, prior to the local elections. At that time the Commission indicated that it would give the councils time to consider these reports, along with other aspects of their Northland Forward Together programme, before seeking a response.
17. The Commission followed up asking councils to report on progress with the programme, and the water and ICT reports in particular, in July 2017. A response was received on 23 August. This was the subject of a report to the September 2017 Commission meeting.
18. In addition to the specific actions set out above the Commission has met in several occasions with Chief Executives and Mayors so as to remain informed about developments and community views in the region generally.

## 2. Statutory decisions required

19. Schedule 3 sets out a sequence of decisions which the Commission must work through towards the possible release a new draft proposal based on a new preferred option. Each step has its own set of relevant criteria or factors to be considered:
  - a) The Commission must decide the extent to which it identifies reasonably practicable options (clause 11(3));
  - b) The Commission must identify reasonably practicable options and ensure that these meet the tests in clause 11(5), after considering the factors set out in clause 11(6). Note however that the existing local government arrangements are deemed to be “reasonably practicable” without the application of those tests (clause 11(4));
  - c) Where there is more than one reasonably practicable option (which will be the case unless the existing local government arrangements option is the only reasonably practicable option) the Commission must identify a preferred option, applying the tests in clause 12;
  - d) Having identified a preferred option the Commission must then develop a draft proposal based on that option (clauses 13 and 14 to 19).
20. There are then specific requirements relating to the notification of any new draft proposal and the conduct of consultation on it (clause 20).
21. The range of options available to the Commission is set out in the definition of “local government reorganisation” contained in section 24.

## 3. Reasonably practicable options

### Extent of identification of reasonably practicable options

22. *Officials recommend that the Commission limit the extent to which it identifies reasonably practicable options to those options for which it has evidence of sufficient community support for such a proposal to be likely to be successfully implemented – that is that they would have a reasonable chance of success at a poll of affected electors.*
23. In returning, under clause 21, to the clause 11 process to identify a new preferred option, the Commission is required to have regard to the same statutory considerations as when it approached this step in response to the original applications. It is also required, by clause 21, to consider the submissions and views received during the consultation process on the earlier draft proposal. In addition, the information and views obtained by the Commission in its further work undertaken since May 2015 are relevant. Consequently the context for the clause 11 process is now different from the Commission’s initial consideration of clause 11 in 2013.
24. Clause 11(2) gives the Commission discretion as to the extent that it identifies reasonably practicable options, after it has had regard to the factors listed in clause 11(3). These are:
  - a) the scale and scope of the changes proposed

- b) the degree of community support ... demonstrated to the Commission
- c) the potential benefits of considering other options and
- d) the desirability of early certainty about local government arrangements for the affected area.

25. Any new proposal would ultimately have to be able to attract sufficient **community support** to win a poll of electors in order to be implemented. The Commission now has better information on community views than when it previously traversed these provisions in 2013. Submissions on the previous draft proposal (both written submissions and hearings) made it clear that the lack of **community support** for the previous proposal was not solely a response to specific details of that proposal, but reflected a significant level of public scepticism that there was a case for change of major scale and scope to local government structures across the Northland region.
26. It has been clear throughout the Commission's engagement with the Northland councils since May 2015 that there remains a significant level of political opposition to the scale of changes to local government arrangements in the region that would fall within the definition of "local government reorganisation". There has been no indication these political attitudes are out of step with broader community opinion.
27. The Commission has previously considered a very broad range of reorganisation options in arriving at its original preferred option. There are no benefits from attempting to consider a **broader range of options** at this point.
28. The Commission also needs to be conscious that the reorganisation process for the Northland region has been running since late 2012. It has consumed a considerable amount of resource, and involved a significant period of uncertainty about local government arrangements in the region. In returning to the clause 11 process to identify a new draft proposal, we recommend the Commission gives greater weight to providing **certainty about local government arrangements** than was necessary when it considered the initial reorganisation applications.
29. These considerations as a whole need also to be considered in the context of this being a revisiting of the process after the Commission's original draft proposal failed to attract community support. The legislation is not explicit on the implications of this for how the clause 11 tests are approached – clause 21 merely directs that a new preferred option should be identified "under clause 11". It seems unlikely that the purpose of the legislation is for the Commission to advance further options (on a second look) where the information available to it does not support a view that there is a reasonable chance of those options attracting sufficient community support to be implemented. Otherwise, the effect would be to prolong the reorganisation process, and continue the expenditure of public resources on it, to no meaningful purpose. Officials consider it is more likely that the intention of the legislation is for the Commission to use the information it has obtained through the first process and any further engagement with the community and councils and exercise judgement about the range of options it might seek to promote.
30. Having had regard to all of the matters in clause 11(3), we recommend the Commission limit its identification of reasonably practicable options at this stage to only those for

which it has evidence of sufficient community support for such a proposal to be likely to be successfully implemented – that is that they would have a reasonable chance of success at a poll of affected electors.

## **Identification of reasonably practicable options**

31. *Officials recommend Commissioners agree that there are no options for “local government reorganisation” in the Northland region for which there is evidence of sufficient support for a proposal based on it to have a reasonable chance of success at a poll at this time.*
32. Reflecting on the results of the Commission’s consultations in the region, the results of the submission process on the previous draft proposal, and the Commission’s subsequent further engagement with the Northland councils, there is no evidence of significant public support for change to local government arrangements in the region at the scale that falls within the definition of “local government reorganisation”. This includes the options identified in 2013 as “reasonably practicable” but not the Commission’s then preferred option.
33. To the extent that the Commission does have evidence of any appetite for change this is at the level of the development of collaborative and shared services arrangements among the existing councils with the aim of improving governance and service delivery within the context of the current local authority boundaries and the current allocation of core roles and responsibilities among them. These sorts of changes do offer the prospect of promoting good local government in the region, but fall outside the range of changes that the Commission has mandate to advance as “local government reorganisation”. In particular, the creation of the Northland Transportation Alliance has to a large degree superseded the transport elements of the enhanced status quo option considered by the Commission in 2013 (transferring functions to the regional council).
34. Consequently the existing local government arrangements are, at this time, the only “reasonably practicable option”. The current arrangements are deemed by clause 11(4)(a) to be a reasonably practical option without application to the statutory tests set out in clauses 11(5) and (6).
35. Accordingly these tests do not need to be addressed as the current arrangements are the only “live” option. This means the current arrangements are also the Commission’s preferred option, without the need for the additional tests set out in clause 12 to be applied.

## **4. Recommended decisions**

36. *Officials recommend that the Commission revisit its decision of 25 May 2015 to identify a new preferred option as the basis for a new draft proposal, and instead decide not to issue a final proposal and to give public notice of the reasons for it, in terms clause 21(1)(d). It is recommended that the Commission’s reasons are:*

- a) *it is conscious of the efforts being made by the Northland councils to explore and advance shared services arrangements as a means of delivering better value to their ratepayers, and wishes to work with the Northland councils to further advance these;*
- b) *it considers that the ongoing development of such shared services arrangements, rather than local government reorganisation, is at this time the option that best promotes good local government in the region;*
- c) *it does not believe that there is any option for local government reorganisation in Northland that would have a sufficient level of community support to be successfully implemented – that is have a reasonable chance of success at a poll of affected electors.*

37. The Commission's May 2015 decision reflected an aspiration to identify a new preferred option as the basis for a new draft proposal, and the expectation that further work with the Northland councils would result in such an option being identified. In the event this has not proven to be the case. The further engagement we have undertaken has proven productive in supporting the developing impetus towards better local government in the region through the development of strategic collaboration and shared services. These are, however, not options which are capable of being advanced through a formal reorganisation proposal.

38. Accordingly it is timely for the Commission to acknowledge the changed focus of its engagement with the councils of the Northland region by bringing the formal reorganisation process to an end. This can be done by deciding not issue a final proposal, in terms of clause 21(1)(d). This will supersede the Commission's previous decision to identify a new preferred option as the basis for a new draft proposal under clause 11(1)(c).

39. Where the Commission decides not to issue a final proposal, it is required to give public notice of its reasons for deciding to do so. It is suggested that these reasons are:

- a) it is conscious of the efforts being made by the Northland councils to explore and advance shared services arrangements as a means of delivering better value to their ratepayers, and wishes to work with the Northland councils to further advance these
- b) it considers that the ongoing development of such shared services arrangements, rather than local government reorganisation, is at this time the option that best promotes good local government in the region
- c) it does not believe that there is any option for local government reorganisation in Northland that would have a sufficient level of community support to be successfully implemented – that is have a reasonable chance of success at a poll of affected electors.

## 5. Next Steps

40. *Officials advice is that the Commission should continue to work with the Northland councils in terms of its mandates under sections 30(2)(b) and 31 (1A). The invitation from the chief executives to visit Northland for further discussions with councils should be accepted as a first step. The Commission could then look to develop a report under section 31 to the councils and Minister making any specific recommendations on ways forward to the councils that seem appropriate.*
41. Bringing the formal reorganisation to a close will mean that the existing configuration of districts within the Northland region will remain in place. It does not however necessarily bring the Commission's involvement with the region to an end.
42. The Commission has general powers outside the formal reorganisation process that provide opportunities for it continue to engage with, and influence councils, in promoting good local government. These are:
  - a) under section 30(2)(b) to promote good practice in relation to a local authority or to local government generally, and
  - b) under section 31(1A) to consider report and make recommendations to local authorities on matters arising from a reorganisation process.
43. In addition the Northland Chief Executives, in responding to the Commission's letter of 20 July, invited the Commission to discuss progress with the region's shared services programme, and how the working relationship between the Commission and the Northland councils might best be progressed.
44. The Commission has the opportunity to continue to play a role in relation to the Northland Forward Together programme by continuing to engage and providing guidance and potentially making recommendations to the councils. There may be transferable insights and lessons from the Commission's work in other regions that may be of value: such as for instance the Wellington Water model.
45. It is proposed that in the first instance the Commission accept the invitation from the Chief Executives to visit Northland for further discussions. The first opportunity to do this is likely to be the Northland Mayoral forum scheduled for 20 October. The Commission could then look to develop a report making recommendations to the councils on how best to advance the shared services programme.